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Texas Register

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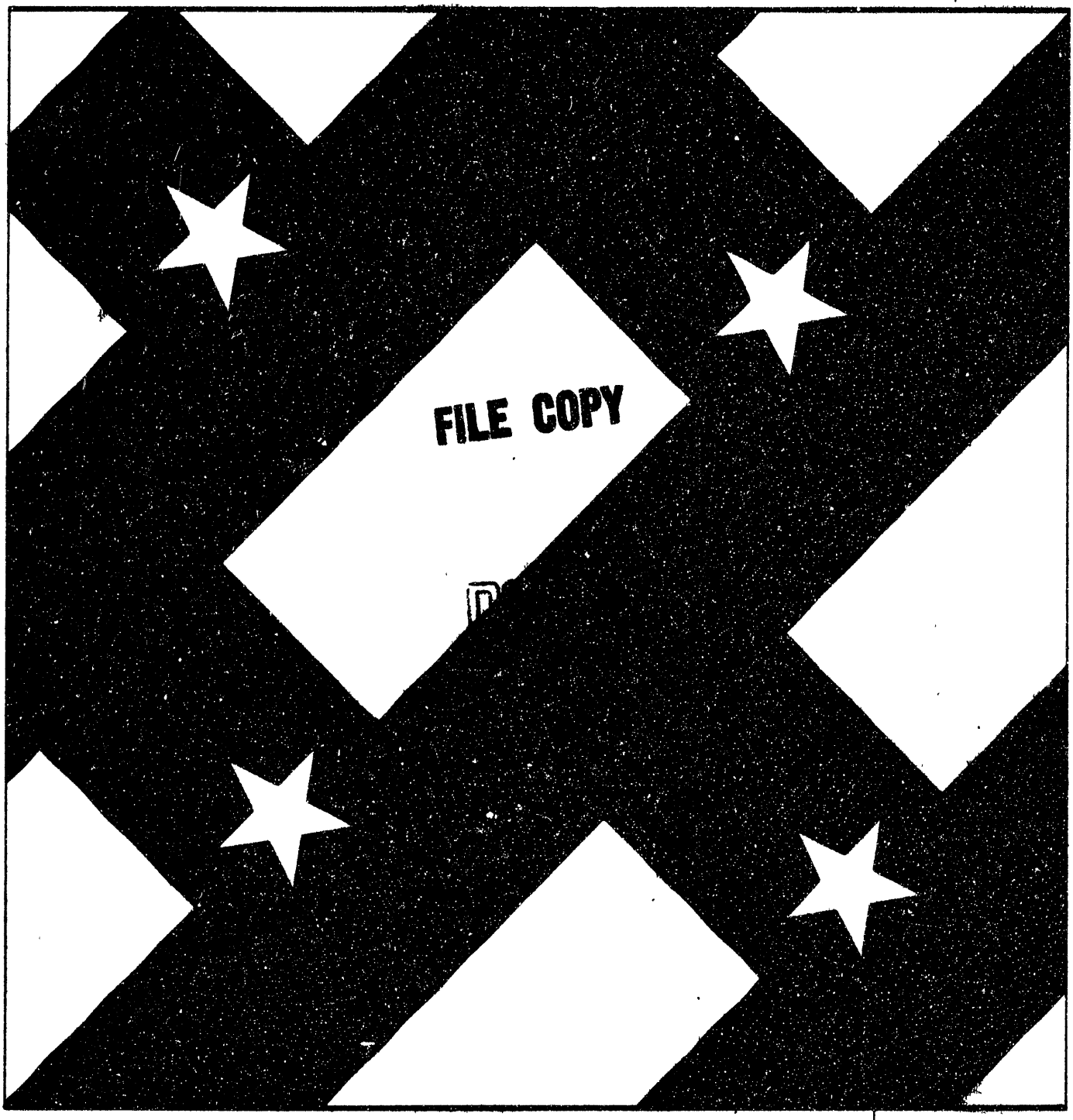

Highlights

Office of the Secretary of State

Texas Register

The *Texas Register* (ISSN 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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Information Available: The 11 sections of the *Register* represent various facets of state government. Documents contained within them include:

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- 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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 ([illegible] cite as follows: 6 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "11 TexReg 2 Issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 11 TexReg 3."

How To Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code*, rule number, or TRD number.

Texas Administrative Code

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

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

1 indicates the title under which the agency appears in the *Texas Administrative Code*;

TAC stands for the *Texas Administrative Code;*

27.15 is the section number of the rule (27 indicates that the rule is under Chapter 27 of Title 1; 15 represents the individual rule within the chapter).

Texas Register Publications

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TAC Titles Affected

TAC Titles Affected—February

The following is a list of the administrative rules that have been published this month.

The Governor

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

Appointment Made February 27

Texas World Trade Council

For a term to expire February 1, 1987:

Diana Natalicio
1320 Madeline
El Paso, Texas 79902

Ms. Natalicio is being appointed pursuant to Senate Bill 1409, 69th Legislature, 1985.

Issued in Austin, Texas, on February 27, 1986.

TRD-8602267 Mark White
Governor of Texas

★ ★ ★

Appointment Made February 28

Texas World Trade Council

For a term to expire February 1, 1987:

Donald J. Zahn
11639 Forest Creek Place
Dallas, Texas 75230

Mr. Zahn is being appointed pursuant to Senate Bill 1409, 69th Legislature, 1985.

Issued in Austin, Texas, on February 28, 1986.

TRD-8602267 Mark White
Governor of Texas

★ ★ ★

Appointment Made March 2

Railroad Commission of Texas

To be a member, until the next general election and until his successor shall be elected and duly qualified:

Clark Jobe
832 Bannister Lane
Austin, Texas 78704

Mr. Jobe is replacing Buddy Temple of Austin, who resigned.

Issued in Austin, Texas, on March 2, 1986.

TRD-8602267 Mark White
Governor of Texas

★ ★ ★

Appointments Made March 3

State Community Development Block Grant Review Committee

For two year terms to expire August 31, 1987:

Hershal L. Davenport
Alderman
City of Sonora
P.O. Box 1184
Sonora, Texas 76905

Maria Elena Flores
Councilwoman
City of Anthony
317 South Main Street
Anthony, Texas 88021

Roberto Guerra
County Judge
Jim Wells County
200 North Almond Street
Alice, Texas 78332

Dianne Hearn
Councilwoman
City of Colorado City
P.O. Box 792
Colorado City, Texas 79512

Betty Jean Jones
Mayor
City of Seguin
P.O. Box 591
Sequin, Texas 78155

Billy Daniel Jones
County Judge
Angelina County
P.O. Box 908
Angelina, Texas 75901

Billy Leo
Mayor
City of La Joya
P.O. Drawer H
La Joya, Texas 78560

Andrew R. Melontree
Commissioner
Smith County
2801 North Whitten
Tyler, Texas 75701

Ivory Moore
Commissioner
Hunt County
2600 Bois D'Arc
Commerce, Texas 75428

Eugene V. Ridlehuber
Mayor
City of Plainview
P.O. Box 1870
Plainview, Texas 79072

Leroy Singleton
Mayor
City of Hempstead
606 Seventh Street
Hempstead, Texas 77445

Shirley A. Young
Mayor
City of Goliad
205 South Market Street
Goliad, Texas 77963

Issued in Austin, Texas, on March 3, 1986.

TRD-8602267 Mark White
Governor of Texas

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Appointments Made March 4

Port of Galveston and Texas City

To be a member of the pilot commission for a term to expire April 15, 1987:

Charles Jordan
908 Pine Hollow
Friendswood, Texas 77546

Mr. Jordan is being reappointed.

Advancement of Labor-Management Relations

To be a member of the governor's task force for a term to continue at the pleasure of this governor:

David Brandon
Executive Director
Economic Development Commission
P.O. Box 12728
Austin, Texas 78711

Mr. Brandon is replacing Harden Wiedemann of Austin, who resigned.

Issued in Austin, Texas, on March 4, 1986.

TRD-8602267 Mark White
Governor of Texas

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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 16. ECONOMIC REGULATION

Part IV. Texas Department of Labor and Standards

Chapter 69. Manufactured Housing Division

Titling

★16 TAC §69.208

The Texas Department of Labor and Standards adopts on an emergency basis new §69.208, concerning recording tax liens on mobile homes. The department was provided this responsibility by the 69th Legislature, 1985. The department adopts §69.208 on an emergency basis to protect the welfare of mobile home consumers in Texas.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 5221-f, which provide for the adoption of rules and for action necessary to assure compliance with the interest and purpose of the Act, and which provide for uniform enforcement of all provisions of the Act.

§69.208. Recording Tax Lien on Manufactured Homes.

(a) The collector for a taxing unit may file notice of the unit's tax lien on a manufactured home with the Texas Department of Labor and Standards (TDLS). The notice must include:

(1) name and address or owner of manufactured home;

(2) amount of tax owed, tax year for which tax was imposed, and name of taxing unit that imposed tax; and

(3) manufacturer name, correct identification number, and Housing and Urban Development label number (if available).

(b) The notice must be on a form prescribed by the department and will consist of four parts:

(1) white—for TDLS;

(2) blue—for lienholder;

(3) orange—for notice of cancellation; and

(4) yellow—for collector.

(c) The white and blue portions of the notice are sent to the department to file the notice of tax lien. The department will stamp both portions received and recorded. The white portion will be returned to the collector, and the blue portion will be returned to the lienholder, if applicable. The orange portion will be retained by the collector for notice of lien cancellation. Upon cancellation of the lien, the orange portion should be completed and sent to the department where it will be stamped received and recorded and returned to the collector.

(d) The collector may simultaneously file notice of tax liens of all the taxing units served by the collector. However, notice of any lien for taxes for the prior calendar year must be filed with the department prior to May 1 of the following year. Any lien for which the notice is not filed by such date is extinguished and is not enforceable.

(e) A collector which handles several taxing units must file a separate tax lien notice for each of the taxing units.

(f) If the information on the tax lien notice matches that of the title of record, the department shall record a tax lien notice and shall indicate the existence of the lien on any document of title for the manufactured home issued by the department, until the collector for the taxing unit files a notice canceling the tax lien. Simultaneously with the recording of a tax lien, the department must mail a notice of the tax lien to any other lienholders of record

(g) If the information on the tax lien notice does not match that of the title of record, the notice will be returned to the taxing unit.

(h) For all manufactured homes sold, or to which ownership is transferred, after December 31, 1985, the recording of a tax lien notice filed with the department constitutes constructive notice of the existence of the lien to all purchasers of the manufactured home who purchase it after the date of recordation of the lien and before the collector for the taxing unit files a notice canceling the tax lien.

(i) If a tax lien ceases to exist, the collector for the taxing unit shall file a notice with the department stating that the lien no longer exists. Such notice shall be filed no later than 10 days after payment of the taxes.

(j) The provisions of this section shall not apply to a taxing unit, or any lien filed by a taxing unit, which regulates manufactured housing for siting or zoning purposes in a manner which is different from such regulation of site-built housing.

(k) For the purposes of this section, the term "manufactured housing" has the meaning assigned by Texas Civil Statutes, Article 5221f, §3(s), but does not apply to any manufactured home which has been declared to be real estate and for which the document of title has been canceled.

(l) A personal property tax lien may not be enforced against a manufactured home transferred to a bona fide purchaser who does not have constructive notice of the existence of the lien.

Issued in Austin, Texas, on March 7, 1986.

TRD-8602346 Allen Parker, Sr.
Commissioner
Texas Department of Labor and Standards

Effective date: March 10, 1986
Expiration date: July 8, 1986
For further information, please call (512) 463-3127.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 291. Water Rights

Subchapter A. General Provisions

★31 TAC §§291.1-291.7

The Texas Water Commission adopts on an emergency basis new §§291.1-291.7, 291.21-291.37, 291.41-291.44, 291.51-291.56, 291.61, 291.62, 291.71-291.76, 291.81-291.88, 291.91, 291.92, and 291.101-291.115, concerning the regulation of the business of water and sewer utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

It is the position of the commission that the provision of adequate water supply service and sewage treatment service directly impacts the public health, safety, and welfare. The commission acquired jurisdiction over these activities as of March 1, 1986. Because there is a need to maintain regulatory standards which will assure rates, operations, and services that are just and reasonable to consumers and utilities, and which will protect the public health, safety, and welfare, the commission found that an urgent need existed to adopt these new sections immediately.

The new sections are adopted in response to Senate Bill 249, Article C, 69th Legislature, 1985, which in pertinent part, amended the Texas Water Code. The new sections establish the substantive regulations which reflect the policies of the Texas Water Commission, as established in Senate Bill 249, regarding the assurance of water and sewer rates, operations, and services which are just and reasonable. The new sections also outline the procedures for presentation of these matters to the commission for consideration and determination. The procedures outlined in the new sections should be read together with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (APTRA); the Texas Water Code, Chapters 11, 12, and 13; and the rules of procedure of the Texas Water Commission.

The new sections were constructed by reviewing the rules that have been used by the Public Utility Commission of Texas (PUC) pertaining to water and sewer utilities, and modifying these rules to incorporate differences between the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c, (PURA), and Senate Bill 249, Article C, and to reflect procedure and practice of the Texas Water Commission.

Subchapter A primarily states matters already found in the Texas Water Code, Chapter 13 (the Act) or adopts regulations that have been used by the PUC. Exceptions to this practice are found in new §§291.3, 291.7, and 291.8. In §291.3, the definition of "licensing" has been broadened for purposes of clarity only. New terms are also proposed for definition. These terms reflect concepts similar to "purchased power and/or energy" and "purchased power and/or energy adjustment procedure," which are part of the PUC regulations. The commission's experience with water supply issues under the Texas Water Code, Chapters 11 and 12, indicates that those services can be shared among utilities and political subdivisions, and a procedure should be available for adjusting rates accordingly, without needing an exhaustive and costly rate review procedure. New §291.7 makes clear where filings and communications to the commission regarding rates and services matters are to be delivered, and new §291.8 makes clear that all agreements among parties to proceedings before the commission must be in writing in order to be enforceable.

Subchapter B, new §§291.21-291.37, is entitled "Jurisdiction and Appeal, Pleading and Petition Requirements. The Act, Chapters 11, 12, and 13, establish a large variety of ways to seek the commission's consideration of matters pertaining to water and sewer utilities' rates, operations, and services. These include surrender of exclusive original jurisdiction to the commission by governing bodies, proposals for changes in rates and complaints regarding such proposals, appeals to the commission regarding decisions of regulatory authorities with exclusive original jurisdiction, and applications for certificates of convenience and necessity and protests to such applications. Subchapter B addresses on an individual basis each of these cases. The approach of the commission is to provide in rule form a checklist so that the practitioner has a clear idea of what information must be submitted, and in what form, to successfully initiate an action before the commission. Utilities and customers will be best served by the commission if information can be collected and assimilated in the most efficient manner possible. The commission anticipates much work in this area, and must meet statutorily mandated processing deadlines in many cases. The checklist approach is intended to facilitate this processing.

Subchapter C basically incorporates the notice requirements set forth in the Act, as well as the notice requirements for hearings established by the APTRA. Particular note should be taken of new §291.41. It has already been emphasized herein that the commission's staff must receive all information in a form which facilitates efficient processing and assimilation. New §291.41 makes clear that submittals which do not conform to the requirements of Subchapter B will not be considered filed with the commission until sufficient information is provided to render the application administratively complete. In cases affected by the statutory processing deadlines set forth in the Texas Water Code, §13.187, new §291.41 makes clear that the proposed rate change cannot become effective until at least 35 days after the filing of a sufficient application. The commission will send notifications of deficiencies in writing so that the inadequacies of the submittal and the affected timelines are clear to those involved.

Subchapter D concerns evidence and procedure. New §291.51 makes clear that matters of evidence and procedure are controlled by the APTRA, the Texas Water Code, and the rules of procedure of the Texas Water Commission. New §291.52 represents no real change in the regulatory scheme because it tracks §21.84 of the rules of practice and procedure of the PUC. Likewise, new §291.53 represents no real change in the regulatory scheme because it tracks §21.163 of the rules of practice and procedure of the PUC. (Similarly, it should be noted that the Texas Water Code, §13.187(a), parallels the PURA, §43(e).) New §291.55 does, however, represent a significant change from the established regulatory scheme. The PURA, §43(h), provides for the availability of informal procedures only to utilities with fewer than 150 customers, which utilities are not members of groups filing a consolidated tax return and are not under common control or ownership with other water or sewer utilities. By contrast, the Texas Water Code, §13.015, affords the informal process to all utilities subject to regulation under the Texas Water Code, Chapter 13, as long as a record is made which supports written findings of fact in the case. New §291.55 establishes how the informal process is to be initiated and how a record of proceedings is to be made in order to support written findings of fact.

With few exceptions, this Subchapter E tracks §23.21 and §23.23 of the substantive rules of the PUC, to the extent that these sections pertain to water and sewer rates, operations, and services. One exception is found in new §291.61(b)(1)(B), where it is made clear that allowable expenses include depreciation expense based on original cost, computed on a straight line basis over the useful life of the asset. This is intended to eliminate confusion and unnecessary argument over the period for which straight line depreciation computation is appropriate. Another departure from PUC standards is found at new §291.61(a)(1)(E), which limits allowable expenses for ordinary advertising, contributions, and donations to $300. The PUC standard was 3/10 of 1.0% of the gross receipts of the utility. Because the regulations are addressed to utilities, rather than private enterprises, there is no purpose served by recognizing a need for differences in advertising, contributions, and donations based on the size of the utility or the amount of gross receipts. The impact of this change from the PUC approach is offset somewhat by the addition of new §291.61(a)(1)(F), which specifically allows expenses for funds expended for membership in professional or trade associations, as long as such associations contribute to the professionalism of their membership.

Additional flexibility is built into new §291.61(c)(3), by including the language "unless otherwise determined by the commission, for good cause shown," to the stipulation of items not to be included in rate base calculations. The commission recognizes the possibility that justification may exist for some items not normally considered part of the rate are to be included in that calculation, in order to assure the provision of adequate service. Finally, departures from PUC policy are also found in new §291.62(b) and (c). New §291.62(b) prohibits the use of rate structures which discourage conservation, such as declining-block rate structures. High volume customers are not to be favored because of the amount of business they generate for the utility. New §291.62(c) provides guidance for use of volume charges.

Subchapter F essentially adopts, in a changed format, the reporting requirements imposed on water and sewer utilities by §§23.11-23.14 of the substantive rules of the PUC. The initial reporting requirement is changed to include the most recent fiscal year ending on or prior to March 1, 1985. New §291.71(d) reflects the recognition of the commission that collection of monthly or quarterly reports

from all water and sewer utilities might be an unnecessary exercise which increases the cost of providing service. Therefore, annual reports only will be the general requirement, except in circumstances which require more specific investigation or monitoring. In such instances, new §291.71(d) provides that such reports may be required by the commission on a case-by-case basis. New §291.71 departs from the PUC policy by providing that the requirements regarding uniform systems of accounts can be waived by the commission if a federal regulatory body having jurisdiction over the utility imposes other requirements. This would eliminate the need for a utility to maintain more than one set of accounts.

Subchapter G adopts in large measure the contents of §§23.41-23.48 of the substantive rules of the PUC, which pertain to water and sewer utilities. One notable difference is that these new sections make no reference to provision of credit to customers. The only reference of that kind is the encouragement in new §291.84 (c) to offer a deferred payment plan to a customer who cannot pay the full bill, but is willing to pay in reasonable installments. All other credit policy is left to the individual utility and should be clearly explained in its tariff. The deposit policy found in new §291.82(a) reflects this credit policy, and also recognizes the difference between water and sewer utilities, on the one hand, and telephone and electric utilities, on the other hand, by imposing a ceiling of $50 for customer deposits.

It should be particularly noted that new §291.84(c) provides that contributions in aid of construction may be required of developers regardless of lot size or the number of lots into which property may be subdivided. The contribution would simply be determined by the amount necessary to furnish the development with facilities that conform to state requirements. This is intended to eliminate any possibility that subdividing could enable a developer to shift the cost of providing service to the utility and its other customers. Similarly, new §291.84(d) makes clear that the utility shall bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to a residential customer. The purpose of this approach is to protect utilities from being adversely affected by disorderly or spot-style development within their service areas. The commission policy is that customers who choose to move to out-of-the-way locations should be prepared to pay the cost of that decision, rather than shifting that burden to the other customers of the utility.

New §291.84(e) changes the time requirements for responses to requests for service to recognize the capital intensive nature of the work requested. The change also recognizes that immediate response is sometimes thwarted due to matters beyond the control of the utility, such as the unpreparedness of the applicant for utility service, or difficulties of interaction with local agencies (as in the acquisition of work permits).

It should also be noted that new §291.85 (b) does not distinguish between residential and commercial connections with regard to penalties for delinquent bill payments. Whereas such a distinction may be appropriately applied in cases involving telephone and electric service, it did not seem appropriately applied to water and sewer service cases.

Subchapter H adopts the provisions of §23.63 and §23.64 of the substantive rules of the PUC.

Subchapter I concerning certificate of convenience and necessity, contains a few changes from pre-existing PUC regulations in this area, including the filing deadlines found in new §291.106, which have been changed to conform to the deadline established by the Texas Water Code, §13.244(e). Just as with the exception for submission of initial reports found in new §291.71(b)(2), submission of maps and other certificate-related information is not necessary if the commission can fairly expect to have that information transferred from the PUC. The details of this exception are found in new §291.106(b).

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.1. Purpose and Scope of this Chapter. This chapter is intended to establish a comprehensive regulatory system to assure rates, operations, and services which are just and reasonable to the consumer and the utilities, and to establish the rights and responsibilities of both the utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, creed, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct, and determination of all water and sewer rate causes and proceedings before the Texas Water Commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

§291.2. Severability Clause. The adoption of this chapter will in no way preclude the commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. Furthermore, this chapter will not relieve in any way a utility or customer from any of its duties under the laws of this state or the United States. If any provision of this chapter is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable. The commission may make exceptions to this chapter for good cause.

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

Affected person—Any utility affected by any action of the regulatory authority; any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a utility with respect to any service performed by the utility or that desires to enter into competition.

Affiliated interest—The definition of affiliated interest is that definition given in the Texas Water Code, §13.002(8).

Agency—Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions for higher education) which makes rules or determines contested cases.

Allocations—For all utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

Base rate—The portion of a consumer's utility bill which is attributable to a set level of expenses fixed during rate proceedings.

Code—The Texas Water Code.

Commission—The Texas Water Commission.

Class of service or customer class—A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate.

Corporation—Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations, unless expressly provided otherwise in the Texas Water Code.

Customer—Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any utility.

Facilities—All the plant and equipment of a utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, op-

owned, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any utility.

License—The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

Licensing—The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the Texas Water Commission pursuant to its authority under the Texas Water Code.

Municipality—A city, existing, created, or organized under the general, home rule, or special laws of the state.

Municipally owned utility—Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

Permanent installation—Any installation that is constructed or placed on and permanently affixed to a foundation, and which is, or will be, used or occupied on a permanent full-time basis. A manufactured home or prefabricated structure shall qualify as a permanent installation only if it is installed on a foundation system according to regulations of the Texas Department of Labor and Standards or is otherwise impractical to move and has the wheels, axles, and hitch or towing device removed, and if it is connected to a permanent water and sewer system.

Person—Any natural person, partnership, cooperative corporation, corporation, association, or public or private organization of any character other than an agency or municipality.

Premises—A tract of land or real estate, including buildings and other appurtenances thereon.

Public utility—The definition of public utility is that definition given to "water and sewer utility" in this subchapter.

Purchased water—Raw or treated water purchased from a source outside the utility's system to meet system requirements.

Purchased water adjustment procedure—A short form procedure to adjust rates to recognize increases or decreases in the cost of purchased water. The total of these charges to all customers will not exceed the increased or decreased cost of purchased water.

Purchased sewage adjustment procedure—A short form procedure to adjust rates to recognize increases or decreases in the cost of purchased sewage treatment. The total cost of these charges to all customers will not exceed the increased or decreased cost of purchased sewage treatment.

Purchased sewage treatment—Sewage treatment purchased from a source outside the utility's system to meet system load requirements.

Rate—Includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any utility, or water or sewer service supplier, for any service, product, or commodity described in the Texas Water Code, §13.002(4), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

Service—Any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by utilities or water or sewer service suppliers in the performance of their duties under the Texas Water Code to their patrons, employees, other utilities, and the public, as well as the interchange of facilities between two or more of the utilities or water or sewer service suppliers.

Tariff—The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.

Test year—The most recent 12 months for which operating data for a utility are available, and shall commence with a calendar quarter or a fiscal year quarter.

Utility—The definition of utility is that definition given to "water and sewer utility" in this subchapter.

Water and sewer utility—Any person, corporation, cooperative corporation, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage, or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a city, town, or other political subdivision of this state or a water supply or sewer service corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

Water supply or sewer service corporation—Any nonprofit, member-owned, member controlled corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st called Session, 1933 (Texas Civil Statutes, Article 1434a).

§291.4. Cooperative Corporation Rebates. Nothing in these rules prevents a cooperative corporation from returning to its members the whole or any part of the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

§291.5. Filing of Documents.

(a) Filing with commission. All documents relating to any proceeding pending or to be instituted before the commission shall be filed with the commission, unless admitted as part of the record in a hearing. Unless otherwise provided in this chapter, an original and three copies shall be filed. Except as provided in §291.41 of this title (relating to Administrative Completeness) documents shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by statute or commission rules.

(b) Where to file. All filings and other communications with the commission pursuant to this chapter shall be delivered to Director, Water Rates and Services Division, Texas Water Commission, 1700 North Congress Avenue, P.O. Box 13087, Austin, Texas 78711-3087.

§291.6. Agreements to be in Writing. No stipulation or agreement between the parties, their attorneys, or representatives with regard to any matter involved in any proceeding before the commission shall be enforced unless it shall have been reduced to writing and signed by the parties or representatives authorized by these sections to appear for them, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated into an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law. The commission shall not accept any stipulation other than on procedural matters, unless there is evidence in the record as to the effect of the stipulation on every class of customers not expressly represented in the proceeding.

§291.7. Communications. Communications by public utilities, their affiliates or representatives, or any party with the commission or any employee of the commission shall be recorded at the commission. This record will contain the name of the person contacting the commission or employee of the commission, the name of the party or business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by same. This record shall be available to the public on a monthly basis.

Issued in Austin, Texas, on March 4, 1986.

TRD-8602216 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: March 5, 1986
Expiration date: July 3, 1986
For further information, please call (512) 463-8070.

Subchapter B. Jurisdiction and Appeal, Pleading, and Petition Requirements

★31 TAC §§291.21-291.37

The new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.21. Complaint by any Affected Person. Any affected person, political subdivision, or water supply corporation may complain to the commission in writing, setting forth any act or thing done or omitted by any utility in violation or claimed violation of any law that the commission has jurisdiction to administer or of any order, ordinance, or rule of the regulatory authority.

§291.22. Jurisdiction over Affiliated Interests. The commission has jurisdiction over affiliated interests having transactions with utilities under the jurisdiction of the commission to the extent of access to all accounts and records of those affiliated interests relating to such transactions, including, but in no way limited to, accounts and records of joint or general expenses, any portion of which may be applicable to those transactions.

§291.23. Ratepayer Defined. For purposes of this subchapter, each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer, notwithstanding the number of bills received. A petition for review shall be considered properly signed if signed by any person, or spouse of any such person, in whose name residential utility service is carried.

§291.24. Procedure for Surrender of Exclusive Original Jurisdiction of Municipalities. At any time after September 1, 1987, a municipality may seek to surrender to the commission exclusive original jurisdiction over water or sewer utility rates, operations, and services by any of the following methods.

(1) Discretionary election. The governing body of a municipality may, without being petitioned to do so, submit the question of the surrender to the qualified voters at a municipal election. If a majority of voters elect to surrender jurisdiction, a request will be submitted in writing by the governing body to the commission, accompanied by a sworn affidavit from the county clerk that the official result of the election was a majority rule that the municipality seeks to surrender the jurisdiction.

(2) Ordinance. The governing body of a municipality may by ordinance seek to surrender the jurisdiction to the commission. The request must be submitted to the commission in writing, accompanied by a certified copy of the ordinance passed for this purpose.

(3) Mandatory Election. On receipt of a petition signed by the lesser of 20,000 or 10% of the number of qualified voters voting in the last preceding general election in that municipality, the governing body must submit the question of surrender of the jurisdiction to the commission at a municipal election. If a majority of voters elect to surrender jurisdiction, a request must be submitted in writing, accompanied by a sworn affidavit from the county clerk that the official result was a majority rule that the municipality seeks to surrender jurisdiction.

§291.25. Reinstatement of Exclusive Original Jurisdiction of Municipalities.

(a) The municipality may at any time, by majority vote of the electorate, reinstate exclusive original jurisdiction in the governing body of the municipality. This must be accomplished by informing the commission in writing of the results of the election, accompanied by a sworn affidavit from the county clerk that the official result of the election was a majority rule that jurisdiction be reinstated in the governing body of the municipality.

(b) Notwithstanding subsection (a) of this section, no municipality may, by vote of the electorate, reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

(c) Any municipality that reinstates its jurisdiction shall be unable to again surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction.

§291.26. Jurisdiction over Nonprofit Water Supply Corporations.

(a) On petition of the lesser of 100 or 5% of the ratepayers of a nonprofit water supply corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Texas Civil Statutes, Article 1434a), the commission shall assume jurisdiction over the nonprofit water supply corporation.

(b) In order to establish jurisdiction in the commission, the following procedure will be followed.

(1) Upon collection of a sufficient number of signatures, the petition will be delivered to the main administrative office of the nonprofit water supply corporation by certified mail, return receipt requested. At the same time a copy of the petition will be delivered to the commission.

(2) No later than 15 working days from the date of delivery of the petition, as reflected on the certified mail receipt, the nonprofit water supply corporation must verify that the names on the petition are the names of ratepayers of the corporation.

(3) No later than 30 working days from the date of delivery of the petition to the nonprofit water supply corporation, as reflected on the certified mail receipt, the nonprofit water supply corporation will submit the following to the commission:

(A) the petition;

(B) an explanation of which, if any, of the signatures on the petition are not valid signatures of ratepayers of the nonprofit water supply corporation; and

(C) a sworn statement from an officer of the corporation ranking at least as high as vice-president, stating the number of ratepayers the nonprofit water supply corporation has.

(c) If a nonprofit water supply corporation comes under the jurisdiction of the commission, the jurisdiction of the commission may be rescinded on a petition which is constituted, verified, and delivered to the commission in the same manner prescribed in subsections (a) and (b) of this section.

(d) If a nonprofit water supply corporation comes under the jurisdiction of the commission, all rules and regulations contained herein applying to water and sewer utilities shall apply to such corporation.

§291.27. General Pleading Requirements. When commission action is sought for any purpose pursuant to the commission's regulatory authority over water and sewer utilities' rates and services, the following information shall be provided:

(1) the name of the party seeking commission action, with the original copy of every pleading signed in ink by the applicant or his authorized representative;

(2) the business phone number and the address, including the city, if any, and county, of the party and of his authorized representative, if any;

(3) the jurisdictional authority of the commission over the parties and subject matter;

(4) all the known parties and territories, if applicable, which would be affected if the petition is granted;

(5) the address of any party against whom any specific relief is sought;

(6) a concise statement of the facts relied upon by the pleader;

(7) a prayer stating the type of relief, action, or order desired by the pleader; and

(8) any other matter required by statute.

§291.28. Contents of Pleadings to Seek Review of Rate Actions Pursuant to the Act, §13.187(g).

(a) In addition to the information called for in §291.27 of this title (relating to General Pleading Requirements) petitions for review of rate actions filed pursuant to the Code, §13.187(g), shall contain the original petition for review with the required signatures. Each signature page of a petition shall contain in legible form the following information for each signatory:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the water or sewer service supplier in question as well as a concise descrip-

tion and date of that rate action;

(2) a statement designating a specific individual or organization as the signatories' attorney in fact, and a statement that the designated attorney in fact is authorized to represent the signatories in all proceedings before the commission and appropriate courts of law and to do all things necessary to represent the signatories in those proceedings;

(3) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory.

(b) If customers file individual complaints rather than joint petitions, each complaint shall contain the information called for in §291.27 of this title (relating to General Pleading Requirements).

§291.29. Contents of Petitions for Review of Municipal Rate Actions Filed Pursuant to the Act, §13.086(a), (b), or (e).

(a) In addition to the information called for in §291.27, of this title (relating to General Pleading Requirements), petitions for review of municipal rate action filed pursuant to the Code, §13.086(a), (b), or (e) shall contain the original petition for review with the required signatures. Each signature page of a petition shall contain in legible form the following information for each signatory:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the municipality in question as well as a concise description and date of that rate action;

(2) a statement designating a specific individual or organization as the signatories' attorney in fact, and a statement that the designated attorney in fact is authorized to represent the signatories in all proceedings before the commission and appropriate courts of law and to do all things necessary to represent the signatories in those proceedings;

(3) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory. The petition shall list the address of the location where service is received if it differs from the residential address of the signatory;

(4) a statement indicating whether the signatory is appealing the municipal rate action as a qualified voter of that municipality under the Code, §13.086(b), or as a customer of the municipal utility district served outside the municipal utility district boundaries under the Code, §13.086(e), or as a citizen of the municipal utility district under the Code, §13.086(a).

(b) Any page of the petition omitting any of the information required by this subsection, or containing illegible information not reasonably susceptible to verification is deemed invalid; however, if the omitted or illegible material consists only of the name, telephone number, or address of a signatory, then only those signatures are to be deemed invalid. The remaining signatures on that page shall be accepted. Any disputes over the informational sufficiency or legibility of a petition shall be resolved by the presiding hearings examiner by interim order.

(c) The petition for review shall state whether there is any other petition for review of municipal rate actions or petition for rate-setting under the commission's original rate-making jurisdiction that is pending at the commission and that concerns the same water or sewer utility. If there is such a petition for review or petition for rate setting, the docket number shall be provided in the petition for review.

§291.30. Contents of Pleadings Seeking Review of Rates for Sales of Water under the Texas Water Code, §§11.036-11.041 and 12.013.

(a) In addition to the information required in §291.27, of this title (relating to General Pleading Requirements), ratepayers seeking relief under the Texas Water Code, §11.041 and §12.013, must include in a written petition to the commission the following information:

(1) petitioner's name;

(2) the name of the water supplier from which water supply service is received or sought;

(3) the specific section of the Code under which petitioner seeks relief, with an explanation of why petitioner is entitled to receive or use the water;

(4) that the petitioner is willing and able to pay a just and reasonable price for the water;

(5) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(6) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(b) In addition to the information required in §291.27 of this title (relating to General Pleading Requirements), water suppliers seeking relief under the Texas Water Code, §11.041 and §12.013, must include in a written petition for relief to the commission the following information:

(1) petitioner's name;

(2) the name of the ratepayers to whom water supply service is rendered;

(3) the specific section of the Code under which petitioner seeks relief, with an explanation of why petitioner is entitled to the relief requested;

(4) that the petitioner is willing and able to supply water at a just and reasonable price; and

(5) that the price demanded by petitioner for the water is just and reasonable and is not discriminatory.

(c) If the petition for relief is accompanied by the deposit stipulated in the Code, the commission shall have a preliminary investigation of allegations contained in the petition made and determine whether or not there are probable grounds for the complaint alleged in the petition. The commission may require the petitioner to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission.

(d) If, after preliminary investigation, the commission determines that probable grounds exist for the complaint alleged in the petition, the commission shall enter an order setting a time and place for a hearing on the petition.

(e) At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The commission shall hold a hearing on the petition at the time and place stated in the order. On completion of the hearing, the commission shall render a written decision.

(g) If, after the preliminary investigation, the commission determines that no probable grounds exist for the complaint alleged in the petition, the commission shall dismiss the petition.

§291.31. Contents of Certificate of Convenience and Necessity Applications. In addition to the information called for in §291.27 of this title (relating to General Pleading Requirements), applications for certificates of convenience and necessity shall contain the following:

(1) an original and four copies of the appropriate application form prescribed by the commission, completed as instructed, and properly executed;

(2) territorial maps filed in support of such application for initial or amended certificates which shall fulfill the following requirements:

(A) for water and sewer utilities, political subdivisions, and water supply and sewage service corporations, the area to be served shall be shown on a state highway county map, scale one-inch equals two-miles. It shall clearly define the proposed location of the applicant and each neighboring water or sewer utility within two miles of applicant's present location, and service boundaries shall conform to verifiable landmarks such as roads, creeks, railroads, etc. Facilities shall be shown on United States Geological Survey 7½ minute series maps, subdivision plats, engineering planning maps, or other maps of equivalent scale and accuracy;

(B) an original and four copies of each map shall be filed;

(C) separate maps shall be filed for each county in which the reporting utility operates;

(D) if applicable, the map shall separately indicate the production facilities, transmission facilities, and distribution facilities as located within the territory claimed:

(i) a color code may be used to distinguish the types of facilities indicated;

(ii) the location of any such facility shall be described with such exactness that the facility can be located on the ground from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location;

(3) an original and four copies of any evidence as required by the commission to show that the applicant has received the required consent or permit of any other public authority, for example, municipalities.

§291.32. Filing Fees. Each application, petition, or complaint which is intended to institute a proceeding before the commission shall be accompanied by the appropriate filing fee as required by the Texas Water Code, §5.235, and costs of mailing notice, if any.

§291.33. Service of Pleadings. A copy of any pleading filed by any party in any proceeding before the commission shall be mailed or delivered by the party filing it to every other party of record and to the director, Water Rates and Services Division, Texas Water Commission. If any party is being represented by an attorney or other representative authorized under these sections to make appearances, service shall be made upon that attorney or representative.

§291.34. Examination and Correction of Pleadings and Petitions. Verification of petitions of appeal and surrender or rescission of original jurisdiction submitted pursuant to the Texas Water Code, §13.086. Unless otherwise provided by order of the commission or presiding hearings examiner, the following procedures shall be followed to verify petitions of appeals of original jurisdiction.

(1) Within 30 days after receipt of the petition from the executive director, the affected water supply corporation or political subdivision shall determine the status of the signatories to the petition and shall file with the commission a statement setting forth the results of its review, together with a supporting written affidavit sworn to by a duly authorized official.

(2) The period for review of the signatures on the petition may be extended by the commission for good cause, upon written motion served on all parties.

(3) Failure of the entity responsible for verification to timely submit the statement of review required in paragraph (1) of this section shall result in all signatures being deemed valid.

(4) Objections based on an insufficient number of valid signatures by the entity responsible for verification shall be set out in its statement of review and shall be resolved by the commission after notice and opportunity to be heard is afforded pursuant to the Administrative Procedure and Texas Register Act, and the Texas Water Commission rules of procedure.

§291.35. Applications, Testimony, and Exhibits.

(a) A change in rates is initiated by the submission of a rate filing package which consists of a petition for rate setting, a rate/tariff change application form or such other forms as prescribed by the commission, a statement of intent to change rates, a copy of the notice the applicant intends to publish and to provide to customers, annual financial statements covering the complete test year, if available, and prefiled testimony and exhibits.

(b) A utility filing for a change in rates shall be prepared to go forward at a hearing on the data which has been previously submitted and sustain the burden of proof of establishing that its proposed changes are just and reasonable, and the material submitted as the filing and supporting work papers shall be of such composition, scope, and format so as to serve as the utility's complete case.

(c) An original and four copies of the rate filing package shall be submitted and filed with the commission and in the event that the proposed rate change becomes the subject of a hearing, the commission shall require additional copies.

(d) The book data included in the schedules and information prepared and submitted as part of the filing shall be reported in a separate column or columns. All adjustments to book amounts shall also be shown in a separate column or columns so that book amounts, adjustments thereto, and adjusted amounts will be clearly disclosed, and any separation and allocation between interstate and intrastate operations shall be fully disclosed and clearly explained.

(e) All intervenors or protestants shall file the specified number of copies of their prepared testimony and exhibits and within the specified time period.

(f) The executive director shall prefile, except for good cause, the prepared testimony and exhibits of its witnesses eight days prior to the final hearing, but shall not otherwise be required to present its case prior to that time, except upon the granting of motions for discovery.

(g) The items in the rate filing package may be modified on a showing of good cause.

(h) The times for filing set out in this chapter may be modified by the commission for good cause.

§291.36. Form and Filing of Tariffs.

(a) Effective tariff. No utility shall directly or indirectly demand, charge, or collect any rate or change, or impose any classifications, practices, rules, or regulations different from those prescribed in its effective tariff filed with the commission.

(b) Requirements as to size, form, identification, and filing of tariffs.

(1) Every public utility shall file with the commission five copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service by May 29, 1986, or when it applies for a certificate of convenience and necessity to operate as a public utility, if it is not in existence as of May 29, 1986. (Utilities which already have current tariffs on file with the Public Utility Commission of Texas, which have been transferred to the Texas Water Commission, need not file tariffs pursuant to this section unless specifically directed to do so by the Texas Water Commission.) The utility shall also file five copies of each subsequent revision. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(2) All tariffs shall be in looseleaf form of size 8½ inches by 11 inches, and shall be plainly printed or reproduced on paper of good quality. The front page of the tariff shall contain the name of the utility, location of its principal office, and the type of service rendered.

(3) Each rate schedule must clearly state the territory, city, or county wherein said schedule is applicable.

(4) Tariff sheets are to be numbered consecutively per schedule. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(c) Composition of tariffs. The tariff shall contain sections setting forth:

(1) a table of contents;

(2) a preliminary statement containing a brief description of the utility's operations;

(3) a list of the cities and counties, and subdivisions or systems in which service is provided;

(4) the rate schedules;

(5) the service rules and regulations, including forms of the service agreements, if any;

(6) extension policy; and

(7) an approved water rationing plan.

(d) Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the docket number, date of the order, a list of tariff sheets filed, and any

other necessary information. Said tariff sheets shall comply with all other rules in this chapter and shall include only changes ordered. The effective date and/or wording of said tariffs shall comply with the provisions of the order.

(e) Symbols for changes. Each proposed tariff sheet shall contain notations in the right-hand margin indicating each change made on these sheets. Notations to be used are:

(A) to denote a change in regulations;

(B) to denote discontinued rates or regulations;

(C) to denote the correction of an error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision);

(D) to denote a rate increase;

(E) to denote a new rate or regulation;

(F) to denote a rate reduction; and

(G) to denote a change in text, but no change in rate or regulation. In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.

(f) Availability of tariffs. Each utility shall make available to the public at each of its business offices or designated sales offices within Texas all of its tariffs currently on file with the commission, and its employees shall lend assistance to seekers of information therefrom and afford inquirers an opportunity to examine any of such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.

(g) Rejection. Any tariff filed with the commission and found not to be in compliance with these sections shall be so marked and returned to the utility with a brief explanation of the reasons for rejection.

(h) Change by other regulatory authorities. Tariffs which are filed to reflect changes in rates or regulations set by other regulatory authorities shall include a copy of the order or ordinance authorizing the change.

(i) Effective date of tariff change. No tariff change may take effect prior to 35 days after filing without commission approval. The requested date will be assumed to be 35 days after filing unless the utility requesting the change requests a different date in its application. The commission may suspend the effective date of the tariff change for up to 120 days after the requested effective date and extend that suspension for up to 30 additional days if it finds that a longer time will be required for final determination.

§291.37. Appeal under the Texas Water Code, §13.086.

(a) The appeal process shall be instituted within 30 days of the final decision by the governing body by filing a petition for review with the commission and by serving copies on all parties to the original rate proceeding.

(b) When a petition for appeal is submitted to the commission, the governing body shall have 30 days to challenge the petition on the basis of invalidity of signatures, an insufficient number of signatures, or on the basis that the appellant was not a party to the rate proceeding before the governing body of the municipality. If no such challenge is presented, or if the petition withstands such challenge, the commission will fix a time and place for hearing on the matters in dispute, as well as all other related matters which the commission feels are necessary to consider.

(c) The commission shall hear an appeal *de novo* and shall fix in its final order the rates which the municipality or municipal utility district should have fixed in the ordinance from which the appeal was taken.

Issued in Austin, Texas, on March 4, 1986.

TRD-8602217 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: March 5, 1986
Expiration date: July 3, 1986
For further information, please call (512) 463-8070.

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Subchapter C. Notice

★31 TAC §§291.41-291.44

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rule-making authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.41. Administrative Completeness. Applications for rate/tariff change and certificates of convenience and necessity shall be reviewed by the staff for administrative completeness within 10 working days of receipt of the application by the executive director. An application for rate/tariff change shall not be deemed to have been filed until a determination of administrative completeness is made. Upon determination that the application is administratively complete, the executive director will notify the applicant by mail of that determination. The filing date of the application shall be the date of such letter of notification. If the executive director determines that material deficiencies exist in any pleadings, petitions for relief, applications, or other requests for commission action addressed by this chapter, the party so notified shall have 10 days to amend and thereby correct the deficiency. In cases involving proposed rate changes, the effective date of the proposed change is 35 days after the filing date of the application or other proposed effective date, if later. Statutory processing deadlines will be initiated on the same day.

§291.42. Applicant's Notice of Intent To Change Rates.

(a) In order to change rates which are subject to the commission's original jurisdiction, the applicant shall give notice in the following ways.

(1) The applicant shall publish a notice of a proposed change in rates in conspicuous form and place once each week for four consecutive weeks prior to the effective date of the rate change in a newspaper having general circulation in each county containing territory affected by the proposed change.

(2) The published notice shall contain the following information: the effective date of the proposed rate change, the increase or decrease requested over test year revenues as adjusted for test year customer growth and annualization of test year rate increases, stated both as a dollar amount and as a percentage, and the classes of utility customers affected. The notice shall also include the following language: "The specific rates requested by the utility may be decreased or increased by order of the commission, but in no case will the total amount of the rate relief exceed the total amount included in this notice. Persons who wish to complain of this proposed rate change or request a hearing on the matter should notify the Texas Water Commission within 30 days of the effective date of the rate change. A request for hearing, a complaint, or a request for further information should be mailed to the Director, Water Rates and Services Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087."

(b) The applicant shall also give notice of the proposed rate change by mail or hand delivery to all affected utility customers. On this notice shall be printed in prominent lettering "notice of rate change request." The notice shall contain the same information as set forth in subsection (a)(1) of this section, and the proposed rate structure to be instituted. Notices may be mailed separately, or may accompany customer billings, and shall be mailed to all customers no later than 30 days after the date the utility files its rate filing package with the executive director.

(c) The applicant shall mail or deliver a copy of the statement of intent to change rates to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed change. The commission may also require that notice be mailed or delivered to other affected persons or agencies.

(d) Proof of notice in the form of a publisher's affidavit and an affidavit stating that proper notice was mailed to customers and affected municipalities, and stating the dates of such publication and mailing, shall be filed by the applicant within 10 days after the proposed effective date of the rate change. The publisher's affidavit shall state with

specificity each county in which the newspaper is of general circulation. Failure to comply with the notice requirements and proof of notice requirements within the specified time period will result in a postponement of the effective date of the rate change.

§291.43. Party Status. Persons who wish to participate in the hearing as a party must file a complaint or request for hearing within 30 days after the effective date of the rate change. Any request for party status received after the 30-day period may be denied, if in the opinion of the hearing examiner, granting of party status would result in undue delay of the hearing.

§291.44. Contents of Notice for Rate Changes To Be Undertaken Water Utilities with Fewer than 150 Customers, Pursuant to the Code, §13.187(g).

(a) Utility notice to customers.

(1) A water or sewer utility that has fewer than 150 customers, is not a member of a group filing a consolidated tax return, and is not under common control or ownership with another water or sewer utility, shall notify its customers of any proposed change in rates at least 30 days prior to implementing the changed rates.

(2) At the request of one-tenth of the customers of the utility within 60 days after the day the rates are put into effect, the commission may hold a hearing, which may be an informal proceeding.

(3) The number of customers that a utility has shall be determined by ascertaining the number of separate residential dwelling units and businesses in any way connected to and being served by the utility, and shall include those who pay a periodic fee to the utility for the right to receive service at some future date. If a business has more than one connection to the utility, each connection shall be counted as a separate customer.

(4) Notice to customers may be in the form of a billing insert or a letter to each affected customer containing the date of the change, the present rates, the proposed rates, and the total revenue increase requested. The notice shall also include the following language: "Persons who wish to complain of this proposed rate change or request a hearing on the matter should notify the Texas Water Commission within 60 days after the date the new rates are put into effect. A request for hearing, a complaint, or a request for further information should be mailed to the Director, Water Rates and Services Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. If a hearing is held, the specific rates requested by the utility may be decreased or increased by order of the commission, but in no case will the total amount of the rate relief exceed the total amount included in this notice."

(b) Utility notice to commission. Notice of the proposed change in rates shall also be given to the commission by filing with the director, Water Rates and Services Division, a statement specifying the date of such change, the number of customers served by the utility, a revised tariff containing new rates to be charged, and a copy of the notice sent to customers pursuant to subsection (a) of this section, and a sworn and notarized statement that the utility satisfies the requirements of subsection (a)(1) of this section and that the notice was sent to each affected customer. The statement of change shall be filed with the commission no sooner than 30 days after providing notice of the rate change to customers, and upon such filing the utility may put the changed rates into effect.

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TRD-8602218 James K. Rourke, Jr.
General Counsel
Texas Water Commission

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Subchapter D. Evidence and Procedure

★31 TAC §§291.51-291.56

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rule-making authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.51. General. Except as otherwise stated in this chapter, evidentiary and procedural matters will be decided in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, the Texas Water Code, and the rules of procedure of the Texas Water Commission.

§291.52. Burden of Proof. In any proceeding involving any proposed change of rates, the burden of proof shall be on the utility to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable. In any other matters or proceedings, the burden of proof is on the moving party.

§291.53. Interim Rate Relief.

(a) This section applies only to rate proceedings over which the commission has original jurisdiction. This section does not apply to tariffs filed pursuant to §291.36 of this title (relating to Form and Filing of Tariffs) or to appellate proceedings following an original jurisdiction case in which the commission has set rates on a systemwide basis.

(b) In any proceeding involving a petition for interim rate relief, the burden of proof is on the utility to establish that without additional revenues it is unlikely it will be able to pay its current, reasonable cash operating expenses and continue operating during the pendency of its rate proceeding. A request for interim relief will not be considered by the commission or the examiner earlier than one week after it is filed.

(c) This section does not preclude the commission from granting interim rate relief on the basis of agreement of all parties, or upon a showing of good cause by the utility, in lieu of meeting the standards established by subsection (b) of this section.

(d) Interim rate relief shall not go into effect until the applicant has filed and the commission has approved an interim rate tariff sheet or sheets showing the rates that have been given interim approval.

(e) Interim rates may be conditional upon an obligation to refund all or a part thereof upon final order or such other conditions as the commission or the examiner may deem appropriate.

§291.54. Form and Filing of Bonds. During the pendency of its rate proceeding, a utility seeking to implement rates pursuant to the Act, §13.187(e), shall file a bond and four copies of its proposed bonded tariff with the executive director at least one week prior to the bonding date, or one week prior to the date the bonded rates are to be effective if that follows the bonding date. The bond shall be in an amount equal to or greater than the difference between the utility's current rates and the bonded rates for a two-month period and must be approved by the executive director as to sufficiency. Any decision by the executive director either approving or disapproving the bond is appealable to the commission.

§291.55. Informal Proceedings.

(a) A proceeding involving a water or sewer utility, a retail public water or sewer utility as defined in §291.101 of this title (relating to Definitions of Terms), or a water supply or sewer service corporation may be conducted as an informal proceeding when the conduct of a hearing under informal procedures is likely to:

(1) result in savings of time or costs to all parties;

(2) lead to a negotiated or agreed settlement of facts or issues in controversy; and

(3) will not prejudice the rights of any party.

(b) Provided, however, a hearing in a case involving a major change in utility rates may not be conducted as an informal proceeding if a complaint on the proposed major rate change is received by the commission within 45 days after notice of the change is filed.

(c) An informal proceeding is subject to all public notice requirements of the Code, Chapter 13, and commission rules with regard to notice requirements promulgated thereunder.

(d) An informal proceeding is governed by the Administrative Procedure and Texas

Register Act; however, the commission or the hearings examiner may relax, modify, or eliminate the formalities associated with evidentiary proceedings including, but not limited to, the following:

(1) the order of proceeding and questioning of witnesses;

(2) opening and closing statements;

(3) marking and form of exhibits;

(4) form of objections and preservation of error;

(5) limits of direct and cross-examination and rebuttal;

(6) discovery methods and procedures;

(7) the form of witnesses' testimony, either oral or written; and

(8) the necessity for written notice of continuances, reconvened informal proceedings, and reopening of the record.

(e) In all cases, the extent to which the matters listed in subsection(d)(1)-(8) of this section or other formalities may be relaxed, modified, or eliminated shall be determined by the commission or the hearings examiner under the three criteria enumerated in subsection (a) of this section.

(f) If, in the judgment of the commission or the hearings examiner, the evidence adduced at the informal proceeding is insufficient to support a substantiated recommendation, or if the parties are unable to achieve a negotiated or agreed settlement of facts or issues in controversy, the informal proceeding may be adjourned and reconvened as a hearing under standard hearing procedures as otherwise provided for in these sections.

(g) If the evidence adduced at the informal proceeding is sufficient to support a substantiated recommendation, the hearings examiner shall forward a proposal for decision, recommending findings to the commission. The commission is not bound by any negotiated or agreed settlement, but may make a final determination based on any evidence of record or remand the case for further hearings or take any other actions as otherwise provided for in these sections. All final decisions of the commission with respect to issues litigated in an informal proceeding shall be in writing and shall contain detailed findings of fact upon which such orders are based. The commission shall retain a copy of the record of any informal proceeding.

§291.56. Consolidation. Petitions for ratemaking under the commission's original jurisdiction and petitions for reviewing municipal rate actions may be consolidated upon motion of a party or on the examiner's own motion if the proceedings involve common questions of law or fact and if separate hearings would result in unwarranted expense, delay, or substantial injustice.

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Subchapter E. Rate-making Components

★31 TAC §291.61, §291.62

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rule-making authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.61. Cost of Service.

(a) Components of cost of service. Rates are based upon a utility's cost of rendering service to the public. The two components of cost of service are allowable expenses and return on invested capital.

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the public shall be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes will be considered.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:

(A) operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service to the public. Payments to affiliated interests for costs of service or any property, right, or thing, or for interest expense shall not be allowed as an expense for cost of service except as provided in the Texas Water Code, §13.185(e);

(B) depreciation expense based on original cost and computed on a straight line basis over the useful life of the asset, as approved by the commission;

(C) assessments and taxes other than income taxes;

(D) federal income taxes on a normalized basis. Federal income taxes shall be computed according to the provisions of the Texas Water Code, §13.185(f);

(E) the actual expenditures for ordinary advertising, contributions, and donations, provided that the total sum of all such items allowed in the cost of service shall not exceed $300;

(F) funds expended in support of membership in professional or trade associations, provided such associations contribute toward the professionalism of their membership.

(2) Expenses not allowed. The following expenses shall not be allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including, but not limited to, legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of water;

(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A)-(F) of this paragraph;

(H) costs, including, but not limited to, interest expense, of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission in a case where the utility has put bonded rates into effect, or when the utility has otherwise been ordered to make refunds; and

(I) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including, but not limited to, executive salaries, advertising expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines.

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low by changes affecting opportunities for investment, the money market, and business conditions generally.

(B) The commission shall consider the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other applicable conditions and practices.

(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. The rate of return must be high enough to attract necessary capital, but need not go beyond that. In each case, the commission shall consider the utility's cost of capital, which is the com-

posite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt.

(ii) Equity capital. The cost of equity capital shall be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital shall be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(2) Invested capital; rate base. The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as follows:

(A) original cost, less accumulated depreciation, of utility plant used by and useful to the utility in providing service:

(i) original cost shall be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor;

(ii) reserve for depreciation is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the asset. Depreciation shall be computed on a straight line basis over the expected useful life of the item or facility;

(iii) the original cost of plant, property, and equipment acquired from an affiliated interest shall not be included in invested capital, except as provided in the Texas Water Code, §13.185(e);

(B) working capital allowance to be composed of, but not limited to, the following:

(i) reasonable inventories of materials and supplies, held specifically for purposes of permitting efficient operation of the utility in providing normal utility service;

(ii) reasonable prepayments for operating expenses. Prepayments to affiliated interests shall be subject to the standards set forth in the Texas Water Code, §13.185(e);

(iii) a reasonable allowance up to one-eighth of total annual operations and maintenance expense for water and sewer utilities, excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments. Alternative methods of establishing an allowance, including, but not limited to, lead-lag studies and balance sheet methods may be used or required by the commission. Operations and maintenance expense does not include depreciation, other taxes, or federal income taxes.

(3) Items not included in rate base. Unless otherwise determined by the commission, for good cause shown, the following items will not be included in determining the overall rate base:

(A) certain items which include, but are not limited to, the following:

(i) accumulated reserve for deferred federal income taxes;

(ii) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(iii) contingency and/or property insurance reserves;

(iv) contributions in aid of construction;

(v) customer deposits; and

(vi) other sources of cost-free capital, as determined by the commission.

(B) Construction work in progress. The inclusion of construction work in progress is an exceptional form of rate relief. Under ordinary circumstances, the rate base shall consist only of those items which are used and useful in providing service to the public. Under exceptional circumstances, the commission will include construction work in progress in rate base to the extent that the utility has proven that:

(i) the inclusion is necessary to the financial integrity of the utility; and

(ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress shall not be allowed for any portion of a major project which the utility has failed to prove was efficiently and prudently planned and managed.

§291.62. Rate Design.

(a) General. In fixing the rates of a utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its capital investment used and useful in rendering service to the public over and above its reasonable and necessary operating expenses.

(b) Conservation. In order to promote conservation, water and sewer utilities shall not apply declining-block rate structures or any other rate design which may offer discounts or reduced rates for increased usage.

(c) Volume charges. Charges for additional usage above the minimum shall be based on usage over and above the minimum, rounded off to the nearest 1,000 gallons or 100 cubic feet, or the fractional portion of the usage.

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Subchapter F. Records and Reports

★31 TAC §§291.71-291.76

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rule-making authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.71. General Reports.

(a) Who shall file. The record keeping, reporting, and filing requirements listed in this section shall apply to all water and sewer utilities operating in the State of Texas. For purposes of this subchapter, utility includes municipally owned utilities, utilities owned by political subdivisions, and utilities owned by nonprofit water supply corporations created and operating under Chapter 76, 43rd Legislature, 1st Called Session, 1933 (Texas Civil Statutes, Article 1434a).

(b) Initial reporting. Periodic reporting shall commence with an initial filing, unless otherwise specified in this subchapter, such that:

(1) the initial annual report shall reflect the transactions and condition of the utility for the most recent fiscal quarter ending on or prior to March 1, 1986. All initial reports shall, unless otherwise specified in this section, be filed within 60 days after issuance of commission instructions or forms;

(2) water and sewer utilities which have been filing such reports with the Public Utility Commission of Texas for at least one year prior to March 1, 1986, need not submit this initial report, unless directed to do so by the commission.

(c) Report attestation. All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility's operation.

(d) Due dates of reports. All reports must be received by the commission on or before the following due dates, unless otherwise specified in this subchapter:

(1) annual reports: 90 days after the end of the fiscal year of the utility;

(2) special or additional reports: as may be prescribed by the commission.

(e) Contents of report. The annual report shall be submitted on forms prescribed by the commission and shall disclose the following information:

(1) the rates that are subject to the original or appellate jurisdiction of the commission for any service, product, or commodity offered by the utility;

(2) rules and regulations relating to or affecting the rates, utility service, product, or commodity furnished by the utility;

(3) all ownership and management relationships among the utility and other entities, including individuals;

(4) all transactions with affiliates including, but not limited to, payments for costs of any services, interest expense, or for any property, right, or thing;

(5) all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, and all payments for legal, administrative, or legislative matters in Texas or for representation before the Texas Legislature or any governmental agency or body; and

(6) a verified or certified copy of the appropriate permit, issued by the conservation, reclamation, or subsidence district for each utility which withdraws groundwater from conservation, reclamation, or subsidence districts.

(f) Gross receipts assessment reporting. All utilities subject to the requirements of the Texas Water Code, §§13.451-13.453, shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment stipulated in the Act on a form prescribed by the state comptroller. These reports shall be required on an annual basis for those companies that have elected to remit their assessment annually, and on a quarterly basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Texas Water Code, §§13.451-13.453.

(g) Information omitted from reports. The commission may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.

(h) Special and additional reports. Each utility, including municipally owned utilities, shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.

(i) Report amendments. Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission.

(j) Penalty for refusal to file on time. In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

§291.72. Financial Records and Reports—Uniform System of Accounts. Every public utility shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts as amended from time to time shall be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the commission.

(1) Classification. For the purposes of accounting and reporting to the commission, each public utility shall be classified with respect to its annual operating revenues as follows:

(A) water and/or sewer utilities:

(i) Class A: annual operating revenues exceeding $750,000;

(ii) Class B: annual operating revenues exceeding $150,000, but not more than $750,000;

(iii) Class C: annual operating revenues not exceeding $150,000.

(2) System of accounts. For the purpose of accounting and reporting to the commission, each public utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(A) water and/or sewer utilities:

(i) Class A: uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class A utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes;

(ii) Class B: uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class B utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes;

(iii) Class C: uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class C utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(3) Accounting period. Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

(4) Rules related to capitalization of construction costs. Each Class A and B utilities shall accrue allowance for funds used during construction on construction work in progress and interest during construction on both short-term (on an off-book basis, if necessary) and long-term plant under construction to the extent not included in rate base. In the event construction work in progress is included in rate base pursuant to these sections, capitalization of allowance for funds used during construction for Class A and B utilities, and interest during construction for utilities shall be discontinued to the extent construction work in progress or plant under construction is allowed.

§291.73. Water and Sewer Utilities Annual Reports. All water and sewer utilities shall submit an annual report to the commission on a form prescribed by the commission, or the same annual report as required of such utility by the United States Department of Agriculture, Farmers Home Administration.

§291.74. Duplicate Information. A utility shall not be required to file with the commission forms or reports which duplicate information already on file with the commission.

§291.75. Reports of Sale of Property and Mergers.

(a) A public utility shall not sell, acquire, lease, or rent any plant as an operating unit or system in the State of Texas for a total consideration in excess of $100,000, unless the public utility reports such pending transaction to the commission within 30 days, or other reasonable time as allowed by the commission.

(b) A public utility shall not merge or consolidate with another public utility operating in the State of Texas, unless the public utility reports such pending transaction to the commission within 30 days, or other reasonable time period as allowed by the commission.

(c) A public utility shall not purchase voting stock in another public utility doing business in the State of Texas, unless the utility reports such pending purchase to the commission within 30 days, or other reasonable time period as allowed by the commission.

(d) A public utility shall not loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the public utility, unless the public utility reports such transaction to the commission within 30 days, or other reasonable time period as allowed by the commission.

§291.76. Maintenance and Location of Records. Unless otherwise permitted by the commission, all records required by these sections or necessary for the administration thereof shall be kept within the State of Texas at a central location or at the main business office located within the area served. These records shall be available for examination by the commission or its authorized representative at all reasonable hours.

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TRD-8602222 James K. Rourke, Jr.
General Counsel
Texas Water Commission

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Subchapter G. Customer Service and Protection

★31 TAC §§291.81-291.88

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rule-making authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.81. Customer Relations.

(a) Information to customers. Each utility shall maintain a current set of maps showing the physical locations of its facilities. All facilities (production, transmission, distribution or collection lines, treatment plants, etc.) shall be labeled to indicate the size, design capacity, and any pertinent information which will accurately describe the utility's facilities. These maps, or such other maps as may be required by the commission, shall be kept by the utility in a central location and will be available for commission inspection during normal working hours.

(b) Customer complaints.

(1) Upon complaint to the utility by a customer either at its office, by letter, or by telephone, the utility shall promptly make a suitable investigation and advise the complainant of the results thereof.

(2) In the event the complainant is dissatisfied with the utility's report, the utility must advise the complainant that he has recourse in the Texas Water Commission complaint process, and that such process can be initiated by contacting the Director, Office of Public Information, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8028.

(3) Upon receipt of a complaint either by letter or by telephone from the commission on behalf of a customer, the utility shall make a suitable investigation and advise the commission of the results thereof. Initial response to the commission must be made within 30 days. The commission encourages all customer complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(4) The utility shall keep a record of all complaints which shall show the name and address of the complainant, the date and nature of the complaint, and the adjustment or disposition thereof for a period of two years subsequent to the final settlement of the complaint. Complaints with reference to rates or charges which require no further action by the utility need not be recorded.

§291.82. Refusal of service.

(a) Compliance by applicant. Any utility may decline to serve an applicant until such applicant has complied with the state and municipal regulations and approved rules and regulations of the utility on file with the commission governing the service applied for, or for the following reasons:

(1) if the applicant's installation or equipment is known to be inadequate or of such character that satisfactory service cannot be given;

(2) if the applicant is indebted to any utility for the same kind of service as that applied for, provided, however, that in the event the indebtedness of the applicant is in dispute, the applicant shall be served upon complying with the deposit requirement in §291.83 of this title (relating to Applicant and Customer Deposit); and

(3) for refusal to make a deposit, if applicant is required to make a deposit under these sections.

(b) Applicant's recourse. In the event that the utility shall refuse to serve an applicant under the provisions of these sections, the utility must inform the applicant of the basis of its refusal and that the applicant may file a complaint with the commission thereon.

(c) Insufficient grounds for refusal to serve. The following shall not constitute sufficient cause for refusal of service to a present customer or applicant:

(1) delinquency in payment for service by a previous occupant of the premises to be served;

(2) failure to pay a bill to correct previous underbilling due to misapplication of rates more than six months prior to the date of application;

(3) violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interferes with the service of others, unless the customer has first been notified and been afforded reasonable opportunity to comply with said rules;

(4) failure to pay a bill of another customer as guarantor thereof, unless the guarantee was made in writing to the utility as a condition precedent to service;

(5) failure to pay the bill of another customer at the same address except where the change of customer identity is made to avoid or evade payment of a utility bill. A customer may request a supervisory review if the utility determines that evasion has occurred and refuses to provide service.

§291.83. Applicant and Customer Deposit.

(a) Deposit policy.

(1) Residential applicants. If a residential applicant cannot establish credit to the satisfaction of the utility, the residential applicant can be required to pay a deposit that does not exceed $50 for water service and $50 for sewer service.

(2) Nonresidential applicants. If an application for nonresidential service cannot establish credit to the satisfaction of the utility, the applicant may be required to make a deposit. The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billings. If actual billings of a nonresidential customer are at least twice the amount of the estimated billings, a new deposit requirement may be calculated and an additional deposit may be required to be made within 15 days after the issuance of written notice.

(b) Applicants 65 years of age or older. All applicants for permanent residential service who are 65 years of age or older will be considered as having established credit if such applicant does not have an outstanding account balance with the utility or another water or sewer utility which accrued within the last two years. No cash deposit shall be required of such applicant under these conditions.

(c) Interests on deposits. Each utility shall pay a minimum interest on such deposits at an annual rate at least equal to a rate set each calendar year by the Public Utility Commission in accordance with the provisions of Texas Civil Statutes, Article 1440a. Payment of the interest to the customer shall be annually if requested by the customer, or at the time the deposit is returned or credited to the customer's account. Inquiries about the current interest rate may be directed to the director of the Water Rates and Services Division.

(d) Deposits for temporary or seasonal service and for weekend residences. The utility may require a deposit sufficient to reasonably protect it against the assumed risk for temporary or seasonal service, including service for weekend residences, provided such policy is applied in a uniform and nondiscriminatory manner. These deposits shall be returned according to guidelines set out in subsection (h) of this section.

(e) Complaint by applicant or customer. Each utility shall direct its personnel engaged in initial contact with an applicant for service or customer seeking to establish or reestablish credit under the provisions of these sections to inform the customer, if dissatisfaction is expressed with the utility's decision, of the customer's right to file a complaint with the commission thereon.

(f) Reestablishment of credit or deposit. Every applicant who previously has been a customer of the utility and whose service has been discontinued for nonpayment of bills, meter tampering, bypassing of meter, or failure to comply with applicable state and municipal regulations or regulations of the utility shall be required, before service is resumed, to pay all amounts due the utility or execute a deferred payment agreement, if offered, and pay a deposit, if requested. The burden shall be on the utility to prove the amount of utility service received but not paid for and the reasonableness of any charges for such unpaid service, as well as all other elements of any bill required to be paid as a condition of service restoration.

(g) Records of deposits.

(1) The utility shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit;

(C) each transaction concerning the deposit; and

(D) the amount of interest earned on customer deposit funds.

(2) The utility shall issue a receipt of deposit to each applicant from whom a deposit is received and shall provide means whereby a depositor may establish claim if the receipt is lost.

(3) A record of each unclaimed deposit must be maintained for at least four years, during which time the utility shall make a reasonable effort to return the deposit.

(4) The utility shall maintain all funds received as customer deposits in a separate, federally insured, interest-bearing account or accounts, and shall use such funds for no purpose other than application to unpaid bills guaranteed by such deposits, payment of interest to depositors, and refunds of deposits to depositors.

(h) Refund of deposit.

(1) If service is not connected, or after disconnection of service, the utility shall promptly and automatically refund the customer's deposit plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. A transfer of service from one premise to another within the service area of the utility shall not be deemed a disconnection within the meaning of these sections, and no additional deposit may be demanded, unless permitted by these sections.

(2) When the customer has paid bills for service for 12 consecutive residential billings or for 24 consecutive commercial or industrial billings without having service disconnected for nonpayment of bill and without having more than two occasions in which a bill was delinquent, and when the customer is not delinquent in the payment of the current bills, the utility shall promptly and automatically refund the deposit plus accrued interest to the customer in the form of cash or credit to a customer's bill, or void the guarantee. If the customer does not meet these refund criteria, the deposit and interest may be retained until the customer meets the refund criteria or is no longer receiving service from the utility.

(i) Sale or transfer of utility or company. Upon the sale or transfer of any public utility or operating units thereof, the seller shall file with the commission, under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest.

§291.84. New Construction.

(a) Standards of construction. In determining standard practice, the commission will be guided by the provisions of American Water Works Association and such other codes and standards that are generally accepted by the industry, except as modified by this commission, the Texas Department of Health, or municipal regulations within their jurisdiction. Each utility shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public and to prevent interference with service furnished by other public utilities, insofar as practical.

(b) Line extension and construction charges. Every utility shall file its extension policy with the commission as part of its tariff. The policy shall be consistent, nondiscriminatory, and subject to the approval of the commission. No contribution in aid of construction may be required of any customer, except as provided for in the extension policy.

(1) The fees for initiation of service charged by a water or sewer utility shall be in accordance with the following.

(A) The fee charged by a utility for connecting a customer's premises to the system (i.e., tap fee) shall be cost based and limited to the utility's average of actual costs of materials and labor for such service connections.

(B) The fee charged for all service connections (i.e., taps) requiring meters larger than ¾ inch shall be set at the actual cost of making the individual service connection.

(2) Utilities shall not charge disconnect fees, membership fees, application fees, service call fees, or any other fee or charge for service or function that is a normal utility service, except as provided in the tariff of the utility.

(c) Contributions in aid of construction. Contributions in aid of construction that are required through an approved extension policy shall not be required of individual residential customers for production, storage, treatment, or transmission facilities, except that developers may be required to provide contributions in aid of construction in amounts to furnish the development with facilities compliant with Texas Department of Health minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water, or Texas Water Commission minimum design criteria for facilities used in the transmission, pumping, treatment, and disposal of sewage.

(d) Costs utilities shall bear. Utilities shall be required to bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to an individual residential customer. The customer may be charged the remaining costs of extending service to his property. The utility shall bear the full cost of any oversizing of water mains or sewer collection lines necessary to serve other customers in the immediate area. The individual residential customer shall not be charged for any additional production, storage, or treatment facilities, unless that customer places unique, nonstandard service demands upon the systems, in which case, the customer may be charged the full cost of extending service to and throughout their property, including the cost of all necessary transmission and storage facilities necessary to meet the service demands anticipated to be created by that property. For purposes of this section, commercial, industrial, and wholesale customers shall be treated as developers.

(e) Response to request for service.

(1) Every public utility shall serve each qualified applicant for service within its certificated area as rapidly as is practical after accepting a completed application. A qualified applicant is an applicant who has met all of the utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service. A request for service that does not require line extensions, construction, or new facilities shall be filled within 14 working days after a completed application has been accepted. If construction is required to fill the order and if it cannot be completed within 30 days, the utility shall provide a written explanation of the construction required and an expected date of service. Except for good cause, the failure to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from a qualified applicant shall constitute refusal to serve, and consideration may be given to revoking the certificate of convenience and necessity or to granting a certificate to another utility to serve the applicant. The time requirements set forth herein are not applicable in the event that the utility is prevented from extending service by legal impediment.

(2) Any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants shall be explained to the customer upon assessment of the costs of necessary line work, but before construction begins.

§291.85. Billing.

(a) Due date. The due date of the bill for utility service shall not be less than 16 days after issuance. A bill for utility service is delinquent if not received at the utility or at the utility's authorized payment agency by the due date. The postmark, if any, on the envelope of the bill, or an issuance date on the bill, if there is no postmark on the envelope, shall constitute proof of the date of issuance. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(b) Penalty on delinquent bills for retail service. A one-time penalty of $1.00 or 5.0%, whichever is larger, may be made on delinquent bills. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be collected unless the bill on which payment is delin-

quent is mailed within three business days after the meter is read.

(c) Deferred payment plan. The utility is encouraged to offer a deferred payment plan to a customer who cannot pay an outstanding bill in full and is willing to pay the balance in reasonable installments.

(d) Rendering and form of bills.

(1) Bills for water and sewer service shall be rendered monthly, unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters.

(2) The customer's bill shall show all the following information, if applicable:

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

(B) the number and kind of units metered;

(C) the applicable rate schedule title or code;

(D) the total amount due for water service and separately stated, the total amount due for sewer service;

(E) the due date of the bill;

(F) the date by which customers must pay the bill in order to avoid addition of a penalty;

(G) the total amount due as penalty for nonpayment within a designated period;

(H) a distinct marking to identify an estimated bill;

(I) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;

(J) the gallonage used in determining sewer usage; and

(K) the information required in paragraphs (A)-(J) of this paragraph shall be arranged so as to allow the customer to readily compute his bill with a copy of the applicable rate schedule, which shall be mailed on request to the customer.

(e) Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being purchased by the customer, or if the utility fails to bill the customer for such service, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment shall be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount which was underbilled. The backbilling is not to exceed six months, unless the utility can produce records to identify and justify the additional amount of backbilling or unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §291.87 of this title (relating to Meters). However, the utility may not disconnect service if the customer fails to pay charges arising from an underbilling more than six months prior to the date the utility initially notified the customer of the amount of the undercharge and the total additional amount due, unless such undercharge is a result of meter tampering, bypassing, or diversion by the customer as defined in §291.87 of this title (relating to Meters). If the underbilling is $25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(f) Estimated bills. When there is good reason for doing so, a water or sewer utility may submit estimated bills, provided that an actual meter reading is taken every two months.

(g) Disputed bills.

(1) In the event of a dispute between a customer and a utility regarding any bill for utility service, the utility shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the customer and, in the event the dispute is not resolved, shall inform the customer that a complaint may be filed with the commission by contacting the Director, Office of Public Information, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8028.

(2) Notwithstanding any other section of this chapter, the customer shall not be required to pay the disputed portion of the bill which exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's average monthly usage at current rates shall be the average of the customer's gross utility service for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage shall be estimated on the basis of usage levels of similar customers and under similar conditions.

(3) Notwithstanding any other section of this chapter, a utility customer's service shall not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §291.86 of this title (relating to Discontinuance of Service).

(h) Notification of alternative payment programs or payment assistance. Anytime a customer contacts a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall inform the customer of all available alternative payment and payment assistance programs available from the utility, such as deferred payment plans, as applicable, and of the eligibility requirements and procedure for applying for each.

(i) Adjusted bills due to meter tampering. There shall be a presumption of reasonableness of billing methodology by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any of the following methods of calculating such bills are used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills shall be based on at least 24 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 24 months; this subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;

(3) in cases of meter tampering, meter bypassing, or other service diversion, where the amount of actual unmetered consumption can be calculated by industry recognized testing procedures, bills may be calculated for the consumption over the entire period of meter bypassing or other service diversion.

(j) Equipment damage charges. A utility may charge for all labor, material, equipment, and other costs necessary to repair or replace all equipment damaged due to meter tampering or bypassing, service diversion, or the discharge of wastes which the system cannot properly treat. The utility may charge for all costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs, unless such penalty has been expressly approved by the commission and filed in the utility's tariff, or such other additional charge has been approved by order of the commission or court of law of competent jurisdiction.

§291.86. Discontinuance of Service.

(a) Disconnection for delinquent bills. A customer's utility service may be disconnected if a bill has not been paid or a deferred payment agreement entered into within 26 days from the date of issuance of a bill and if proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery, at least 10 days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The information included in the notice shall be provided in English and Spanish as necessary to

adequately inform the customer. Attached to or on the face of the termination notice shall appear a statement notifying the customer that if they are in need of assistance with payment of their bill, they may be eligible for alternative payment programs, such as deferred payment plans, and to contact the local office of the utility for more information. If mailed, the cut-off day may not fall on a holiday or weekend, but shall fall on the next working day after the 10th day. Payment at a utility's authorized payment agency is considered payment to the utility. The company shall not issue late notices or disconnect notices to the customer earlier than the first day the bill becomes delinquent, so that a reasonable length of time is allowed to ascertain receipt of payment by mail or at the utility's authorized payment agency.

(b) Disconnection with notice. Utility service may be disconnected after proper notice for any of the following reasons:

(1) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement;

(2) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation; and

(3) failure to comply with deposit or guarantee arrangements where required by §291.83 of this title (relating to Applicant and Customer Deposit).

(c) Disconnection without notice. Utility service may be disconnected without notice where a known dangerous condition exists, for as long as the condition exists, or where service is connected without authority by a person who has not made application for service or who has reconnected service without authority following termination of service for nonpayment, or in instances of tampering with the utility company's meter or equipment, bypassing the same, or other instances of diversion as defined in §291.87 of this title (relating to Meters). Where reasonable, given the nature of the hazardous condition, a written statement providing notice of disconnection and the reason therefor shall be posted at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected.

(d) Disconnection prohibited. Utility service may not be disconnected for any of the following reasons:

(1) delinquency in payment for utility service by a previous occupant of the premises;

(2) failure to pay for merchandise or charges for nonutility service provided by the utility;

(3) failure to pay for a different type or class of utility service, unless fee for such service is included on the same bill;

(4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

(5) failure to pay charges arising from an underbilling occurring due to any misapplication of rates more than six months prior to the current billing;

(6) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §291.87 of this title (relating to Meters); and

(7) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control.

(e) Disconnection on holidays or weekends. Unless a dangerous condition exists, or unless the customer requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the utility are not available to the public for the purpose of making collections and reconnecting service.

(f) Disconnection due to utility abandonment. No public utility may abandon a customer or a certified service area without written notice to its customers therein and all similar neighboring utilities, and approval from the commission.

(g) Disconnection for ill and disabled. No utility may discontinue service to a delinquent residential customer permanently residing in an individually metered dwelling unit when that customer establishes that discontinuance of service will result in some person residing at that residence becoming seriously ill or more seriously ill if service is discontinued. Each time a customer seeks to avoid termination of service under this rule, the customer must have the attending physician (for purposes of this rule, the term "physician" shall mean any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the utility within 16 days of issuance of the bill. A written statement must be received by the utility from the physician within 26 days of the issuance of the utility bill. The prohibition against service termination provided by this rule shall last 63 days from the issuance of the utility bill or such lesser period as may be agreed upon by the utility and the customer or physician. The customer who makes such request shall enter into a deferred payment plan.

(h) Resolution of disputes. Any customer or applicant for service requesting the opportunity to dispute any action or determination of a utility under the customer service rules of the commission shall be given an opportunity for a review by the utility. If the utility is unable to provide a review immediately following the customer's request for such review, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected pending completion of the review. If the customer chooses not to participate in such review or to make arrangements for such review to take place within five days after requesting it, the company may disconnect service, providing notice has been issued under standard disconnect procedures. Any customer who is dissatisfied with the review by the public utility must be informed of their right to file a complaint and/or request a hearing before the appropriate municipal regulatory body or the Texas Water Commission, whichever is applicable. The results of the review must be provided in writing to the customer within 10 days of the review, if requested.

(i) Disconnection of master-metered apartments. When a bill for utility services is delinquent for a master-metered apartment complex (defined as a submetered or nonsubmetered building in which a single meter serves five or more residential dwelling units), the following shall apply.

(1) The utility shall send a notice to the customer as required in subsection (a) of this section. At the time such notice is issued, the utility shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not rendered before that time.

(2) At least six days after providing notice to the customer and at least four days prior to disconnect, the utility shall post a minimum of five notices in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be prominently displayed and shall read: "Notice to residents of (name and address of apartment complex) water utility service or sewer utility service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection)."

§291.87. Meters.

(a) Meter requirements.

(1) Use of meter. All water sold by a utility shall be charged for by meter measurements, except where otherwise provided for by the applicable rate schedule or contract.

(2) Installation by utility. Unless otherwise authorized by the commission, each utility shall provide and install and shall continue to own and maintain all meters necessary for the measurement of water to its customers.

(3) Standard type. No utility shall furnish, set up, or put in use any meter which is not reliable and of a standard type which meets industry standards; provided, however, special meters not necessarily conforming to such standard types may be used for investigation or experimental purposes.

(b) Meter readings.

(1) Meter unit indication. In general, each meter shall indicate clearly the gallons of water or other units of service for which charge is made to the customer.

(2) Reading of meters. As a matter of general practice, service meters shall be read at monthly intervals, and as nearly as possible on the corresponding day of each meter reading period, but may be read at other than monthly intervals if the circumstances warrant.

(c) Meter tests on request of customer. Each utility shall, upon the request of a customer, and, if he so desires, in his presence or in that of his authorized representative, make without charge a test of the accuracy of the customer's meter. The test shall be made during the utility's normal working hours at a time convenient to the customer, if he desires to observe the test. The test shall be made preferably on the customer's premises, but may, at the utility's discretion, be made at the utility's test laboratory. If the meter has been tested by the utility or by an authorized agency, at the customer's request, and within a period of two years the customer requests a new test, the utility shall make the test, but if the meter is found to be within the accuracy standards established by the American Water Works Association, the utility may charge the customer a fee which reflects the cost to test the meter, but this charge shall in no event be more than $15 for a residential customer. Following the completion of any requested test, the utility shall promptly advise the customer of the date of removal of the meter, the date of the test, the result of the test, and who made the test.

(d) Bill adjustment due to meter error. If any meter is found to be outside of the accuracy standards established by the American Water Works Association, proper correction shall be made of previous readings for the period of six months immediately preceding the removal of such meter from service for the test, or from the time the meter was in service since last tested, but not exceeding six months, as the meter shall have been shown to be in error by such test, and adjusted bills shall be rendered. No refund is required from the utility except to the customer last served by the meter prior to the testing. If a meter is found not to register for any period, unless bypassed or tampered with, the utility shall make a charge for units used, but not metered, for a period not to exceed three months, based on amounts used under similar conditions during the period preceding or subsequent thereto, or during corresponding periods in previous years.

(e) Meter tampering. For purposes of these sections, meter tampering, bypass, or diversion shall be defined as tampering with a water or sewer utility company's meter or equipment, bypassing the same, or other instances of diversion, such as physically disorienting the meter, objects attached to the meter to divert service or to bypass, insertion of objects into the meter, and other electrical and mechanical means of tampering with, bypassing, or diverting utility service. The burden of proof of meter tampering, bypass, or diversion is on the utility. Photographic evidence must be accompanied by a sworn affidavit by the utility when any action regarding meter tampering, as provided for in these sections, is initiated. A court finding of meter tampering may be used instead of photographic or other evidence, if applicable.

§291.88. Continuity of Service.

(a) Service interruptions.

(1) Every public utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.

(2) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(b) Record of interruption. Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(c) Report to commission. The commission shall be notified in writing of interruptions in service affecting the entire system or any major division thereof lasting more than four hours. The notice shall also state the cause of such interruptions.

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TRD-8602223 James K. Rourke, Jr.
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Subchapter H. Quality of Service

★31 TAC §291.91, §291.92

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rule-making authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.91. Water Utilities—Definitions of Terms. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

Adequacy of service—Each utility shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.

(A) The minimum residual pressure at the consumer meter for each utility shall be 20 psi during periods of peak usage and 35 psi during normal operating conditions.

(B) The water system quantity requirements of the Texas Department of Health shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water utilities for household usage. Additional capacity shall be provided to meet the reasonable local demand characteristics of the service area.

Main—A water pipe, owned, operated, and maintained by a utility, which is used for the purpose of transmission or distribution of water, but is not a water service pipe.

Meter test facilities and equipment—

(A) The accuracy of a water meter shall be tested by comparing the actual amount of water passing through it with the amount indicated on the dial. The test shall be conducted in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association.

(B) The utility shall provide the necessary standard facilities, instruments, and other equipment for testing its meters in compliance with these sections. Any utility may be exempted from this requirement by the commission, provided that the satisfactory arrangements are made for testing its meters by another utility or commission-approved agency equipped to test meters in compliance with these sections.

Meter test measurement standards—

(A) Measuring devices for test of meters may consist of a calibrated tank for volumetric measurement or tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be accompanied by a certificate of accuracy from any standard laboratory as may be approved by the commission. If a weight standard is used, the scales shall be tested and calibrated periodically by such approved laboratory and a record maintained of the results of the test.

(B) Standards used for meter testing shall be of a capacity sufficient to insure

accurate determination of accuracy and shall be subject to the approval of the commission.

(C) A standard meter may be provided and used by a utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated periodically to insure its accuracy within the limits required by these sections. In any event, such test shall be made at least once every 120 days while the standard meter is in use, and a record of such tests shall be kept by the utility.

Meter test prior to installation—No meter shall be placed in service unless its accuracy has been established. If any meter shall have been removed from service, it must be properly tested and adjusted before being placed in service again. No meter shall be placed in service if its accuracy falls outside the limits as specified by the American Water Works Association.

Quality of product—Each utility shall furnish water which has been approved by the Texas Department of Health.

Requirements of others—The application of commission rules shall not relieve the utility from abiding by the requirements of the laws and regulations of the state, local department of health, local ordinances, and all other regulatory agencies having jurisdiction over such matters.

Service connections—

(A) Ownership of service pipe.

(i) The utility shall furnish and install, for the purpose of connecting its distribution system to the customer's premises, the service pipe from its main to the meter location. For all new installations, a utility-owned cut-off valve shall be provided on the utility side of the meter. Utilities without customer meters shall provide and maintain a cut-off valve at or as near the property line as possible. This does not relieve the utility from compliance with §291.87 of this title (relating to Meters).

(ii) The customer shall be responsible for furnishing and laying the necessary service pipe from the meter location to the place of consumption and shall keep the service line in good repair. For utilities without customer meters, customer responsibility shall begin at the discharge side of the utility's cut-off valve.

(B) Location of service pipe. Prior approval of the utility shall be secured as to the proper location for connecting the customer's service pipe to the utility's facilities.

(C) Location of meters.

(i) Meters shall be readily accessible for maintenance and reading, and so far as practicable, the location should be mutually acceptable to the customer and the utility. The meter shall be installed so as to be unaffected by climatic conditions and reasonably secure from injury.

(ii) One meter is required for each residential, commercial, or industrial facility. An apartment building or a trailer or mobile home park may be considered to be a single commercial facility for the purpose of this section.

Service pipe—A pipe connecting the main and the customer's place of consumption.

Water rationing—The tariff of each utility shall include an approved plan for the implementation and monitoring of water rationing in periods of emergency or drought.

§291.92. Sewer Utilities—Definitions of Terms. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

Adequacy of service—The utility's facilities for the collection, treatment, and disposal of sewage must be sufficiently sized to meet all normal demands for service and provide a reasonable reserve for emergencies.

Adequacy of treatment—Each utility shall maintain and operate a treatment facility of adequate size and properly equipped to treat sewage and discharge the effluent at the quality required by the laws and regulations of the State of Texas.

Charges for sewage service—It is not a requirement for the utility to use meters to measure the quantity of sewage disposed by individual customers. When a sewer utility is operated in conjunction with a water utility which serves the same customers, the charge for sewage disposal service may be based on the consumption of water as registered on the customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates which will accurately reflect the cost of service to each class of customer.

Main—A sewerage pipe, owned, operated, or maintained by a sewer utility, used to transport sewage, and which is not a service pipe.

Requirements of others—The application of commission rules shall not relieve the utility from abiding by the requirements of the laws and regulations of the state, local department of health, local ordinances, and all other regulatory agencies having jurisdiction over such matters.

Service connections—

(A) The utility shall furnish and install, for the purpose of connecting its collection system to the customer's premises, the service pipe from its main to the customer's property line.

(B) The customer shall be responsible for furnishing and laying the necessary service pipe from the property line to the residence and shall keep the service line in good repair.

Service pipe—A pipe connecting the customer's premises to the main, and which receives sewage from the customer's premises.

Service pipe maintenance—

(A) Utility maintenance. The utility shall maintain its collection system and appurtenances to minimize blockages.

(B) Customer maintenance. The service pipe and appurtenances shall be constructed in accordance with the laws and regulations of the State of Texas, local plumbing codes, or, in the absence of such local codes, the National Plumbing Code, or other standards as prescribed by the commission. It shall be the customer's responsibility to maintain the service pipe and appurtenance in good operating condition.

Sewage—Ground garbage, human and animal, and all other waterborn type waste normally disposed of through the sanitary drainage system.

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Subchapter I. Certificates of Convenience and Necessity

★31 TAC §§291.101-291.115

These new sections are adopted on an emergency basis under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rule-making authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

§291.101. Definitions of Terms. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Public utility—Does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation that is providing utility services other than water and sewer services and that is under the jurisdiction of the Railroad Commission of Texas or the Public Utility Commission of Texas, but does include a water supply or sewer service corporation.

Retail public utility—Any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation operating, maintaining, or controlling in this state facilities for providing retail water and sewer utility service.

§291.102. Certificate Required. Unless otherwise specified, a public utility may not in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require that installation, opera-

tion, or extension, and except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

§291.103. Exceptions for Extension of Service.

(a) A public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity; or

(3) operation, extension, or service in progress on September 1, 1975.

(b) Any extensions allowed by subsection (a) of this section shall be limited to devices for interconnection of existing facilities on devices used solely for transmitting public utility services from existing facilities to customers of retail utility service.

(c) Whenever an extension is made pursuant to subsection (a) of this section, the utility making the extension must inform the commission of the extension by submitting, within 14 days, a detailed map of the certificate area, accompanied by a detailed written explanation of the extension and work done to accomplish it.

§291.104. Certificates for Existing Service Areas and Facilities. For purposes of granting certificates of convenience and necessity for those facilities and areas in which a utility was providing service on September 1, 1975, unless found by the commission to be otherwise, the following provisions shall prevail for certification purposes.

(1) The water purification, transmission, storage, and pumping facilities, and service area boundary of a utility having such facilities in place or being actively engaged in the construction, installation. extension, improvement of, or addition to such facilities or the utility's system as of September 1, 1975, shall be limited, unless otherwise provided, to the facilities and real property on which such facilities were actually located, used, or dedicated as of September 1, 1975.

(2) The sewage treatment, disposal, storage, and pumping facilities and service area boundary of a utility having such facilities in place or being actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the utility's system as of September 1, 1975, shall be limited, unless otherwise provided, to the facilities and real property on which such facilities were actually located, used, or dedicated as of September 1, 1975.

(3) The facilities and service area boundary for the utilities providing distribution or collection service to any area, or actively engaged in the construction, installation, extension, improvement of, or addition to such facilities or the utility's system as of September 1, 1975, shall be limited, unless otherwise found by the commission, to the facilities and the area which lie within:

(A) 200 feet of any point along a distribution line for utilities furnishing potable water; and

(B) 200 feet of any point along a collection line for utilities engaged in the collection, transportation, treatment, or disposal of sewage.

§291.105. Certificates for New Service Areas and Facilities. Except for certificates granted under §291.104 of this title (relating to Certificates for Existing Service Areas and Facilities), the commission may grant applications and issue certificates only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. The commission may amend or revoke any certificate issued under this section upon a finding of fact that the public convenience and necessity requires such amendment or revocation.

(1) A certificate or certificate amendment is required for a change in service area, and as a requisite to certification, the commission shall consider whether the existing ratepayers of the applicant utility will be adversely impacted as a result of such change in service area.

(2) A certificate is not required for the following:

(A) a contiguous extension of those facilities described in the Texas Water Code, §13.243;

(B) the construction or upgrading of distribution facilities within the utility's service area.

(3) The term construction and/or extension as used in this subsection shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.

§291.106. Filing by Existing Public Utilities.

(a) Not later than May 29, 1986, or at a later date on request in writing by a public utility when good cause is shown, or at any later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities, showing separately facilities for water purification, sewage treatment, distribution lines, transmission lines, and any other aspects of the water or sewer service system.

(b) This section shall not apply if a public utility has filed a facilities map with the Public Utility Commission of Texas which accurately reflects its current system as of March 1, 1986, within the specifications set forth in these sections. In that event, the utility shall file a statement with the Texas Water Commission on or before May 29, 1986, setting forth the following information:

(1) the filing date of such map or maps;

(2) the docket number in which such map or maps were filed, if applicable;

(3) the filing number, log number, or other identification number assigned to such map by the Public Utility Commission of Texas; and

(4) any other information relevant to the filing which shall aid the Texas Water Commission in locating and identifying such filing.

§291.107. Application Contents. Each applicant for a certificate of convenience and necessity or an amendment to a certificate shall submit the following information as part of its application:

(1) a fully completed Texas Water Commission application form;

(2) a verified document which clearly shows on its face that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;

(3) state highway county map with a scale of one inch = two miles; and a map with a scale of one inch = 2,000', or greater detail; showing clearly all of applicant's proposed facilities, all of applicant's existing facilities (if any), and the area to be included in the certification;

(4) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

(5) a schedule for the ultimate construction of all proposed facilities, keyed to maps showing where such facilities will be located to provide service;

(6) source of funding for facilities.

§291.108. Preliminary Order for Certificate. If a public utility desires to exercise a right or privilege under a franchise or permit that it contemplates securing but that has not as yet been granted to it, the public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission then may issue an order declaring that it will, on application under such rules as it prescribes, issue the desired certificate on terms and conditions it designates, after the public utility has obtained this con-

templated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

§291.109. Notice and Hearing for Applications for Certificates of Convenience and Necessity.

(a) If an application for issuance or amendment of a certificate of public convenience and necessity is filed, the applicant will prepare notice, as prescribed in the commission's application form, which will include the following:

(1) all information outlined in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §13;

(2) all information stipulated in the commission's instructions for water certification applicants form; and

(3) a statement that persons who wish to intervene or comment upon the action sought should contact the Director, Water Rates and Services Division, Texas Water Commission, 1700 North Congress Avenue, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant for publication and mailing. The applicant shall mail the notice to cities and neighboring utilities providing the same utility service within two miles of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.

(c) The applicant shall publish the notice in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the notice is received from the commission. Proof of publication in the form of publisher's affidavit shall be submitted to the commission within 10 days of the last publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(d) The commission may require the applicant to deliver notice to other affected persons or agencies.

(e) If, 30 days after the required mailed or published notice has been issued (whichever occurs later), no hearing is requested, the commission may consider the application for final decision without further hearing.

(f) If a hearing is requested, the commission shall fix a time and place for the hearing and notice thereof shall be issued at least 10 days in advance of the hearing. Mailed notice shall be issued to all parties and any person requesting a hearing.

§291.110. Revocation or Amendment of Certificate.

(a) The commission, at any time after notice and hearing, may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area covered by the certificate, or is in violation of the tariff it has on file with the commission, or is in violation of the rules and regulations of the commission.

(b) If the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

§291.111. Transferability of Certificates. Any certificate granted under this section is not transferable without approval of the commission and shall continue in force until further order of the commission.

§291.112. Notice Requirements for Ceasing Operations or Transfers of Certificates.

(a) The applicant will prepare notice which will include the following:

(1) the name and business address of the transferor utility and any transferee utility, or the utility which seeks to cease operations;

(2) a description of the service area of the utilities involved;

(3) the anticipated effect of the transfer or cessation of operations on the rates and services provided to the customers; and

(4) a statement that persons who wish to intervene or comment upon the action sought should contact the Director, Water Rates and Services Division, Texas Water Commission, 1700 North Congress Avenue, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(b) The applicant shall mail the notice to the commission for review, to cities and neighboring utilities providing the same utility service within two miles of the requested service area, and to the customers of the utility to be transferred or proposing to cease operations.

(c) The commission may require the applicant to deliver notice to other affected persons or agencies.

(d) If, 30 days after the required mailed or published notice has been issued (whichever occurs later), no hearing is requested, the commission may consider the application for final decision without further hearing.

(e) If a hearing is requested, the commission shall fix a time and place for the hearing and notice thereof shall be issued at least 10 days in advance of the hearing. Mailed notice shall be issued to any person requesting a hearing.

§291.113. Exclusiveness of Certificates. Any certificate granted under this section shall not be construed to vest exclusive service or property rights in and to the area certificated. The commission may grant, upon finding that the public convenience and necessity requires additional certification to another utility or utilities, additional certification to any other utility or utilities to all or any part of the area heretofore certificated pursuant to this chapter.

§291.114. Certification Forms. The commission shall prescribe a form or forms which will facilitate the granting of certificates of convenience and necessity so that the granting of certificates, both contested and uncontested, will be expedited.

§291.115. Contracts Valid and Enforceable. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, are valid and enforceable and are incorporated into the certificates of public convenience and necessity.

Issued in Austin, Texas, on March 4, 1986.

TRD-8602225 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Effective date: March 5, 1986
Expiration date: July 3, 1986
For further information, please call (512) 463-8070.

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Chapter 331. Underground Injection Control

Subchapter A. General Provisions

★31 TAC §§331.1-331.13

The Texas Water Commission adopts on an emergency basis new §§331.1-331.13, 331.31-331.36, 331.41-331.48, 331.61-331.67, 331.81-331.86, 331.101-331.107, 331.121, 331.122, and 331.131-331.133, concerning underground injection control. Adoption of these regulations on an emergency basis is necessary to continue federal authorization for the State of Texas to administer its Underground Injection Control Program, in lieu of a federally administered program, pursuant to the Safe Drinking Water Act of 1974. To maintain federal authorization, it is necessary for the Texas Water Commission to have regulations substantially equivalent to the federal program administered by the United States Environmental Protection Agency (EPA).

Although these new sections are adopted on an emergency basis, most have been in effect under the jurisdiction of the Texas Department of Water Resources, the predecessor agency to the Texas Water Commission, and were proposed as permanent rules by the commission on January 10, 1986, (with serialized publication in the *Texas Register* occurring on January 21, 1986). Senate Bill 249, 69th Legislature, 1985, effective on September 1, 1985, abolished the Texas Department of Water Resources and transferred jurisdiction under the Texas Injection Well Act,

Texas Water Code, Chapter 27, to the Texas Water Commission.

Sections 331.1-331.13 provide general provisions applicable to underground injection. These sections define the purpose and scope of the chapter, provide definitions, and prohibit certain activities and require permits or authorization by rule for various classes of injection wells. The subchapter also provides criteria and procedures for the exemption of fresh water aquifers for purposes of mineral extraction.

Certain classes of injection wells fall under shared or separate jurisdiction of other agencies. Senate Bill 249, 69th Legislature, 1985, added new §27.036 to the Texas Water Code, transferring jurisdiction for brine mining from the Texas Department of Water Resources to the Railroad Commission of Texas. All Class II wells and certain Class V wells associated with the use of geothermal energy resources are also within the jurisdiction of the Railroad Commission of Texas and can generally be defined by the description in 40 Code of Federal Regulations §146.05. Jurisdiction over Class III injection wells used for the solution mining of uranium is shared between the Texas Water Commission and the Texas Department of Health. Subchapter B details this shared jurisdiction.

Sections 331.31-331.36 delineate the different areas of responsibility agreed upon by the Texas Water Commission and the Texas Department of Health in regard to *in situ* uranium mining. These areas include separate and shared authorities regarding applications, permitting, and financial assurances.

Sections 331.41-331.48 provide standards and requirements applicable to all Class I and Class III wells, unless specifically excluded. These sections include provisions relating to area of review, mechanical integrity standards, corrective action, certification of proper construction, requirements for plugging and abandonment, and requirements for pond lining.

Sections 331.61-331.67 apply to all new Class I injection wells and to all existing Class I wells authorized by rule. A Class I well is an injection well used for the disposal of industrial and municipal wastes, including hazardous wastes. These sections provide construction standards, operation and monitoring requirements, and reporting and record keeping requirements for Class I wells.

Sections 331.81-331.86 establish criteria and standards applicable to all new Class III wells and to all existing Class III wells authorized by rule. Class III wells are wells used to inject fluids for the extraction of minerals. These sections provide construction standards, operations and monitoring requirements, reporting requirements, and closure standards.

Sections 331.101-331.107 establish additional standards for Class III well injection activities relating to the development of production or other areas authorized by an area permit and production area authorized for the extraction of minerals. These sections provide for the confinement of mining solutions, the use of monitoring wells, and the establishment of baseline ground water quality. They also require monitoring, reporting, remedial action for detected excursions, the restoration of water quality in the mining area, and the closure of the mining facilities.

Sections 331.121 and 331.122 establish the considerations of the commission prior to the issuance of any permit for Class I and III wells. These sections require the submission and consideration of certain information in the application review process including technical information, financial assurance for closure, and a closure plan. Section 331.121 reflects the requirements of the Texas Water Code, §27.051, as amended by House Bill 2358, 69th Legislature, 1985. Subchapter G includes the following additional considerations in order to determine if a new hazardous waste injection well is in the public interest: a compliance history of the applicant, an analysis of alternatives to injection well disposal, and financial responsibility for public liability in case of accidents.

Sections 331.131-331.133 apply to all new Class V injection wells under the jurisdiction of the Texas Water Commission. These sections provide minimum acceptable construction and closure standards. Except in extraordinary circumstances, compliance with these standards will result in authorization by rule for these wells.

The Texas Water Commission found that an urgent need existed to adopt these new sections on an emergency basis because the emergency rules for Chapter 338, cross-referenced in these sections as Chapter 305 and currently in force, 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 has the authority under law to adopt the proposed permanent rules at the present time. The commission has decided to delay adoption of all of its currently proposed rules in order to facilitate public comment. A lapse in the rules would constitute an imminent peril to the public health, safety, and welfare.

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, and §27.019, which provides the Texas Water Commission with the authority to adopt rules reasonably required for the performance of its powers and duties under the Texas Water Code and other laws of the state.

§331.1. Purpose, Scope, and Applicability.

(a) The purpose of these rules is to implement the provisions of the Injection Well Act, Texas Water Code, Chapter 27, as it applies to the commission, consistent with the policy of the Act stated in §27.003.

(b) This chapter applies to all injection wells and activities within the commission's jurisdiction.

§331.2. Definitions. The definitions contained in the Texas Water Code, §27.002, shall apply to this chapter. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise:

Abandoned well—A well whose use has been permanently discontinued or a well for which, after appropriate review and evaluation by the commission, there is no reasonable expectation of a return to service.

Activity—The construction or operation of an injection well or of pre-injection facilities and includes processing, storage, and disposal of waste.

Affected person—Any person whose legal rights, duties, or privileges may be adversely affected by the proposed injection operation for which a permit is sought.

Aquifer—A geological formation, group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

Aquifer restoration—The process of achieving or exceeding the water quality levels established by the commission for a permit/production area.

Area permit—An injection well permit which authorizes the construction and operation of two or more similar injection wells within a specified area.

Artificial liner—The impermeable lining of a pit, lagoon, pond, reservoir, or other impoundment, that is made of a synthetic material such as butyl rubber, chlorosulfonated polyethylene, elasticized polyolefin, polyvinyl chloride (PVC), other man-made materials, or similar materials.

Baseline quality—The parameters and their concentrations that describe the local groundwater quality of an aquifer prior to the beginning of injection activities.

Baseline well—A well from which groundwater is analyzed to define baseline quality in the permit area (regional baseline well) or in the production area (production area baseline well).

Buffer area—The area between any mine area boundary and the permit area boundary.

Casing—Material lining used to seal off strata at and below the earth's surface.

Cement—A substance generally introduced as a slurry into a wellbore which sets up and hardens between the casing and borehole and/or between casing strings to prevent unwanted movement of fluids within or adjacent to a borehole or a similar substance used in plugging a well.

Cementing—The operation whereby cement is introduced into a wellbore and/or forced behind the casing.

Conductor casing or conductor pipe—A short string of large diameter casing used to keep the top of the wellbore open during drilling operations.

Contaminant—Any physical, biological, chemical, or radiological substance or matter in water.

Control parameter—Any chemical constituent of groundwater monitored on a routine basis used to detect or confirm the presence of mining solutions in a designated monitor well.

Date of approval—The effective date of Environmental Protection Agency original approval of Texas' underground injection control program: January 6, 1982.

Disposal well—An injection well that is used for the injection of industrial or municipal waste.

Excursion—The movement of mining solutions into a designated monitor well.

Existing injection well:

(A) Any well or group of wells for which the following occurs before the date of approval:

(i) if no permit is required by law, commencement of construction, or operation; or

(ii) issuance of an appropriate permit, if such permit is required by law.

(B) Any well that is constructed after the date of approval and represents a continuation of an existing Class III injection well operation or well field.

Formation—A body of rock characterized by a degree of lithologic homogeneity which is prevailingly, but 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.

Fresh water—Water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(A) For the purposes of this subchapter, it will be presumed that water is suitable and feasible for beneficial use for any lawful purpose only if:

(i) it is used as drinking water for human consumption; or

(ii) the ground water contains fewer than 10,000 milligrams per liter total dissolved solids; and

(iii) it is not an exempted aquifer.

(B) This presumption may be rebutted upon a showing by the executive director or an affected person that water containing greater than or equal to 10,000 milligrams per liter of total dissolved solids can be put to a beneficial use.

Ground water—Water below the land surface in a zone of saturation.

Hazardous industrial waste—Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations, Part 261, Subparts C and D, respectively. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

Injection operations—The surface storage or subsurface emplacement of fluids occurring in connection with an injection well or wells, other than that occurring solely for construction or initial testing.

Injection well—A well used for underground injection.

Injection zone—A formation, a group of formations, or part of a formation, that receives fluid through a well.

Mine area—The area defined by a line through the ring of designated monitor wells installed to monitor the production zone.

Mine plan—A map of proposed mine areas and a schedule indicating the sequence and timetable for mining and any required aquifer restoration.

Monitor well—Any well used for the sampling or measurement of any chemical or physical property of subsurface strata or their contained fluids.

(A) Designated monitor wells are those listed in the production area authorization for which routine water quality sampling is required.

(B) Secondary monitor wells are those wells in addition to designated monitor wells, used to delineate the horizontal and vertical extent of mining solutions.

(C) Pond monitor wells are wells used in the subsurface surveillance system near ponds or other surface facilities.

New injection well—Any well or group of wells not an existing injection well, and:

(A) for which construction began after the date of approval; or

(B) for which operation began before the date of approval without a permit required by law.

Permit—A written document issued by the Texas Water Commission that by its conditions authorizes the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified injection well facility.

Permit area—The area owned or under lease by the permittee which may include buffer areas, mine areas, and production areas.

Pollution—The contamination of water or the alteration of the physical, chemical, or biological quality of water:

(A) that makes it harmful, detrimental, or injurious:

(i) to humans, animal life, vegetation, or property; or

(ii) to public health, safety, or welfare; or

(B) that impairs the usefulness the public enjoyment of the water for a lawful and reasonable purpose.

Pre-Injection facilities—The above-ground appurtenances, structu equipment, and other fixtures that are be used for storage, processing, or junction with an injection operation.

Production area—The area define by a line generally through the outer per meter of injection and recovery wells use for mining.

Production area authorization—document, issued by the Texas Water Com mission under the terms of an injection we permit, approving the initiation of minin activities in a specified production area within a permit area.

Production zone—The stratigraphic interval extending vertically from the shallowest to the deepest stratum into which mining solutions are authorized to be introduced.

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

Radioactive waste—A solid waste which is identified as a radioactive waste in and requires special licensing under Texas Civil Statutes, Article 4590f, as amended, or the rules adopted by the Texas Board of Health pursuant thereto.

Restoration demonstration—A test or tests conducted by a permittee to simulate production and restoration conditions and verify or modify the fluid handling values submitted in the permit application.

Restored aquifer—An aquifer whose local ground water quality has, by natural or artificial processes, returned to levels consistent with restoration table values or better as verified by an approved sampling program.

Stratum—A sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or material.

Surface casing—The first string of casing (after the conductor casing, if any) that is set in a well.

Underground injection—The subsurface emplacement of fluids through a well.

Underground source of drinking water (USDW)—An aquifer or its portions:

(A) which supplies drinking water for human consumption; or

(B) in which the ground water contains fewer than 10,000 milligrams per liter of total dissolved solids; and

(C) which is not an exempted aquifer.

Upper limit—A parameter value established by the Texas Water Commission in a permit/production area authorization which when exceeded indicates mining solutions may be present in designated monitor wells.

Verifying analysis—A second sampling and analysis of control parameters for the purpose of confirming a routine sample

analysis which indicates an increase in any control parameter to a level exceeding the upper limit. Mining solutions are assumed to be present in a designated monitor well if a verifying analysis confirms that any control parameter in a designated monitor well is present in concentration equal to or greater than the upper limit value.

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

Well monitoring—The measurement by on-site instruments or laboratory methods of any chemical or physical property of the subsurface strata or their contained fluids penetrated by the wellbore.

§331.3. Injection Prohibited.

(a) Unless excluded under subsection (b) of this section, the construction of an injection well, the conversion of a well into an injection well, and the use or operation of an injection well is prohibited unless authorized by an injection well permit, order, or rule of the commission.

(b) The following activities are not within the scope of subsection (a) of this section:

(1) injection of waste into subsurface strata via a single family residential cesspool or other device that receives waste, which has an open bottom or perforated sides;

(2) injection of waste into subsurface strata via a septic system well used for single family residential waste disposal.

(c) This section does not limit the authority of the commission to abate and prevent pollution of fresh water resulting from any injection activity by requiring a permit, by instituting appropriate enforcement action, or by other appropriate action.

§331.4. Mechanical Integrity Required. Injection is prohibited for Class I and III wells which lack mechanical integrity, the result of which may pollute an underground source of drinking water. Except where excluded in the case of authorization by rule, mechanical integrity pursuant to §331.43 of this title (relating to Mechanical Integrity Standards) must be demonstrated to the satisfaction of the executive director before operation begins. Injection may be prohibited for Class V wells which lack mechanical integrity. The executive director may require a demonstration of mechanical integrity at any time if there is reason to believe mechanical integrity is lacking.

§331.5. Prevention of Pollution. No permit or authorization by rule shall be allowed where an injection well causes or allows the movement of fluid that would result in the pollution of an underground source of drinking water. A permit or authorization by rule shall include terms and conditions reasonably necessary to protect fresh water from pollution.

§331.6. Prohibition of Class IV Well Injection. The injection of hazardous fluids or radioactive wastes into or above a formation which within ¼ mile of the well contains an underground source of drinking water is prohibited.

§331.7. Permit Required.

(a) Except as provided in §331.9 of this title (relating to Injection Authorized by Rule), all injection wells and activities must be authorized by permit.

(b) For Class III *in situ* uranium solution mining wells, Frasch sulfur wells, and other specified Class III operations, an area permit authorizing more than one well may be issued for a defined permit area wherein wells of similar design and operation are proposed. Prior to commencing operation of such wells, the permittee may be required to obtain a production area authorization for separate production or mining areas within the permit area.

(c) For new injection wells, a permit must be obtained before construction commences unless the injection is authorized by rule. For existing wells authorized by rule pursuant to §331.9 of this title (relating to Injection Authorized by Rule), a permit must be obtained or an existing permit must be amended to conform to the requirements of commission rules for injection wells within five years from the date of approval.

§331.8. Application Required for Existing Wells. The owner or operator of an existing injection well shall complete, sign, and submit to the executive director an application for permit in conformance with Chapter 305 of this title (relating to Consolidated Permits). The application shall be submitted according to the following schedule:

(1) for Class I hazardous waste wells, within six months from the date of approval;

(2) for other Class I and for Class III wells, within two years from the date of approval.

§331.9. Injection Authorized by Rule.

(a) Injection into existing Class I and Class III wells is authorized by virtue of this section, provided compliance with any permit issued before the date of approval is maintained, provided compliance with the following sections of this chapter is achieved within one year from the date of approval, and provided mechanical integrity is demonstrated within two years from the date of approval for each individually authorized Class I and III well:

(1) financial responsibility: §305.153 of this title (relating to Financial Responsibility);

(2) operating, monitoring, and reporting: Class I, §331.63 of this title (relating to Operating Requirements); §331.64 of this title (relating to Monitoring Requirements); and §331.65 of this title (relating to Reporting Requirements); Class III, §331.83 of this title (relating to Operating Requirements); §331.84 of this title (relating to Monitoring Requirements); and §331.85 of this title (relating to Reporting Requirements); or §331.103 of this title (relating to Production Area Monitor Wells); §331.104 of this title (relating to Establishment of Baseline and Restoration Values); §331.105 of this title (relating to Monitoring Standards); §331.106 of this title (relating to Remedial Action for Excursion); §331.107 of this title (relating to Restoration); §331.86 of this title (relating to Closure);

(3) reporting of noncompliance or malfunction: Class I, §331.65(b) of this title (relating to Reporting Requirements); Class III, §331.106(1) of this title (relating to Remedial Action for Excursion), and §331.85 (e) of this title (relating to Reporting Requirements);

(4) retention of records: Class I, §331.67(c) of this title (relating to Record Keeping Requirements);

(5) notice of abandonment: §331.46 (b) of this title (relating to Plugging and Abandonment Standards);

(6) plugging and abandonment plan and standards: §331.46 of this title (relating to Plugging and Abandonment Standards); and

(7) hazardous waste injection wells: §305.156 of this title (relating to Hazardous Waste).

(b) The authorization and requirements of subsection (a) of this section also apply to the construction or operation commencing after the date of approval of any Class III well that will be part of an existing Class III well field or operation and will represent a continuation of such field or operation, provided a demonstration of mechanical integrity is made and reported to the executive director in accordance with §331.43 of this title (relating to Mechanical Integrity Standards).

(c) Plugging and abandonment of a well authorized by rule at any time after the date of approval shall be accomplished in accordance with the standards of §331.46 of this title (relating to Plugging and Abandonment Standards).

(d) Authorization under subsections (a) and (b) of this section shall expire:

(1) if an application for permit has not been filed in accordance with §331.8 of this title (relating to Application Required for Existing Wells);

(2) upon the effective date of an injection well permit or denial of an injection well permit application; or

(3) the date five years after the date of approval, unless a complete application for permit is pending.

(e) Injection into Class V wells, unless otherwise provided herein is authorized by virtue of this section; injection into new Class V wells used for the disposal of over 1,000 gallons per day of sewage or sewage effluent must apply for and obtain a permit from the

commission prior to operations.

(f) The executive director may require the owner or operator of an injection well authorized by rule to apply for and obtain an injection well permit. The owner or operator shall submit a complete application within 90 days after the receipt of a letter from the executive director requesting that the owner or operator of an injection well submit an application for permit. Cases for which a permit may be required include, but are not limited to:

(1) the injection well is no longer within the scope of subsections (a), (b), and (e) of this section;

(2) compliance with standards in addition to those listed in subsection (a) of this section is required to protect fresh water from pollution; or

(3) the injection well is not in compliance with the standards required by this section.

(g) For Class III injection wells authorized by rule, the executive director is authorized to waive requirements consistent with the provisions of §331.48 of this title (relating to Waiver of Requirements).

§331.10. Inventory of Wells Authorized by Rule.

(a) Within one year after the date of approval or prior to construction, the owner, operator, and driller of an injection well facility shall submit to the executive director an inventory for each facility containing:

(1) the name of the facility;

(2) the name and address of legal contact;

(3) the ownership of the facility;

(4) the nature, type, and operating status of the injection well(s); and

(5) the location, depth, and construction of each well.

(b) Drillers of injection wells authorized by rule may inventory wells by submission of either a form to be provided by the executive director or the form of the Water Well Drillers Board.

(c) Failure to comply with this section shall constitute grounds for termination of authorization by rule.

§331.11. Classification of Injection Wells.

(a) Injection wells within the jurisdiction of the commission are classified as follows:

(1) Class I:

(A) wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells;

(B) other industrial and municipal waste disposal wells which inject fluids beneath the lower-most formation which within ¼ mile of the wellbore contains an underground source of drinking water.

(2) Class III: wells which inject for extraction of minerals, including:

(A) mining of sulfur by the Frasch process;

(B) solution mining of minerals which includes sodium sulfate, sulfur, potash, phosphate, copper, uranium, and any other mineral which can be mined by this process;

(3) Class IV: wells used by generators of hazardous wastes or of radioactive wastes, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous wastes or radioactive wastes into or above a formation which within ¼ mile of the wellbore contains an underground source of drinking water.

(4) Class V: Injection wells within the jurisdiction of the commission, but not included in Classes I, III, or IV. Class V wells include, but are not limited to:

(A) air conditioning return flow wells used to return to the supply aquifer the water used for heating or cooling in a heat pump;

(B) cesspools or other devices that receive wastes, which have an open bottom and sometimes have perforated sides;

(C) cooling water return flow wells used to inject water previously used for cooling;

(D) drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

(E) dry wells used for the injection of wastes into a subsurface formation;

(F) recharge wells used to replenish the water in an aquifer;

(G) salt water intrusion barrier wells used to inject water into a freshwater aquifer to prevent the intrusion of salt water into the fresh water;

(H) sand backfill wells used to inject a mixture of water and sand, mill tailings, or other solids into mined out portions of subsurface mines;

(I) septic system wells used:

(i) to inject the waste or effluent from a multiple dwelling, business establishment, community, or regional business establishment septic tank; or

(ii) for a multiple dwelling, community, or regional cesspool;

(J) subsidence control wells (not used for the purpose of oil or natural gas production) used to inject fluids into a nonoil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water.

(b) Class II wells and Class III wells used for brine mining fall within the jurisdiction of the Railroad Commission of Texas.

§331.12. Conversion of Wells.

(a) Persons utilizing wells authorized by permit, by rule, or otherwise, who wish to convert the well from its authorized purpose to another purpose or to an additional purpose must first obtain the appropriate approval described in paragraphs (1)-(4) of this subsection.

(1) Persons utilizing injection wells authorized by permit must obtain either a permit amendment pursuant to §305.62 of this title (relating to Amendment), or if appropriate, a permit revocation pursuant to §305.66 of this title (relating to Revocation and Suspension), or §305.67 of this title (relating to Revocation and Suspension upon Request or Consent).

(2) Persons utilizing injection wells authorized by rule that are to be converted to a purpose that requires authorization by permit must obtain a permit.

(3) Persons utilizing injection wells authorized by rule that are to be converted to a purpose that does not require authorization by permit must obtain the written approval of the executive director.

(4) Disposal of industrial or municipal waste in Class II wells is specifically prohibited unless authorized by permit or by written approval of the executive director and confirmed by Texas Railroad Commission authorization.

(b) Conversions of wells that remain exclusively within the jurisdiction of the Railroad Commission are not affected by this section. For example, a conversion from a Class II disposal well to a water supply well regulated by the Railroad Commission would neither enter nor exit the jurisdiction of the Texas Water Commission and thus would not be subject to this section.

§331.13. Exempted Aquifer.

(a) An exempted aquifer is an aquifer or a portion of an aquifer which meets the criteria for fresh water but which has been designated an exempted aquifer by the commission after notice and opportunity for public hearing. Those aquifers or portions of aquifers which were designated for exemption by the Texas Department of Water Resources in its original application for program approval submitted to the Environmental Protection Agency shall be considered to be exempted aquifers.

(b) Except for injection authorized by rule, the commission may require a permit for injection into an exempted aquifer in order to protect fresh water outside the exempted aquifer which may be subject to pollution caused by the injection.

(c) An aquifer or portion of an aquifer may be designated as an exempted aquifer if the following criteria are met:

(1) it does not currently serve as a source of drinking water for human consumption; and

(2) until exempt status is removed according to procedures in subsection (d) of this section, it will not in the future serve as a source of drinking water for human consumption because:

(A) it is mineral, hydrocarbon, or geothermal energy bearing with production capability;

(B) it is situated at a depth or location which makes recovery of water for drinking water purposes economically or technologically impractical;

(C) it is so contaminated that it would be economically or technologically impractical to render that water fit for human consumption; or

(D) it is located above a Class III well mining area subject to subsidence or catastrophic collapse.

(d) After notice and opportunity for public hearing, the designation of exempted aquifer may be removed, thereby eliminating the exempt status, provided restoration has been accomplished if required.

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Subchapter B. Jurisdiction Over *In Situ* Uraniam Mining

★31 TAC §§331.31-331.36

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, and §27.019, which provides the Texas Water Commission with the authority to adopt rules reasonably required for the performance of its powers and duties under the Texas Water Code and other laws of the state.

§331.31. Authority of Texas Department of Health. The Texas Department of Health (TDH) shall have primary responsibility for licensing and enforcement activities for aboveground process plant facilities associated with *in situ* uranium mining exclusive of wellhead assemblies, well monitoring equipment, fluid holding ponds, and preinjection equipment associated with waste disposal wells. The TDH will review the applicant's design, construction, operation, record keeping, maintenance, and closure plans to ensure that they meet Texas Department of Health standards.

§331.32. Authority of Texas Water Commission. The Texas Water Commission (TWC) shall have primary responsibility for permitting and enforcement activities for all *in situ* uranium mining injection wells and associated wellhead assemblies and groundwater monitoring equipment. The TWC will review the applicant's design, construction, operation, record keeping, maintenance, and closure plans to ensure that they meet TWC standards. The TWC is further responsible for reviewing the design and operating plans for groundwater monitoring and excursion detection and response, in consultation with the TDH. Preinjection equipment associated with waste disposal wells (tanks, filters, pumping stations, etc.) shall be the primary permitting and enforcement responsibility of the TWC.

§331.33. Joint Authority Over Holding Ponds. The Texas Department of Health (TDH) and the Texas Water Commission (TWC) are responsible for the review, permitting, and licensing, and enforcement activities for fluid holding ponds used for *in situ* uranium mining. The TDH and the TWC will review applicant's design, construction, operation, record keeping, maintenance, and closure plans to ensure that they meet the respective agency standards. The TDH and the TWC may coordinate inspections sampling programs, and enforcement actions.

§331.34. Applications.

(a) The Texas Water Commission (TWC) will encourage applicants for *in situ* uranium mining permits to attend a preapplication meeting with representatives from the Texas Department of Health (TDH) in attendance.

(b) Applications for *in situ* uranium mining injection wells permits and related information required by the TWC may be accepted as part of the application to the TDH. Information bearing on the technical merit of the applications or other substantive issues received by TWC will be forwarded to TDH.

§331.35. Permits.

(a) Each Texas Water Commission (TWC) *in situ* uranium mining injection well permit shall contain a provision that the permittee must comply with Texas Department of Health license requirements which protect occupational and public health and safety and the environment.

(b) The TDH shall have primary responsibility for enforcement of the conditions of its licenses, regulations, and rules. The TWC shall have primary responsibility for enforcement of the conditions of its permits, regulations, and rules. The TWC will refer to the TDH any complaints received which are the primary responsibility of the TDH. When deemed appropriate by both agencies, the TWC and the TDH may jointly enforce permit and license terms and conditions; may hold joint public hearings; and may make joint inspections and cooperate on enforcement actions. Nothing herein shall preclude either agency from individual enforcement or legal actions. Joint hearings procedures will be pursuant to the Texas Water Commission rules. Decisions will be made by the appropriate separate authorities, as provided by law.

(c) The TWC will specify in its *in situ* uranium mining permits parameters to be met for aquifer restoration. Radiological parameters will be set by the TDH. Nonradiological parameters will be set by the TWC. The TWC shall be responsible for regulation of groundwater monitoring, excursion detection and response, and groundwater restoration.

(d) Technical staff of the TWC will cooperate with the technical staff of the TDH so that their highest level of technical expertise will be available to assess environmental impacts associated with *in situ* uranium mining and enforce the agencies mandates.

§331.36. Financial Assurances.

(a) Requirements for financial security for decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive materials of the below and aboveground site to specified radiological and chemical levels shall be established jointly by the TWC and the TDH. Posting of financial security with the TDH shall include funds for restoration as agreed with the TWC.

(b) The TWC will require financial assurances for plugging and abandonment of injection and disposal wells.

(c) In the event that financial security or assurances depoxited in the radiation and perpetual care fund as provided herein are required to complete decontamination, decommissioning, stabilization, reclamation, maintenance, surveillance, control, storage, and disposal of radioactive material, the TDH, in agreement with the TWC, may enter contracts to accomplish these activities. Payment for such contract services may be made from the radiation and perpetual care fund upon order of the TDH when the contract terms are satisfactorily completed.

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Subchapter C. General Standards and Methods

★31 TAC §§331.41-331.48

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §27.019, which provides the Texas Water Commission with the authority to adopt rules reasonably required for the performance of its powers and duties under the Texas Water Code and other laws of the state.

§331.41. Applicability. The provisions of this subchapter set forth standards and requirements that apply to all Class I and Class III wells, unless specifically excluded.

§331.42. Area of Review.

(a) The area of review is the area surrounding an injection well or a group of injection wells, for which pressure data are

calculated and artificial penetrations are evaluated for possible corrective action.

(b) The area of review is:

(1) for Class I wells, an area determined by a radius of 2½ miles from the proposed or existing wellbore;

(2) for Class III *in situ* uranium, Frasch sulfur, and other Class III permit areas, an area extending ¼ mile beyond the permit area boundary, and such additional surrounding area as may be required by the commission;

(3) for other Class III wells and Class V wells, an area determined by a radius of at least ¼ mile from the proposed or existing wellbore.

(c) After an appropriate review, the commission may modify the area of review. In no event shall the boundary of an area of review be less than ¼ mile from any injection well covered by the appropriate authorization. The following factors are to be included in the review:

(1) chemistry of injection and formation fluids;

(2) hydrogeology;

(3) population and its dependence on ground water use; and

(4) historical practices in the area.

(d) The executive director may require an owner or operator of an existing injection well to submit any reasonably available information regarding the area of review, if the information would aid a review for the prevention or correction of freshwater pollution.

§331.43. Mechanical Integrity Standards.

(a) An injection well has mechanical integrity if there is no significant leak in the casing, tubing, or packer, and if there is no significant fluid movement through vertical channels adjacent to the injection wellbore.

(b) Except as provided by subsection (c) of this section, the following tests shall be used to evaluate the mechanical integrity of an injection well:

(1) monitoring of annulus pressure, or pressure test with liquid or gas, or radioactive tracer survey, or (for Class III uranium solution mining wells only) single point resistivity survey in conjunction with a pressure test to detect any leaks in casing, tubing, or packer; and

(2) temperature log, or noise log, or radioactive tracer survey, or cement bond log, or (for Class III uranium solution mining wells only) cement records where other tests are not suitable.

(c) The executive director may approve in writing the use of tests to evaluate mechanical integrity other than those listed in subsection (b) of this section.

(d) Methods and standards generally accepted in the industry shall be applied in conducting and evaluating the tests required by this section.

§331.44. Corrective Action Standards. In determining the adequacy of corrective action proposed under §305.152(a) of this title (relating to Corrective Action) or required to prevent or correct pollution of fresh water under §305.152(f) of this title (relating to Corrective Action), the following factors will be considered:

(1) toxicity and volume of the injected fluid;

(2) toxicity of native fluids and byproducts of injection;

(3) population potentially affected;

(4) geology and hydrology;

(5) history of the injection operation;

(6) completion and plugging records;

(7) abandonment procedures in effect at the time a well was abandoned; and

(8) hydraulic connections with fresh water.

§331.45. Certification of Construction and Completion. The executive director will certify construction and completion for an injection well or project which is constructed and completed in compliance with the requirements of the permit. In making a determination whether to make such certification, the following shall be considered:

(1) for Class I wells:

(A) logging and testing program data on the well;

(B) a demonstration of mechanical integrity;

(C) anticipated operating data;

(D) the results of the formation testing program;

(E) the injection procedure;

(F) the compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone; and

(G) the status of corrective action required for defective wells in the area of review;

(2) for Class III wells:

(A) logging and testing data on the well;

(B) a satisfactory demonstration of mechanical integrity for all new wells and for all existing salt solution wells;

(C) anticipated operating data;

(D) the results of the formation testing program;

(E) the injection procedures; and

(F) the status of corrective action required for defective wells in the area of review.

§331.46. Plugging and Abandonment Standards.

(a) Prior to abandoning Class I and III wells, the well shall be plugged with cement in a manner which will not allow the movement of fluids out of the injection zone either into or between freshwater aquifers.

(b) The permittee shall notify the executive director before commencing plugging and abandonment according to an approved plan. For Class I wells, this notice shall be given at least 30 days before commencement. The executive director will review any revised, updated, or additional plugging and abandonment plans.

(c) Placement of the cement plugs shall be accomplished by an approved method that may include one of the following:

(1) the balance method;

(2) the dump bailer method; or

(3) the two-plug method.

(d) Prior to plugging, the well to be abandoned shall be in a state of static equilibrium with the mud or fluid weight equalized top to bottom, either by circulating the mud or fluid in the well at least once or by a comparable method prescribed by the executive director.

(e) The plugging and abandonment plan shall, in the case of a Class III production zone which underlies or is in an exempted aquifer, also demonstrate that no movement of contaminants that will cause pollution from the production zone into a freshwater aquifer will occur. The commission shall prescribe aquifer cleanup and monitoring where deemed necessary and feasible to insure that no migration of contaminants that will cause pollution from the production zone into a freshwater aquifer will occur.

(f) The following shall be considered in determining the adequacy of a plugging and abandonment plan for Class I and III wells:

(1) the type and number of plugs to be used;

(2) the placement of each plug including the elevation of the top and bottom;

(3) the type, grade, and quantity of plugging material to be used;

(4) the method of placement of the plugs;

(5) the procedure used to plug and abandon the well;

(6) any newly constructed or discovered wells, or information, including existing well data, within the area of review;

(7) geologic or economic conditions; and

(8) such other factors that may affect the adequacy of the plan.

(g) Within 30 days after completion of plugging, the permittee shall file with the executive director a plugging report on forms provided by the commission.

§331.47. Pond Lining. All holding ponds, emergency overflow ponds, emergency storage ponds, or other impoundments associated with, or part of the surface facilities associated with underground injection wells shall be lined with clay or an artificial liner as approved by the executive director and as required by permit, and shall in addition, conform to any applicable requirements of Chapter 336 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

§331.48. Waiver of Requirements.

(a) When injection does not occur into, through, or above an underground source of drinking water, the commission, by permit, may authorize a well with less stringent requirements than those required in this chapter and Chapter 305 of this title

(relating to Consolidated Permits) to the extent that the less stringent requirements will not result in an increased likelihood of movement of fluid that may pollute fresh water.

(b) When injection occurs and a cone of depression centered at the well or well field is maintained for the injection zone, the commission, by permit, may authorize a well with less stringent requirements for operation, monitoring, and reporting than those required in this chapter and Chapter 305 of this title (relating to Consolidated Permit Regulations) to the extent that the less stringent requirements will not result in an increased likelihood of movement of fluid that may pollute fresh water.

(c) When requirements are reduced under subsection (a) or (b) of this section, a technical summary will be prepared setting for the basis for the action.

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Subchapter D. Standards for Class I Wells

★31 TAC §§331.61-331.67

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §27.019, which provides the Texas Water Commission with the authority to adopt rules reasonably required for the performance of its powers and duties under the Texas Water Code and other laws of the state.

§331.61. Applicability. The rules of this subchapter apply to all new Class I injection wells and to all existing Class I wells authorized by rule to the extent required by §331.9 of this title (relating to Injection Authorized by Rule).

§331.62. Construction Standards.

(a) Casing and cementing. All Class I wells shall be cased and cemented to prevent the movement of fluids into or between freshwater aquifers. Cementing shall be by the pump and plug or other method approved by the executive director and a sufficient amount of cement shall be used to fill the annular space between the hole and casing and between casing strings to the surface of the ground. The casing and cement used in the construction of each new injection well shall be designed for the life expectancy of the well. Surface casing shall be set to a minimum subsurface depth determined by the executive director to properly protect freshwater strata. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(1) depth to the injection zone;

(2) injection pressure, external pressure, internal pressure, and axial loading;

(3) hole size;

(4) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(5) corrosive effects of injected fluid, formation fluids, and temperatures;

(6) lithology of injection and confining intervals; and

(7) types and grades of cement.

(b) Tubing and packer. All Class I injection wells shall inject fluids through tubing with either a packer or a fluid seal system approved by the executive director. In determining and specifying requirements for tubing, packer, or a fluid seal system, the following factors shall be considered:

(1) depth of setting;

(2) characteristics of injection fluid;

(3) injection pressure;

(4) annular pressure;

(5) rate, temperature, and volume of injected fluid; and

(6) size of casing.

(c) Logs and tests.

(1) Integrity testing. Appropriate logs and other tests shall be conducted during the drilling and construction of Class I wells. All logs and tests shall be interpreted by the service company which processed the logs or conducted the test; or by other qualified persons. A minimum of the following logs and tests shall be conducted:

(A) deviation checks on all holes constructed by first drilling a pilot hole, and then enlarging the pilot hole by reaming or another method. Such checks shall be at sufficiently frequent intervals to assure that avenues for fluid migration in the form of diverging holes are not created during drilling;

(B) for surface casing: spontaneous potential, resistivity or gamma-resistivity, and caliper logs before the casing is installed; and

(C) for intermediate and long string casing:

(i) spontaneous potential, resistivity, or gamma-resistivity, and caliper logs before the casing is installed; and

(ii) a cement bond log, a gamma-ray (full hole) log, and an inclination survey.

(2) Pressure tests. All casing strings shall be pressure tested at conditions specified by the executive director.

(3) Core samples. Full-hole cores shall be taken from selected intervals of the injection zone and lowermost overlying confining zone; or, if full-hole coring is not feasible or adequate core recovery is not achieved, side-wall cores shall be taken at sufficient intervals to yield representative data for selected parts of the injection zone and lower most overlying confining zone. Core analysis shall include a determination of permeability, porosity, bulk density, and other necessary tests.

(d) Injectivity tests. After completion of the well, injectivity tests shall be performed to determine the well capacity and reservoir characteristics. Surveys shall be performed to establish preferred injection zones. Prior to performing injectivity tests, the bottom hole pressure, bottom hole temperature, and static fluid level shall be determined, and a representative sample of formation fluid shall be obtained for chemical analysis.

(e) Construction supervision. All phases of well construction and all phases of any well workover shall be supervised by a person who is knowledgeable and experienced in practical drilling engineering and who is familiar with the special conditions and requirements of injection well construction.

§331.63. Operating Requirements.

(a) Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone, initiate new fractures in the confining zone, or cause movement of fluid out of the injection zone that may pollute fresh water.

(b) Injection between the outermost casing protecting fresh water and the wellbore is prohibited.

(c) Unless an alternative to a packer has been approved by the executive director, the tubing-long string casing annulus shall be filled with a fluid approved by the executive director. A pressure approved by the executive director shall be maintained on the annulus to detect well malfunctions.

(d) Monthly average and maximum instantaneous rates of injection, and annual and monthly volumes of injected fluids shall not exceed limits specified by the commission.

(e) Any chemical or physical characteristic of the injected fluids shall be maintained within specified permit limits, if necessary for the protection of the injection well, associated facilities, and injection zone and to ensure proper operation of the facility.

(f) The permittee shall notify the executive director before commencing any workover operation or corrective maintenance which involves taking the injection well out of service. The notification shall be in writing and shall include plans for the proposed work. The executive director may grant an exception of the prior written notification when immediate action is required. Approval by the executive director shall be obtained before the permittee may begin any workover operation or corrective maintenance that involves taking the well out of service. Pressure control equipment shall be installed and maintained during workovers which involve the removal of tubing.

§331.64. Monitoring Requirements.

(a) Injection fluids shall be sampled and analyzed with a frequency sufficient to

yield representative data of their characteristics.

(b) Pressure gauges shall be installed and maintained in proper operating conditions at all times on the injection tubing and on the tubing-long string casing annulus at the wellhead.

(c) Continuous recording devices shall be installed and maintained in proper operating condition at all times to record injection tubing pressures, injection flow rates, injection volumes, tubing-long string casing annulus pressure, and any other specified data. The instruments shall be housed in weatherproof enclosures.

(d) Mechanical integrity must be demonstrated at least once every five years during the life of the well.

(e) Any wells within the area of review selected for the observation of water quality, formation pressure, or any other parameter, shall be monitored at a frequency sufficient to protect fresh water.

§331.65. Reporting Requirements.

(a) Pre-operation reports.

(1) Completion report. Within 90 days after the completion of the well, the permittee shall submit a completion report to the executive director providing the drilling and completion history, casing and cementing records, well logs, injectivity tests performed on the well, and a surveyors plat showing the exact location and giving the latitude and longitude of the well. The drilling history shall include a complete and accurate record of the depth, thickness, and character of the strata penetrated. The permittee shall integrate the data obtained into adjusted formation pressure increase calculations, fluid front calculations, and updated cross-sections of the injection zone and include these items in the completion report. A descriptive report interpreting the results of all logs and tests shall be included in the completion report.

(2) Well data report. Within 90 days after the completion of the well, the permittee shall submit to the executive director a well data report on forms provided by the executive director

(3) Local authorities. The permittee shall provide written notice to the executive director in a manner specified by the executive director that a copy of the permit has been properly filed with the health and pollution control authorities of the county, city, and town where the well is located.

(4) Start-up date. The permittee shall notify the executive director in writing of the anticipated well start-up date. Compliance with all pre-operation terms of the permit must occur prior to beginning injection operations.

(b) Operating reports.

(1) Injection operation quarterly report. Within 20 days after the last day of the months of March, June, September, and December, the permittee shall file a quarterly report of injection operation on forms supplied by the executive director. The executive director may require more frequent reporting.

(2) Injection zone annual report. The permittee shall file annually with the December report of injection operation an updated graphic or other acceptable report of the pressure effects of the well upon its injection zone. The report shall include a direct measurement of bottom-hole pressure or a calculation of bottom-hole pressure using the specific gravity of fluid in the wellbore and the static fluid level. To the extent such information is reasonably available the report shall also include:

(A) locations of newly constructed or newly discovered wells within the area of review if such wells were not included in the technical report accompanying the permit application or in later reports; and

(B) a tabulation of data as required by §331.122(2)(B) of this title (relating to Class III Wells) for all such wells within ½ mile of the injection well and for all other wells within the area of review that penetrate to within 300 feet of the top of the injection zone.

(3) Mechanical integrity and other reports. The permittee shall submit, within 45 days after test completion, a report including both data and interpretation on the results of:

(A) periodic tests of mechanical integrity; and,

(B) any other test of the injection well or injection zone if required by the executive director.

(4) Emergency report of leak or other failure. The permittee shall notify the Austin office of the commission within 24 hours of any significant change in monitoring parameters which could reasonably be attributed to a leak or other failure of the well equipment or injection zone integrity.

(c) Workover reports.

(1) Completed workover report. Within 60 days after the completion of the workover, a report shall be filed with the executive director including the reason for well workover and the details of all work performed.

(2) Bottom hole pressure report. During major work overs, the bottom hole pressure shall be determined either by direct measurement by conventional techniques or by calculation using specific gravity of fluid in the wellbore and the static fluid level as specified by the executive director.

§331.66. Additional Requirements. The commission may prescribe additional requirements for Class I wells in order to protect fresh water from pollution.

§331.67. Record-Keeping Requirements.

(a) The permittee shall keep complete and accurate records of:

(1) all monitoring required by the permit, including:

(A) continuous records of surface injection pressures;

(B) continuous records of the tubing-long string annulus pressures;

(C) continuous records of injection flow rates;

(D) monthly total volume of injected fluids;

(2) all periodic well tests, including but not limited to:

(A) injection fluid analyses;

(B) bottom hole pressure determinations; and

(C) mechanical integrity;

(3) all shut-in periods and times that emergency measures were used for handling injection fluid;

(4) any additional information on conditions that might reasonably affect the operation of the injection well.

(b) All records shall be made available for review upon request from a representative of the commission.

(c) The permittee shall retain, for a period of five years following abandonment, records of all information resulting from any monitoring activities or other records required by the permit.

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TRD-8601881 James K. Rourke, Jr.
General Counsel
Texas Water Commission

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Subchapter E. Standards for Class III Wells

★31 TAC §§331.81-331.86

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §27.019, which provides the Texas Water Commission with the authority to adopt rules reasonably required for the performance of its powers and duties under the Texas Water Code and other laws of the state.

§331.81. Applicability. This subchapter establishes criteria and standards that apply to all new Class III wells and to all existing Class III wells authorized by rule to the extent required by §331.9 of this title (relating to Injection Authorized by Rule).

§331.82. Construction Requirements.

(a) Casing and cementing. All new Class III wells shall be cased and cemented to prevent the migration of fluids which may cause the pollution of freshwater aquifers. The casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well. In determining and specifying casing and cementing requirements, the following factors shall be considered:

(1) depth to the injection zone;

(2) injection pressure, external pressure, internal pressure, axial loading, etc.;

(3) hole size;

(4) size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification, and construction material);

(5) corrosiveness of injected fluids and formation fluids;

(6) lithology of injection and confining zones; and

(7) type and grade of cement.

(b) Alterations to Construction Plans. Any proposed changes or alterations to construction plans after permit issuance shall be filed with the executive director and written approval obtained before incorporating such changes.

(c) Logs and tests.

(1) During the drilling and construction of Class III wells, appropriate deviation checks shall be conducted on holes where pilot holes and reaming are used at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(2) Additional logs and tests may be required by the executive director when appropriate.

(d) Construction and testing supervision. All phases of well construction and testing shall be supervised by a person who is knowledgeable and experienced in practical drilling engineering and who is familiar with the special conditions and requirements of injection well construction.

(e) Injection zone characteristics - water bearing formation. Where the injection zone is a water bearing formation, the following information concerning the injection zone shall be determined or calculated:

(1) fluid pressure;

(2) temperature;

(3) fracture pressure;

(4) other physical and chemical characteristics of the injection zone;

(5) physical and chemical characteristics of the formation fluids; and

(6) compatibility of injected fluids with formation fluids.

(f) Injection zone characteristics nonwater bearing formations. Where the injection formation is not a water bearing formation, the fracture pressure shall be determined or calculated.

(g) Monitor well location. Monitoring wells may be required to be completed into the injection zone, into any freshwater aquifer above the injection zone, and into the first freshwater aquifer below the injection zone which could be affected by the mining operation. These wells shall be located in such a fashion as to detect any excursion of injection fluids, production fluids, process byproducts, or formation fluids outside the mining area or zone. If the operation may be affected by subsidence or catastrophic collapse, the monitoring wells shall be located so that they will not be physically affected. Designated monitoring wells shall be installed at least 100 feet inside any permit area boundary unless excepted by written authorization from the commission.

(h) Subsidence or catastrophic collapse. Where the injection wells penetrate an aquifer containing fresh water in an area subject to subsidence or catastrophic collapse, an adequate number of monitoring wells shall be completed into the freshwater aquifer to detect any movement of injected fluids, process byproducts, or formation fluids into the fresh water. The monitoring wells shall be located outside the physical influence of the subsidence or catastrophic collapse.

(i) Monitor well criteria. In determining the number, location, construction, and frequency of monitoring of the monitoring wells, the following criteria shall be considered:

(1) the population relying on the freshwater aquifer affected or potentially affected by the injection operation;

(2) the proximity of the injection operation to points of withdrawal of drinking water;

(3) the local geology and hydrology;

(4) the operating pressures and whether a negative pressure gradient is being maintained;

(5) the chemistry and volume of the injected fluid, the formation water, and the process byproducts; and

(6) the injection well density.

§331.83. Operating Requirements.

(a) Injection pressure at the wellhead shall not exceed a maximum, as specified in the permit or supplementary technical report, which shall be calculated so as to assure that the pressure in the injection zone during injection does not:

(1) initiate new fractures or propagate existing fractures in the injection zone, except as approved by the executive director;

(2) initiate fractures in the confining zone; or

(3) cause the migration of injection or formation fluids into fresh water.

(b) Injection between the outermost casing protecting freshwater aquifers and the wellbore is prohibited.

§331.84. Monitoring Requirements.

(a) Injection fluid shall be analyzed for physical and chemical characteristics with sufficient frequency to yield representative data on its characteristics.

(b) The injection pressure, the injection volume, and the production volume shall be recorded.

(c) Fluid level where appropriate and the parameters chosen to measure water quality in monitor wells completed in the injection zone shall be monitored twice a month at two-week intervals.

(d) Specified wells within ¼ mile of the injection site shall be monitored at least once every three months to detect any migration from the injection zone into fresh water.

(e) All Class III wells may be monitored on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well operating with a common manifold. Separate monitoring systems for each well are not required, provided the owner/operator demonstrates that manifold monitoring is comparable to individual well monitoring.

§331.85. Reporting Requirements.

(a) An updated map of the area of review showing locations of all newly constructed or newly discovered wells not included in the technical report accompanying the permit application or in later reports shall be submitted annually to the executive director.

(b) Except for routine monitoring required in subsection (d) of this section, results of required monitoring shall be maintained on site and reported to the executive director upon request or as specified in the permit.

(c) Results of mechanical integrity and any other periodic test required by the executive director shall be reported upon request or as specified in the permit.

(d) Monitoring may be reported on a project or field basis rather than on an individual well basis where manifold monitoring is used.

(e) Routine monitoring data required in §331.84(c) and (d) of this title (relating to Monitoring Requirements) shall be reported at least quarterly to the Texas Water Commission Austin headquarters and district office on a form provided by the executive director and in accordance with the form completion instructions. These reports must be postmarked no later than the 10th day of the following reporting period.

(f) In the event an excursion is verified in a designated monitor well, the permittee shall submit a written remedial action report at least every month to include for each well affected:

(1) an explanation of required and other actions since the verifying analysis was taken. The explanation should include the date on which actions were initiated and completed;

(2) a description of actions to be taken during the following report period;

(3) sample analysis results for control parameters;

(4) permittee's efforts to define the extent and probable cause of the presence of mining solutions in a designated monitor well;

(g) The first report required by subsection (f) of this section shall include a groundwater analysis in the manner required by §331.106(2) of this title (relating to Remedial Action for Excursion). All such reports shall be mailed to the district supervisor, the director of Hazardous and Solid

Waste Division, and the executive director, postmarked within two days of the end of each report period. The first report period shall begin with the day the presence of mining solution in a designated monitor well is verified. The permittee shall continue to make remedial action reports until clean-up is accomplished.

§331.86. Closure.

(a) Mine facilities. Within 120 days after acknowledgement of completion of mining activities, or if final restoration of the mine area aquifers is required, upon completion of final restoration, the permittee shall accomplish closure of the mining facilities in accordance with approved plugging and abandonment plans submitted as part of the supplementary technical report. Modification to plugging and abandonment plans must be approved in writing by the executive director.

(b) Acknowledgement of closure. When closure has been accomplished, the permittee shall notify the executive director. The executive director will conduct a final inspection of the site to certify that closure has been accomplished in accordance with the permit terms. If closure is certified by the executive director, he shall issue written acknowledgement and permit cancellation procedures will be initiated.

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Subchapter F. Standards for Class III Well Production Area Development

★31 TAC §§331.101-331.107

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103 and §27.019, which provides the Texas Water Commission with the authority to adopt rules reasonably required for the performance of its powers and duties under the Texas Water Code and other laws of the state.

§331.101. Applicability. This subchapter establishes additional standards for Class III well injection activities regarding the development of production or other areas authorized by an area permit and/or production area authorization.

§331.102. Confinement of Mining Solution. Mining solutions shall be confined to the production zone within the area of designated production zone monitor wells.

§331.103. Production Area Monitor Wells.

(a) Production zone monitoring. Designated production zone monitor wells shall be spaced no greater than 400 feet from the production area and no greater than 400 feet between the wells. The angle formed by lines drawn from any production well to the two nearest monitor wells will not be greater than 75. Changes or adjustments in designated production zone monitor well locations may be authorized by the executive director so as to assure adequate containment. These wells shall be subject to the sampling, corrective action, and reporting requirements in §331.105 of this title (relating to Monitoring Standards) and §331.106 of this title (relating to Remedial Action for Excursion).

(b) Nonproduction zone monitoring. At a minimum, designated nonproduction zone monitor wells shall be completed in the production area in any freshwater aquifer overlying the production zone. These wells shall be located not more than 50 feet on either side of a line through the center of the production area with a minimum of one per every four acres of production area for wells completed in the first overlying freshwater aquifer and one per every eight acres for wells completed in any additional overlying freshwater aquifers. Changes or adjustments in designated nonproduction zone monitor well locations may be authorized by the executive director so as to assure adequate containment. Those wells completed in the first overlying freshwater aquifer shall be subject to sampling, remedial action, and reporting requirements of §331.105 of this title (relating to Monitoring Standards) and §331.106 of this title (relating to Remedial Action for Excursion). Monitor wells completed in any additional overlying freshwater aquifers shall be subject to monitoring, remedial action, and reporting requirements specified in the permit.

§331.104. Establishment of Baseline and Restoration Values.

(a) One or more water samples shall be collected from each designated monitor well (production and nonproduction zone) and designated production well in the permit or production area. These samples will be analyzed and the results for each well submitted and summarized on forms provided by the executive director as follows:

(1) mine area baseline—the averages and ranges of the parameter values determined for the designated production zone monitor wells;

(2) production area baseline—the averages and ranges of the parameter values determined from at least five designated production zone wells in the production area; and

(3) nonproduction zone baseline—the averages and ranges by zone of the parameter values determined for designated nonproduction zone monitor wells.

(b) All samples shall be collected, preserved, analyzed, and controlled according to accepted methods as stated in the permit.

(c) The baseline water quality values for a permit or production area shall be used to determine control parameter upper limits.

(d) The baseline water quality values for a permit or production area shall be used to determine restoration table values. Each production area authorization shall contain a restoration table. The table may be developed by using either:

(1) the higher value in either the column headed "Mine Area Average" or the column headed "Production Area Average" for parameters shown on the production area baseline water quality form for the production zone; or

(2) predictions of restoration quality that are reasonably certain after giving consideration to the factors specified in §331.107(f) of this title (relating to Restoration).

§331.105. Monitoring Standards. The following shall be accomplished to detect mining solutions in designated monitor wells.

(1) Routine sampling. Water samples shall be taken at least twice a month at two-week intervals from all monitor wells for permit/production area(s) in which mining solutions have been introduced. These shall be analyzed for the control parameters by the second working day and reported as required in §331.85(e) of this title (relating to Reporting Requirements). The determined values shall be entered on appropriate forms within three working days after analysis. These data shall be kept readily available on site for review by Texas Water Commission representatives.

(2) Duration of monitoring program The program of monitoring detailed in paragraph (1) of this subsection shall be continued in each permit/mine area until the executive director is officially notified that restoration has commenced. Further monitoring as required by permit shall continue until aquifer restoration and stabilization in that particular permit/mine area has been achieved in compliance with §331.107 of this title (relating to Restoration).

(3) Verifying analysis. If the results of a routine sample analysis show that the value of any control parameter is equal to or above the upper limit established for that permit/mine area, the operator shall complete a verifying analysis of samples taken from each apparently affected well within two days.

(4) Sampling frequency when mining solutions present. During the period of time when mining solutions are present in a designated monitor well, water samples will be taken at least two times per week and analyzed for all control parameters by the second day after the sample is taken.

§331.106. Remedial Action for Excursion. If the verifying analysis indicates that mining solutions are present in a designated

monitor well, the operator shall take the following actions:

(1) notification—notify the district office by the next working day by telephone and notify the executive director by letter postmarked within 48 hours identifying the affected monitor well and submitting the control parameter concentrations. This letter shall be addressed to the executive director in care of the director, Hazardous and Solid Waste Division;

(2) analysis—complete a groundwater analysis report for each affected well on forms provided by the executive director (including accuracy checks and stiff diagram) for the following: pH, calcium, magnesium, sodium, potassium, carbonate, bicarbonate, sulfate, chloride, silica, total dissolved solids (180°C), specific conductance and dilute conductance, and any other specified component. Results shall be reported in accordance with §331.85(e) of this title (relating to Reporting Requirements).

(A) The permittee will clean up all designated monitor wells, all zones outside of the production zone, and the production zone outside of the mine area that contains mining solutions. The permittee may use any method judged necessary and prudent to define the extent of the mining solutions and to effect this clean-up in an expeditious and practical manner. Well clean-up is deemed to be accomplished when the water quality in the affected monitor well(s) has been restored to values consistent with current local baseline water quality as confirmed by three consecutive daily samples for the control parameters.

(B) The executive director may determine that cleaup is not necessary if the permittee can demonstrate that the change in water quality is not due to the presence of mining solutions or fluids from other mining activities.

§331.107. Restoration.

(a) Restoration table. Upon issuance and renewal, Class III permits and production area authorizations shall contain a restoration table listing restoration goals as provided by §331.104 of this title (relating to Establishment of Baseline and Restoration Values).

(b) Mining completion. When the mining of a permit or production area is completed, the permittee shall notify the appropriate Texas Water Commission district office and the executive director, and shall proceed to reestablish groundwater quality in the affected permit or mine area aquifers to levels consistent with the value listed in the restoration table for that permit or mine area.

(c) Timetable. Aquifer restoration, where appropriate for each permit or mine area, shall be accomplished in accordance with the timetable specified in the currently approved mine plan, unless otherwise authorized by the commission. Authorization for expansion of mining into new production areas may be contingent upon achieving restoration progress in previously mined production areas within the schedule set forth in the mine plan.

(d) Reports. Beginning six months after the date of initiation of restoration of a permit or production area, as defined in the mine plan, the operator shall provide to the executive director semiannual restoration progress reports until restoration is accomplished for the permit or mine area.

(e) Restoration table values achieved. Once restoration has returned total dissolved solids (TDS) and other specified parameters to concentrations equal to or better than the values listed in the restoration table, as determined by the results of three consecutive sample sets taken at a minimum of 30-day intervals, the permittee may cease restoration operations. The permittee shall sample and complete an analysis of all permit or production area wells used to determine the restoration table for all parameters listed in the restoration table. The permittee shall file with the executive director a written report of the results of the analysis and a summary of restoration efforts. After filing the report, sampling for all parameters listed in the restoration table from all wells used to determine the restoration table and from other selected wells in the designated area shall be conducted at one month intervals for a minimum of three sample sets and reported to the executive director. The permittee shall notify the executive director at least one week in advance of sample dates in order to provide the opportunity for splitting samples. The executive director shall determine within 120 days of the receipt of all sample analysis results whether or not restoration has been achieved. Upon acknowledgement in writing by the executive director confirming achievement of final restoration, the permittee may cease all monitoring and restoration activities in the affected area.

(f) Restoration table values not achieved. After an appropriate effort has been made to achieve restoration to levels equal to or better than the values listed in the restoration table for the permit or mine area, the permittee may request that the restoration table be amended.

(1) In determining whether the restoration table should be amended the commission may consider the following:

(A) uses for which the groundwater was suitable at baseline water quality levels;

(B) actual existing use of groundwater in the area prior to and during mining;

(C) potential future use of groundwater of baseline quality and of proposed restoration quality;

(D) the effort made by the permittee to restore the groundwater to baseline;

(E) technology available to restore groundwater for particular parameters;

(F) the ability of existing technology to restore groundwater to baseline quality in the area under consideration;

(G) the cost of further restoration efforts;

(H) the consumption of groundwater resources during further restoration; and

(I) the harmful effects of levels of particular parameters.

(2) The commission may amend the restoration table if it finds that:

(A) reasonable restoration efforts have been undertaken giving consideration to the factors listed in paragraph (1) of this subsection;

(B) the values for the parameters describing water quality have stablilized for a period of 180 days;

(C) the formation water present in the aquifer would be suitable for any use to which it was reasonably suited prior to mining; and

(D) further restoration efforts would consume energy, water, or other natural resources of the state without providing a corresponding benefit to the state.

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Subchapter G. Consideration Prior to Permit Issuance

★31 TAC §331.121, §331.122

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, and §27.019, which provides the Texas Water Commission with the authority to adopt rules reasonably required for the performance of its powers and duties under the Texas Water Code and other laws of the state.

§311.121. Class I Wells.

(a) The commission shall consider the following before issuing a Class I injection well permit:

(1) all information in the completed application for permit.

(2) all information in the technical report submitted with the application for permit in conformance with Chapter 305 of this title (relating to Consolidated Permits) including, but not limited to:

(A) a map showing the location of the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of

water, springs, mines (surface and subsurface), quarries, water wells, and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be included on this map;

(B) a tabulation of reasonably available data on all wells within ½ mile of the injection well and on all wells within the area of review which penetrate to within 300 feet of the injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion, and any additional information the executive director may require to the extent such data are reasonably available;

(C) maps and cross-sections indicating the general vertical and lateral limits of those aquifers within the area of review that contain water with less than 3,000 milligrams per liter total dissolved solids and those that contain water with less than 10,000 milligrams per liter total dissolved solids, their positions relative to the injection formation and the direction of water movement, where known, in each freshwater aquifer which may be affected by the proposed injection;

(D) maps and cross-sections detailing the geologic structure of the local area;

(E) generalized maps and cross-sections illustrating the regional geologic setting;

(F) proposed operated data:

(i) Average and maximum injection rate and volume of the fluid to be injected over the anticipated life of the injection well;

(ii) Average and maximum injection pressure;

(iii) Source of the injection fluids; and

(iv) An analysis of the chemical and physical, characteristics of injection fluids and any additional analyses which the executive director may require;

(G) proposed formation testing program to obtain a sample of the formation fluids and other information on the receiving formation;

(H) proposed stimulation program;

(I) proposed operation and injection procedures;

(J) engineering drawings of the surface and subsurface construction details of the system;

(K) contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any freshwater aquifer;

(L) plans (including maps) for meeting the monitoring requirements of this chapter;

(M) for wells within the area of review which penetrate to within 300 feet of the top of the injection zone but are not adequately constructed, completed or plugged, the corrective action proposed to be taken;

(N) construction procedures including a cementing and casing program, logging procedures, deviation checks if required, and a drilling, testing, and coring program.

(3) whether the applicant will assure, through a performance bond or other appropriate means, the resources necessary to close, plug, or abandon the well as required;

(4) the plugging and abandonment plan submitted in the technical report accompanying the permit application;

(5) any additional information required by the executive director for the evaluation of the proposed injection well.

(b) In determining whether the use or installation of an injection well for the disposal of hazardous waste is in the public interest under the Texas Water Code, §27.051 (a)(1), the commission shall also consider:

(1) the compliance history of the applicant in accordance with the Texas Water Code, §27.051(e) and §281.21 of this title (relating to Draft Permit and Compliance Summary);

(2) whether there is a practical, economic and feasible alternative to an injection well reasonably available to manage the types and classes of hazardous waste; and

(3) whether the applicant will maintain siginificant public liability insurance for bodily injury and property damage to third parties that is caused by sudden and nonsudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the requirements of 40 Code of Federal Regulations §264.147 shall be deemed sufficient under this paragraph if the policy also covers the injection well.

§331.122. Class III Wells. The commission shall consider the following before issuing a Class III injection well or area permit:

(1) all information in the completed application for permit;

(2) all information in the technical report submitted with the application for permit, including the following:

(A) a map showing the injection well(s) and area for which the permit is sought and the applicable area of review. Within the area of review, the map must show the number, or name, and location of all existing producing wells, injection wells, dry holes, surface bodies of water, mines (surface and subsurface), quarries, public water systems, water wells, and other pertinent surface features including residences and roads. The map should also show faults, if known or suspected. Only information of public record is required to be on this map. If production area authorizations are required prior to the commencement of mining, the proposed production areas must be shown on the map;

(B) a tabulation of reasonably available data on all wells within the area of review which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, and any additional information the executive director may require;

(C) maps and cross-sections indicating the vertical and lateral limits of those aquifers within the area of review that contain water with less than 3,000 milligrams per liter total dissolved solids and those that contain water with less than 10,000 milligrams per liter todal dissolved solids, their position relative to the injection formation, and the direction of water movement.

(D) maps and cross-sections detailing the geologic structure of the local area;

(E) generalized map and cross-sections illustrating the regional geologic setting;

(F) proposed operating data:

(i) average and maximum daily rate and volume of fluid to be injected;

(ii) average and maximum injection pressure;

(iii) source of the injection fluids; and

(iv) analysis as needed of the chemical, physical, and radiological characteristics of the injection fluids;

(G) proposed formation testing program to obtain an analysis of the physical, chemical, and radiological characteristics of the receiving formation;

(H) proposed stimulation program;

(I) proposed injection procedure;

(J) engineering drawings of the surface and subsurface construction details of the system;

(K) plans (including maps) for meeting the minimum monitoring requirements of the rules;

(L) expected changes in pressure, native fluid displacement, direction of movement of injection fluid; and

(M) contingency plans to cope with all shut-ins or well failures so as to prevent the migration of contaminating fluids into fresh water;

(3) whether the applicant will assure, through a performance bond or other appropriate means, the resources necessary to close, plug, or abandon the well;

(4) the plugging and abandonment plan submitted in the technical report accompanying the application.

(5) any additional information reasonably required by the executive director for the evaluation of the proposed injection well or project.

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Subchapter H. Standards for Class V Wells

★31 TAC §331.131-331.133

The new sections are adopted on an emergency basis under the Texas Water Code, §5.103, and §27.019, 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 this state and to establish and approve all general policy of the commission.

§331.131. Applicability. The sections of this subchapter apply to all new Class V injection wells under the jurisdiction of the Texas Water Commission.

§331.132. Construction Standards.

(a) All Class V wells shall be completed in accordance with the following specifications unless otherwise authorized by the executive director.

(b) For all Class V wells, a form provided by the executive director or the form of the Water Well Drillers Board shall be completed and submitted to the executive director.

(c) The annular space between the borehole and the casing shall be filled from ground level to a depth of not less than 10 feet below the land surface or well head with cement slurry. In areas of shallow, unconfined groundwater aquifers, the cement need not be placed below the static water level. In areas of shallow, confined groundwater aquifers having artesian head, the cement need not be placed below the top of the water-bearing strata.

(d) In all wells where plastic casing is used, a concrete slab or sealing block shall be placed above the cement slurry around the well at the ground surface.

(1) the slab or block shall extend at least two feet from the well in all directions and have a minimum thickness of four inches and shall be separated from the well casing by a plastic or mastic coating or sleeve to prevent bonding of the slab to the casing.

(2) the surface of the slab shall be sloped to drain away from the well.

(3) the top of the casing shall extend a minimum of one foot above the original ground surface or known flood elevation.

(e) In wells where steel casing is used, a slab or block as described in subsection (d)(1) of this section will be required above the cement slurry except when a pitless adapter is used.

(1) pitless adapters may be used in such wells provided that:

(A) the adapter is welded to the casing or fitted with another suitably effective seal; and

(B) the annular space between the borehole and the casing is filled with cement to a depth not less than 15 feet below the adapter connection.

(2) the casing shall extend a minimum of one foot above the original ground surface or known flood elevation.

(f) All wells, especially those that are gravel packed, shall be completed so that aquifers or zones containing waters that are known to differ significantly in chemical quality are not allowed to commingle through the borehole-casing annulus or the gravel pack and cause quality degradation of any aquifer zone.

(g) The well casing shall be capped or completed in a manner that will prevent pollutants from entering the well.

(h) When undesirable water is encountered in a Class V well, the undesirable water shall be sealed off and confined to the zone(s) of origin.

§331.133. Closure standards.

(a) It is the responsibility of the landowner or person having the well drilled, deepened, or otherwise altered, to plug or have plugged, under standards set forth in these rules, a Class V well which is to be abandoned.

(b) Closure shall be accomplished by removing all of the removable casing and the entire well filled with cement to land surface.

(c) In lieu of the procedure in subsection (b) of this section and if the use of a Class V well that does not contain undesirable water is to be permanently discontinued, the well may be filled with fine sand, clay, or heavy mud followed by a cement plug extending from land surface to a depth of not less than 10 feet.

(d) In lieu of the procedure in subsection (b) of this section and if the use of a Class V well that does contain undesirable water is to be permanently discontinued, either the zone(s) containing undesirable water, or the fresh water zone(s) shall be isolated with cement plugs and the remainder of the wellbore filled with sand, clay, or heavy mud to form a base for a cement plug extending from land surface to a depth of not less than 10 feet.

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Chapter 336. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste Management in General

★31 TAC §§336.1-336.15, 336.17-336.24, 336.30

The Texas Water Commission adopts on an emergency basis new Chapter 336, concerning industrial solid waste and municipal hazardous waste.

Although these sections are adopted as emergency sections, most of these regulations have been in effect in 31 Texas Administrative Code, Chapter 335, under the jurisdiction of the Texas Department of Water Resources, the predecessor agency to the Texas Water Commission, and have been proposed as permanent sections by the Texas Water Commission. Senate Bill 249, passed by the 69th Legislature, and effective on September 1, 1985, abolished the Texas Department of Water Resources and transferred jurisdiction under the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, to the Texas Water Commission. On September 3, 1985, the Texas Water Commission adopted sections in Chapter 335 of Title 31, Texas Administrative Code, on an emergency basis to extend the substantive requirements of sections adopted by the Texas Water Development Board for the former Texas Department of Water Resources, to extend certain requirements of the existing commission sections relating to industrial solid waste management to municipal hazardous waste, and to change references in the sections to reflect the transfer of jurisdiction to the Texas Water Commission. The emergency sections were published in the *Texas Register* on September 24 and 27, 1985. The proposed permanent sections were published in the *Texas Register* on January 24 and 28, 1986. The chapter designation has been changed to Chapter 336 so that the commission might adopt these proposed sections on an emergency basis, thus extending the public comment period on the permanent proposals.

To reduce the volume of hazardous waste regulations, Subchapters E through T of the sections passed by the Texas Water Development Board (which correspond generally to 40 Code of Federal Regulations Part 265) have been consolidated into one subchapter entitled Subchapter E. This consolidated subchapter adopts many of the provisions in the Environmental Protection Agency (EPA) sections by reference, and expressly includes other provisions in the subchapter. Other subchapters under the Water Development Board sections have been rearranged in response to this consolidation of subchapters in the proposed rule.

The emergency sections incorporate changes necessitated by recent legislative actions of the 69th Legislature and incorporate regulatory changes promulgated by the EPA under the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). The emergency sections respond to regulations published by the EPA on several dates. On December 20, 1984, the EPA published rules allowing generators of hazardous waste to accumulate specified maximum amounts of waste in satellite areas at their facility, (49 FedReg 49568). On January 4, 1985, the EPA promulgated a revised definition of solid and hazardous waste at 50 FedReg 614. This definition was subsequently amended by technical corrections published on April 11, 1985, and August 20, 1985. Regulations setting forth new listings of acute hazardous wastes were published in the *Federal Register* on January 14, 1985, at 50 FedReg 1978. The EPA regulations codifying the Hazardous and Solid Waste Amendments of 1984 were published in the *Federal Register* on July 15, 1985, at 50 FedReg 28702.

In addition to the federal regulatory changes described in this preamble, recent actions of the Legislature also are reflected in these emergency regulations. In Senate Bill 249, the powers and authorities of the Texas Department of Water Resources under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, were transferred to the Texas Water Commission (and the department was abolished). Senate Bill 249, effective on September 1, 1985, also transferred jurisdiction over municipal hazardous waste from the Texas Department of Health and to the Texas Water Commission. House Bill 2358, effective September 1, 1985, includes provisions concerning the siting of hazardous waste facilities. House Bill 1867, effective June 15, 1985, includes a definition of solid waste which provides additional information on the jurisdiction of the Railroad Commission of Texas over waste materials resulting from certain oil and gas activities.

The purpose of the emergency sections is to establish a regulatory system for the management of solid and hazardous waste under the jurisdiction of the Texas Water Commission, and to include recent developments in federal and state law in that regulatory system. The January 4, 1985, publication in the *Federal Register* revised the definition of solid and hazardous waste in the EPA regulations implementing the Resource Conservation and Recovery Act (RCRA), Subtitle C. The EPA regulations address the question of which materials are solid and hazardous wastes when recycled and set forth standards for various types of waste recycling activities. The January 4 sections, effective on July 5, established an April 4, 1985, notification deadline for persons who generate, transport, process, store, or dispose of wastes covered by the January 4 section, unless those persons had previously notified the EPA or a state authorized by the EPA to operate the hazardous waste program under the RCRA, §3006.

In emergency sections adopted by the Texas Water Development Board (the rulemaking predecessor to the Texas Water Commission) on April 18, 1985, and published on April 26, 1985 (10 TexReg 1310), Texas (an authorized state under the RCRA program) established the July 5 filing deadline for submitting a Part A permit application for persons managing wastes covered by the new federal regulations. The emergency sections were effective for 120 days and were renewed in a notice published on August 13, 1985, at 10 TexReg 3042. These sections have also been adopted by the Texas Water Commission in its emergency rulemaking on September 3, 1985.

In Subchapter A, the emergency adoption includes §§336.1-336.15, which existed prior to September 1, 1985, as provisions governing industrial solid waste management in general, and have been updated to reflect the statutory and regulatory changes described in the preceding paragraphs. Section 336.1 includes the definitions for the entire Chapter 336, except as provided elsewhere in that chapter. Section 336.1 includes a lengthy definition of the term "solid waste" in accordance with the federal regulations published on January 4, 1985 (50 FedReg 614). Secondary materials that are considered solid wastes when recycled are described by using a chart, referred to as Table 1, that has asterisks in the columns of secondary materials that are considered solid wastes when recycled in certain ways. The key concept to the proposed recycling provision is to know what a material is and how it is being recycled before determining whether it is defined as a solid waste. Assessment of the economic value of a recycling transaction is not part of the definition of solid waste. Although many materials and activities are deemed to be solid waste activities in Table 1, there are some solid waste activities that are not regulated at this time, as provided in other sections of these regulations. The regulation of scrap metal that is Class III waste under the Texas waste classification scheme is not altered by these sections concerning recycling.

The preamble to the January 4, 1985, EPA regulations may provide assistance in understanding the intent and scope of the regulations in defining a solid waste. In the definition of "solid waste," subparagraph (F) lists situations in which materials are not solid wastes when they are shown to be recycled by being used or reused in specified ways that resemble the use of products. Subparagraph (G) describes materials that are solid wastes, even if used or reused, because they are used in a manner constituting disposal, burned for energy recovery, accumulated speculatively, or deemed to be inherently waste-like. Subparagraph (H) explains that persons who raise a claim that a certain material is not a solid waste, or is excluded or exempted in some way, have the responsibility for supporting their claim. Subparagraph (I) provides that materials that are reclaimed from solid wastes and used beneficially are not solid wastes, and therefore not hazardous wastes under 40 Code of Federal Regulations §261.3(c), unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

Section 336.2 describes when a permit is required, and §§336.3-336.8 describe technical guidelines, general prohibitions, notification requirements, bond requirements, and facility closures. Sections 336.9-336.15 govern shipping, manifesting, recordkeeping, and reporting requirements applicable to generators, transporters, and owners or operators of storage, processing, or disposal facilities.

Section 336.17 provides special definitions for the purposes of the definition of solid waste and §336.24.

Section 336.18 provides for a variance from classification as a solid waste for some recycled materials meeting the standards and criteria set forth in §336.18. Variances will be granted on a case-by-case basis, according to procedures in §336.21. Section 336.20 provides for a variance for certain enclosed devices using controlled flame combustion to be classified as a boiler, even though they do not otherwise meet the definition of boiler in §336.1. This variance is also granted by the executive director on a case-by-case basis in accordance with the procedures in §336.21.

Section 336.22 allows the commission to decide on a case-by-case basis that persons accumulating or storing recyclable materials from which precious metals are reclaimed, which would usually be excepted from the requirements for generators, transporters, and storage facilities under §336.24(a), should be regulated under §336.24(d) and (e). Section 336.23 sets forth the procedures to follow in determining whether to regulate persons handling recyclable materials from which precious metals are reclaimed under §336.24(d) and (e), rather than under Subchapter H of Chapter 336.

Section 336.24 establishes the requirements for recyclable materials (hazardous wastes that are recycled) and nonhazardous recyclable materials (nonhazardous wastes that are recycled). Section 336.24 (b) describes four activities involving recyclable materials that will be subject to regulation under Subchapter H, except as otherwise provided in §336.24(g) and (h). Section 336.24(c) specifies seven types of recyclable materials that are not subject to regulation under the listed subchapters and chapters, except as provided in

§336.24(g) and (h). Section 336.24(d) states the general rule that generators and transporters of recyclable materials are subject to the hazardous waste regulations and the notification requirement of §336.6, except as otherwise provided in §336.24(a)-(c). Owners and operators of facilities that store recyclable materials before recycling are also subject to the hazardous waste regulations and the notification requirement in §336.6, except as provided in §336.24(a)-(c). The recycling process itself is exempt from regulation. Owners and operators of facilities that recycle without prior storage are subject to notification requirements and shipping requirements, unless excepted from regulation under §336.24(a)-(c).

Section 336.24(g) provides that hazardous recyclable materials (excluding industrial ethyl alcohol, certain fuels and reclaimed oils involved in petroleum refining, and coke from the iron and steel industry) are subject to the general prohibitions established in §336.4, the notification requirements of §336.6, and the applicable provisions governing manifesting, reporting and recordkeeping in §§336.9-336.15, except as provided in §336.24(h). Section 336.24(h) explains that nonhazardous recyclable materials, the specified hazardous recyclable materials (including used batteries returned to a battery manufacturer for regeneration, used oil that is characteristically hazardous and scrap metal), and certain hazardous waste fuels are subject to the general prohibitions of §336.4 and the notification requirements of §336.6. These nonhazardous and hazardous recyclable materials may also be subject to manifesting, reporting, and recordkeeping requirements if the executive director determines that such requirements are necessary to protect human health and the environment, considering the criteria described in the regulation. Under §336.24(i), facilities managing hazardous recyclable materials that are required to obtain a permit may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment, considering the criteria outlined in the regulation.

Section 336.30 is the introduction to the Subchapter A appendices, including a copy of the uniform hazardous waste manifest form. Item 16 of the manifest form, the generator's certification, now includes a waste minimization statement, as required by the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984.

The sections implementing the Solid Waste Disposal Act, §4(f)(1), relating to nonhazardous industrial solid waste, have been revised for clarification purposes. No substantive change in the regulation is proposed. Section 336.1 would be amended to provide for a single definition of "on-site." Section 336.2(d), which contains the permit exemption of §4(f)(1), is rewritten to track the language of that statutory provision rather than reference the term "on-site," which is not used in §4(f)(1). Section 336.10 is amended to add subsection (g), which allows shipment of Class I nonhazardous waste to §4(f) sites without the use of a manifest. These revisions preserve the regulatory scheme for sites operating within the scope of §4(f)(1), but clarify the rules which formerly would provide for two different definitions of "on-site storage, processing, or disposal."

In Subchapter B, concerning general provisions for hazardous waste management, §336.41 describes the applicability of these rules to certain wastes, recyclable materials, or waste management activities. The definitions contained in §336.42 of the Texas Water Development Board sections have been consolidated into §336.1 in Subchapter A of this chapter. Sections 336.43-336.45 establish when a permit is required for hazardous waste activities and describe the contents and deadlines for the submittal of applications. Sections 336.46 and 336.47 discuss the sharing of information with the Environmental Protection Agency (EPA) and the requirements for persons eligible for a federal permit by rule. The appendices to Subchapter B that were included in the Texas Water Development Board sections are not included in these sections. The appendices to 40 Code of Federal Regulations Parts 264 and 265 are the appropriate references for purposes of the emergency sections. References in the EPA rules to the regional administrator should be considered references to the executive director of the Texas Water Commission, and the term "treatment" should be considered "processing" in the state rules.

In Subchapter C, concerning standards applicable to generators of hazardous waste, §336.61 includes explanations of the small quantity generator requirements. Importers of hazardous waste from foreign countries are subject to hazardous waste generator standards. Section 336.62 requires a generator of solid waste to determine if that waste is hazardous, and §336.63 establishes requirements for EPA identification numbers. Sections 336.65-336.68 provide packaging, labeling, marking, and placarding requirements for offsite hazardous waste shipments. Section 336.69 allows generators to accumulate hazardous waste on-site for 90 days or less without a permit and accumulate specified maximum amounts of hazardous waste near their point of generation, if certain requirements are satisfied. Sections 336.70, 336.71, and 336.73 establish record-keeping, annual reporting, and additional reporting requirements for generators. Requirements for interstate shipments and international shipments appear in §§336.74 and 336.75. Section 336.76 relates to farmers disposing of waste pesticides.

In Subchapter D, concerning standards applicable to transporters of hazardous waste, §336.91 and §336.92 describe the scope of the sections and require an EPA identification number for hazardous waste transportation. Section 336.93 prescribes procedures to follow in the event of hazardous waste discharges. Requirements for transfer facilities are set forth in §336.94.

Subchapter E, concerning interim standards for owners and operators of hazardous waste storage, processing, or disposal facilities, is a consolidation of Subchapters E-T of the Texas Water Development Board sections. Under §336.112, many of the EPA rules and appendices appearing in 40 Code of Federal Regulations Part 265, in effect on October 1, 1985, are adopted by reference. Other provisions are expressly included in Subchapter E. Sections 336.111 and 336.113-336.115 discuss the applicability of the subchapter and emergency and other reporting requirements for owners or operators of hazardous waste storage, processing, or disposal facilities. Sections 336.116 and 336.117 establish the applicability of groundwater monitoring requirements and the associated record-keeping and reporting requirements. Sections 336.118 and 336.119 relate to closure and postclosure plans and the procedures for submission and approval of those plans. Containment requirements for waste piles are set forth in §336.120. General operating requirements, record-keeping requirements, and closure and postclosure requirements for land treatment facilities are provided in §§336.121-336.123. Section 336.124 establishes general operating requirements for landfills, followed by the special requirements for bulk and containerized waste in landfills outlined in §336.125. Effective May 8, 1985, the placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids in any landfill is prohibited. Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited, with some exceptions. Section 336.126 requires empty containers to be reduced in volume before burial beneath a landfill's surface.

The EPA regulations adopted by reference in §336.112 of Subchapter E include the rules codifying the Hazardous and Solid Waste Amendments of 1984, which were published by the EPA in the July 15, 1985, *Federal Register*. These regulations impose design requirements on owners or operators of surface impoundments, monofills, waste piles, and landfills, including requirements on liners and leachate collection systems.

Subchapter F, concerning permitting standards for owners and operators of hazardous waste storage, processing, or disposal facilities, establishes minimum stan-

dards to define the acceptable management of hazardous waste in evaluating permit applications, groundwater protection investigation reports, and corrective action measures for solid waste management activities. Subchapter F also includes the EPA rules codifying the Hazardous and Solid Waste Amendments of 1984, which appear at 50 FedReg 28702 (July 15, 1985).

Section 336.152 incorporates by reference the provisions 40 Code of Federal Regulations Part 264 in effect as of October 1, 1985, except as specifically provided. Section 336.153 establishes requirements applicable to reporting of emergency situations by the emergency coordinator, including a requirement to notify pursuant to the State of Texas Oil and Hazardous Substances Spill Contingency Plan. Section 336.154 establishes reporting requirements relating to annual reports and monthly summaries.

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 this state, and to establish and approve all general policy of the commission. These sections are also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

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

Act—The Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

Active portion—That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also closed portion and inactive portion.)

Administrator—The administrator of the United States Environmental Protection Agency or his designee.

Aquifer—A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

Authorized representative—The person responsible for the overall operation of a facility or an operational unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

Boiler—An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and super heaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) The unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air and the driving of induced or forced draft fans or feedwater pumps).

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in 336.20 of this title (relating to Variance To Be Classified as a Boiler).

Certification—A statement of professional opinion based upon knowledge and belief.

Class I wastes—Any industrial solid waste or mixture of industrial solid wastes, which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, including hazardous industrial waste.

Class II wastes—Any individual solid waste or combination of industrial solid waste which cannot be described as Class I or Class III as defined in this section.

Class III wastes—Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable.

Closed portion—That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also active portion and inactive portion.)

Confined aquifer—An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

Container—Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

Contingency plan—A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

Designated facility—A Class I or hazardous waste storage, processing, or disposal facility which has received an Environmental Protection Agency (EPA) permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations Parts 270 and 124; a permit from a state authorized in accordance with 40 Code of Federal Regulations Part 271 (in the case of hazardous waste); a permit issued pursuant to 336.2 of this title (relating to Permit Required) (in the case of nonhazardous waste); or that is regulated under 336.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or 336.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator pursuant to 336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste).

Dike—An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

Discharge or hazardous waste discharge—The accidental or intentional spilling, leaking, pumping, pouring, emitting,

emptying, or dumping of waste into or on any land or water.

Disposal—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

Disposal facility—A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

Elementary neutralization unit—A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations §261.22, or are listed in 40 Code of Federal Regulations Part 261, Subpart D, only for this reason; and

(B) meets the definition of tank, container, transport vehicle, or vessel as defined in this section.

Environmental Protection Agency hazardous waste number—The number assigned by the Environmental Protection Agency to each hazardous waste listed in 40 Code of Federal Regulations Part 261, Subpart D and to each characteristic identified in 40 Code of Federal Regulations Part 261, Subpart C.

Environmental Protection Agency identification number—The number assigned by the Environmental Protection Agency or the commission to each generator, transporter, and processing, storage, or disposal facility.

Essentially insoluble—Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the *Federal Register*.

Equivalent method—Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

Existing portion—That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

Facility—Includes all contiguous land and structures, other appurtenances, and improvements on the land for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several storage, processing, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations thereof).

Food-chain crops—Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

Freeboard—The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

Free liquids—Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

Generator—Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class III wastes only shall not be considered a generator.

Groundwater—Water below the land surface in a zone of saturation.

Hazardous industrial waste—Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

Hazardous waste constituent—A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations Part 261, Subpart D or a constituent listed in Table 1 of 40 Code of Federal Regulations §261.24.

Inactive portion—That portion of a facility which is not operated after November 19, 1980. (See also active portion and closed portion.)

Incinerator—An enclosed device using controlled flame combustion that neither meets the criteria for classification as a boiler nor is listed as an industrial furnace.

Incompatible waste—A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) Commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

Individual generation site—The contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

Industrial furnace—Any of the following enclosed devices that are integral components of manufacturing processes and that use controlled flame devices to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) such other devices as the executive director may, after notice and comment, add to this list on the basis of one or more of the following facts:

(i) the design and use of the device primarily to accomplish recovery of material products;

(ii) the use of the device to burn or reduce raw materials to make a material product;

(iii) the use of the device to burn or reduce secondary materials as effective substitutes for raw materials, in processes using raw materials as principal feedstocks;

(iv) the use of the device to burn or reduce secondary materials as ingredients in an industrial process to make a material product;

(v) the use of the device in common industrial practice to produce a material product; and

(vi) other factors, as appropriate.

Industrial solid waste—Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation.

In operation—Refers to a facility which is processing, storing, or disposing of hazardous waste.

Injection well—A well into which fluids are injected. (See also underground injection.)

Inner liner—A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

International shipment—The transportation of hazardous waste into or out of the jurisdiction of the United States.

Landfill—A disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a land treatment facility, a surface impoundment, or an injection well.

Landfill cell—A discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

Land treatment facility—A facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

Leachate—Any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

Liner—A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

Management or hazardous waste management—The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

Manifest—The uniform hazardous waste manifest form furnished by the executive director to accompany shipments of municipal hazardous waste or Class I industrial solid waste.

Manifest document number—A number assigned to the manifest by the commission for reporting and record-keeping purposes.

Movement—That hazardous waste transported to a facility in an individual vehicle.

Municipal hazardous waste—A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

Municipal solid waste—Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

Off-site—Property which cannot be characterized as "on-site."

On-site—The same of geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit beween the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

Open burning—The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also incineration and thermal treatment.)

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

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

Partial closure—The closure of a discrete part of a facility in accordance with the applicable closure requirements of this chapter. For example, partial closure may include the closure of a trench, a unit operation, a landfill cell, or a pit, while other parts of the same facility continue in operation or will be placed in operation in the future.

Permit—A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste storage, processing, or disposal facility in accordance with specified limitations.

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

Personnel or facility personnel—All persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

Pile—Any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for processing or storage.

Processing—The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 *et seq.*, as amended.

Publicly owned treatment works (POTW)—Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, 502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

Regional administrator—The regional administrator for the Environmental Protection Agency Region in which the facility is located, or his designee.

Representative sample—A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

Run-off—Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

Run-on—Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

Saturated zone or zone of saturation—That part of the earth's crust in which all voids are filled with water.

Shipment—Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

Solid Waste—

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, and any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, 91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as delined by the administrator of the United States Environmental Protection

Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 *et seq.*, as amended; or

(iv) a discarded material excluded by 40 Code of Federal Regulations §261.4(a) or by variance granted under §336.18 of this title (relating to Variances from Classification as a Solid Waste) and §336.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste).

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph; or

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Materials are solid wastes if they are recycled or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 Code of Federal Regulations §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products listed in 40 Code of Federal Regulations 261.33 are not solid wastes if they are fuels themselves.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

TABLE 1

	Use Constituting Disposal (1)	Energy Recovery/Fuel (2)	Reclamation (3)	Speculative Accumulation (4)
ent materials (listed hazardous & non-listed characteristically hazardous)	*	*	*	*
ent materials (Class I non-hazardous and Class II)	*	*	*	*
dges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
dges (non-listed characteristically hazardous)	*	*		*
dges (Class I non-hazardous and Class II)	*	*		*
-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
-products (non-listed characteristically hazardous)	*	*		*
-products (Class I non-hazardous and Class II)	*	*		*
mercial chemical products listed in 40 CFR §261.33	*	*		
ap metal (hazardous)	*	*	*	*
ap metal (Class I non-hazardous and Class II)	*	*	*	*

TE: The terms "spent materials", "sludges", "by-products", and "scrap metal" are defined in §336.17 of this title lating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

(E) Materials that are identified by the administrator of the Environmental Protection Agency as inherently waste-like materials under 40 Code of Federal Regulations §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products; or

(iii) returned to the original process from which they were generated, without first being reclaimed. The material must be returned as a substitute for raw material feedstock, and the process must use raw materials as principal feedstocks.

(G) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the Administrator of the Environmental Protection Agency, as described in 40 Code of Federal Regulations §261.2(d).

(H) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do soand that the recycling activity is legitimate and beneficial.

(I) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 Code of Federal Regulations §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

Spill—The accidental spilling, leaking, pumping, emptying, or dumping of hazardous wastes or materials, when spilled, become hazardous wastes into or on any land or water.

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

Surface impoundment or impoundment—A facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

Tank—A stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

Thermal processing—The processing of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also incinerator and open burning.)

Totally enclosed treatment facility—A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

Transfer facility—Any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

Transport vehicle—A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. The term Vessel, includes every description of watercraft, used or capable of being used as a means of transportation on the water.

Transporter—Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline,or other means.

Treatment zone—A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

Underground injection—The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also injection well.)

Unsaturated zone or zone of aeration—The zone between the land surface and the water table.

Uppermost aquifer—The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

Wastewater treatment unit—A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code 466 *et seq.*, §402 or §308(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous waste, or generates and accumulates a wastewater treatment sludge which is a hazardous waste, or processes or stores a wastewater treatment sludge which is a hazardous waste; and

(C) meets the definition of tank as defined in this section.

Water (bulk shipment)—The bulk transportation of municipal hazardous waste or Class I industrial solid waste which is loaded or carried on board a vessel without containers or labels.

Well—Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

§336.2. Permit Required.

(a) Except with regard to storage, processing, or disposal to which subsections (c)-(f) of this section apply, and as provided in §336.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §336.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Water Commission or its predecessor agencies, the Texas Department of Health, or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suf-

fered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any person who has commenced on-site storage, processing, or disposal of a hazardous waste on or before November 19, 1980, and who has filed a hazardous waste permit application with the commission on or before November 19, 1980, and in accordance with the rules and regulations of the commission, may continue the on-site storage, processing, or disposal of hazardous waste until such time as the Texas Water Commission approves or denies the application. Owners or operators of municipal hazardous waste facilities which satisfied this requirement by filing an application on or before November 19, 1980, with the United States Environmental Protection Agency are not required to submit a separate application with the Texas Department of Health. Applications filed under this section shall meet the requirements of 336.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of hazardous waste management facilities who have commenced the on-site storage, processing, or disposal of hazardous waste as defined in this subsection, or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, that render the facility subject to the requirement to have a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards set forth in these subchapters, whichever first occurs. This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §336.44 of this title (relating to Application for Existing On-Site Facilities). For purposes of this subsection, a person has commenced the on-site storage, processing, or disposal of hazardous waste if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for the storage, processing, or disposal of industrial solid waste which is not hazardous industrial waste, if the waste is disposed of on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an other source with respect to other plants and operations owned by the same person. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of 336.6 of this title (relating to Notification Requirements).

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a small quantity generator as defined in §336.61(c) of this title (relating to Purpose, Scope, and Applicability).

(f) No permit under this chapter shall be required for the storage, processing or disposal of hazardous waste by a person described in §336.41(b), (c), and (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 Code of Federal Regulations §261.4(c) and (d).

(g) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit, and, for any unit that receives hazardous waste after January 26, 1983, during any postclosure care period required under 40 Code of Federal Regulations §264.117 and during any compliance period specified under §336 162 of this title (relating to Compliance Period) including any extension of that period.

§336.3. Technical Guidelines. In order to promote the proper collection, handling, storage, processing, and disposal of industrial solid waste or municipal hazardous waste in a manner consistent with the purposes of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the executive director will make available on request copies of technical guidelines outlining methods designed to aid in the prevention of the conditions prohibited in this chapter. Guidelines should be considered as suggestions only.

§336.4. General Prohibitions. In addition to the requirements of §336.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Water Commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health and welfare.

§336.5. Deed Recordation.

(a) Recording required. No person may cause, suffer, allow, or permit the disposal of industrial solid waste or municipal hazardous waste prior to recording in the county deed records of the county or counties in which the disposal takes place, the following information:

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

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

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

(b) Proof of recordation. Proof of recordation shall be provided to the executive director in writing prior to instituting disposal operations.

(c) Additional requirements. Owners of property on which facilities for disposal of hazardous waste are located are subject to further requirements adopted by reference in §336.112(a)(6) of this title (relating to Standards).

§336.6. Notification Requirements.

(a) A person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §336.2(d), (e) or (f) of this title (relating to Permit Required) or §336.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director in writing that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such storage, processing, or disposal is compliant with the terms of this chapter. Such information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide written notice to the executive director of any changes or additional information concern-

ing waste composition, waste management methods, facility engineering plans and specifications, and the geology where the facility is located, to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(c) Any person who generates municipal hazardous waste in quantities greater than or equal to 1,000 kilograms in a calendar month or quantities of acute municipal hazardous waste in excess of quantities specified in §336.61(c)(5) of this title (relating to Purpose, Scope, and Applicability) in a calendar month; or any quantities of industrial solid waste shall notify the executive director of such activity on forms furnished or approved by the executive director. Such person shall also submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §336.2 of this title (relating to Permit Required), or any reports required by §336.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators), §336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), and §336.13 of this title (relating to Record-keeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste). Any person who notifies pursuant to this subsection shall have the continuing obligation to immediately provide written notice to the executive director of any changes or additional information, to that reported previously. If waste is recycled on-site or managed pursuant to §336.2(d) of this title (relating to Permit Required), the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification shall include, but is not limited to:

(1) a description of the waste;

(2) a description of the process generating the waste;

(3) the composition of the waste;

(4) a proper hazardous waste determination. Generators must determine whether such waste is hazardous as defined in 40 Code of Federal Regulations Part 261, and submit the results of that hazardous waste determination to the executive director;

(5) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including the following information:

(A) whether the waste is managed on-site and/or off-site;

(B) a description of the type and use of each on-site waste management facility unit;

(C) a listing of the wastes managed in each unit;

(D) whether each unit is permitted, or qualifies for an exemption, under §336.2 of this title (relating to Permit Required).

(d) Persons generating more than 100 kilograms but less than 1000 kilograms or hazardous municipal waste in any given calendar month shall notify the executive director of such activity on forms provided by the executive director. Such person shall also submit to the executive director upon request such information as may be reasonably required to enable the executive director to determine whether the storage, processing, or disposal of such waste is compliant with the terms of these sections. Notifications submitted pursuant to this section shall be in addition to any information provided on any permit application required by §336.2 of this title (relating to Permit Required), or any reports required by §336.9 of this title (relating to Shipping and Reporting Procedures Applicable to Generators), §336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), and §336.13 of this title (relating to Record-keeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste).

(e) Any person who transports municipal hazardous waste or Class I waste shall notify the executive director of such activity on forms furnished or approved by the executive director. Persons operating transfer facilities in accordance with §336.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.

(f) Upon written request of the executive director, any person who ships, stores, processes, or disposes of industrial solid waste or municipal hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste, provide results of the analysis to the executive director, or furnish samples of the waste for analysis in order to assign a waste classification.

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

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §336.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §336.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Persons engaged in recycling of industrial solid waste or for municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

§336.7. Bond Required. Authority to store, process, or dispose of industrial solid waste or municipal hazardous waste pursuant to a permit issued by the commission is contingent upon the execution and maintenance of a surety bond or other financial assurance acceptable to the executive director, in an amount specified in the permit, which provides for the closing of the solid waste storage, processing, or disposal facility in accordance with the permit issued for the facility and all other sections of the commission. The commission may require the execution and maintenance of a surety bond or other financial assurance acceptable to the executive director for the closing of any solid waste facility exempt from the requirement of a permit under this chapter but subject to the requirement of a permit under the Texas Water Code, Chapter 26. Persons storing, processing, or disposing of hazardous waste are subject to further requirements concerning closure and postclosure contained in Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

§336.8. Closure.

(a) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste at a facility permitted under §336.2(a) of this title (relating to Permit Required), shall, unless specifically modified by other order of the commission, close the facility in accordance with the closing provisions of the permit.

(b) Any person who stores, processes, or disposes of hazardous waste is subject to the applicable provisions relating to closure and postclosure in Subchapters E and F of

this chapter (relating to Interim Standards for Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities).

§336.9. Shipping and Reporting Procedures Applicable to Generators.

(a) Except with regard to the shipments of municipal hazardous waste or Class I industrial solid waste to which §336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste) applies, and except with regard to generators of Class II industrial solid waste with less than 100 employees, each generator shall:

(1) keep records of:

(A) all industrial solid waste storage, processing, and disposal activities; and

(B) all municipal hazardous waste storage, processing, or disposal activities for all hazardous waste generated or accumulated on-site in quantities greater than 100 kilograms in a calendar month or quantities of acute hazardous waste in excess of those quantities specified in §336.61(c)(5) of this title (relating to Purpose, Scope, and Applicability). Records pertaining to on-site activities shall include, at a minimum, information regarding the waste character, classification and quantity, and the method (as described by codes in Appendix I, Table 2, handling codes for storage, processing and disposal methods of 40 Code of Federal Regulations Parts 264 and 265) and location of storage, processing, and disposal. Records regarding off-site activities shall include, at a minimum, the transporter identity, date of shipment and waste character, classification, and quantity;

(2) retain such records required by paragraph (1) of this subsection for a minimum of three years from the date of reporting in paragraph (3) of this subsection; and

(3) submit an annual storage, processing, and disposal summary on forms furnished or approved by the executive director containing such information for the calendar year as is specified in paragraph (1) of this subsection to the Texas Water Commission on or before January 21 of each year; provided, however, upon request by the generator the executive director may authorize a modification in the reporting period.

(b) Any generator who stores, processes, or disposes of hazardous waste on-site shall submit an annual report in accordance with the requirements of §336.71 of this title (relating to Annual Reporting).

§336.10. Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste.

(a) Except as provided in subsection (g) of this section, no generator of Class I industrial solid waste and no generator of municipal hazardous waste shipping municipal hazardous waste which is a part of a total quantity of waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §336.61 (c)(5) of this title (relating to Purpose, Scope, and Applicability) shall cause, suffer, allow, or permit the shipment of municipal hazardous waste or Class I waste consigned to an off-site solid waste, storage, processing, or disposal facility in Texas without preparing a Texas Water Commission (TWC) manifest. Any municipal hazardous waste or Class I waste generated in Texas for consignment to another state must be accompanied by the consignment state's manifest, if provided, or by a TWC manifest if the consignment state does not provide a manifest. A generator shall designate on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternate facility which is authorized to receive the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "special handling instructions and additional information." If the transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(b) The manifest shall contain the following information:

(1) the generator's U.S. Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest (applicable to hazardous waste only);

(2) the total number of pages used to complete the manifest, plus the number of continuation sheets, if any (page 1 of_____);

(3) the company name, mailing address, and telephone number of the generator;

(4) the TWC state generator's registration and/or permit number;

(5) the first transporter's company name, EPA 12-digit identification number (applicable to hazardous waste only) and the state transporter's registration number;

(6) the company name, EPA 12-digit identification number (applicable to hazardous waste only) and state transporter's registration number for the second transporter. If more than two transporters are used, enter each additional transporter's company name, EPA 12-digit identification number, if applicable, and the state transporter's registration number on the continuation sheet. Each continuation sheet has space to record two additional transporters. Every transporter must be listed;

(7) the company name, site address, EPA 12-digit identification number (applicable to hazardous waste only) and TWC state facility permit number of the storage, processing, or disposal facility and an alternate facility, if designated. The generator shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an approved state hazardous waste program administered in lieu thereof (applicable to hazardous waste only);

(8) the U.S. Department of Transportation (DOT) proper shipping name, hazard class, and ID number (UN/NA) for each hazardous waste as identified in 49 Code of Federal Regulations Parts 171-177. For Class I nonhazardous waste, use the TWC waste classification code description as it appears on the TWC notice of registration. If additional space is needed for waste descriptions, enter these additional descriptions in item 28 on the continuation sheet. The uniform hazardous waste manifest form has been designed to allow the listing of both federally regulated wastes and wastes regulated solely by the state. In order to distinguish between federally regulated wastes and other wastes, as required by DOT regulations (49 Code of Federal Regulations §172.201(a)(1)), the TWC has added a hazardous materials (HM) column on the manifest before the DOT description. When a waste shipment consists of both federally-regulated materials and state-regulated wastes, the hazardous materials (HM) column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials;

(9) The number of containers for each waste and the appropriate abbreviation from Subchapter A, Appendix I, Table 1, for the type of container;

(10) the total quantity and unit of measure of each waste described on each line. The appropriate abbreviation for the unit of measure may be found in Appendix I, Table 1 of 40 Code of Federal Regulations Parts 264 or 265;

(11) the TWC waste classification code as assigned by the state; and

(12) a certification by the generator stating: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national governmental regulations, including applicable state regulations." If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space provided below the word "highway". If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space provided below the word "highway".

(c) the manifest shall consist of at least the number of copies which will provide the generator, each transporter, and the owner or operator of the storage, processing, or disposal facility with one copy each for their

records and another copy to be returned to the generator.

(d) at the time of waste transfer, the generator shall:

(1) sign the manifest by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;

(3) retain one copy, in accordance with §336.13(a) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste); and

(4) give the transporter the remaining copies of the manifest.

(e) For shipments of municipal hazardous waste or Class I waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(f) For rail shipments of municipal hazardous waste or Class I waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) the next non-rail transporter, if any;

(2) the designated facility if transported solely by rail; or

(3) the last rail transporter to handle the waste in the United States if exported by rail.

(g) No manifest is required for the shipment of Class I waste which is not hazardous waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants or operations owned by the same person.

§336.11. Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste.

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste) to an off-site storage, processing, or disposal facility, unless the transporter:

(1) obtains a manifest completed by the generator in accordance with 336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste);

(2) upon receipt and prior to shipment, signs and dates the manifest acknowledging the acceptance of waste from the generator; and

(3) returns a signed copy to the generator before leaving the generator's property.

(b) The transporter shall ensure that the manifest accompanies the municipal hazardous waste or Class I waste.

(c) No transporter may cause, suffer, allow, or permit the delivery of a shipment of municipal hazardous waste or Class I waste to another transporter designated on the manifest, unless the transporter:

(1) obtains the date of delivery and the handwritten signature of the accepting transporter on the manifest;

(2) retains one copy of the manifest in accordance with §336.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste); and

(3) gives the remaining copies of the manifest to the accepting transporter.

(d) No transporter may cause, suffer, allow, or permit the delivery of a shipment of municipal hazardous waste or Class I waste to a storage, processing, or disposal facility, unless the transporter:

(1) obtains the date of delivery and the handwritten signature on the manifest, of the owner or operator of the facility designated on the manifest;

(2) retains one copy of the manifest in accordance with §336.14(a) of this title (relating to Record-keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste); and

(3) gives the remaining copies of the manifest to the owner or operator of the facility designated on the manifest.

(e) The requirements of subsections (b)-(d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) the waste is delivered by water (bulk shipment) to the facility designated on the manifest;

(2) a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) accompanies the waste;

(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the facility on either the manifest or the shipping paper;

(4) the person delivering the waste to the initial water (bulk shipment) transporter obtains the date of delivery and the signature of the water (bulk shipment) transporter on the manifest and forwards it to the facility; and

(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §336.14 (b) of this title (relating to Record-keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste).

(f) For shipments involving rail transportation, the requirement of subsections (b)-(e) of this section do not apply and the following requirements do apply:

(1) when accepting Class I waste from a nonrail transporter, the initial rail transporter must:

(A) sign and date the manifest acknowledging acceptance of the waste;

(B) return a copy of the manifest to the nonrail transporter;

(C) forward at least three copies of the manifest to:

(i) the next nonrail transporter, if any;

(ii) the designated facility, if the shipment is delivered to that facility by rail; or

(iii) the last rail transporter designated to handle the waste in the United States;

(D) retain one copy of the manifest and rail shipping paper in accordance with §336.14(c) of this title (relating to Record-keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste).

(2) rail transporters must ensure that a shipping paper containing all the information required on the manifest (including the EPA identification numbers, generator certification, and signatures) accompanies the waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) when delivering Class I waste or municipal hazardous waste to the designated facility, a rail transporter must:

(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and

(B) retain a copy of the manifest or signed shipping paper in accordance with §336.14(c) of this title (relating to Record-keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste).

(4) when delivering municipal hazardous waste or Class I waste to a nonrail transporter, a rail transporter must:

(A) obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest; and

(B) retain a copy of the manifest in accordance with §336.14(c) of this title (relating to Record-keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste).

(5) before accepting municipal hazardous waste or Class I waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport municipal hazardous waste or Class I industrial solid waste out of the United States shall:

(1) indicate on the manifest the date the municipal hazardous waste or Class I waste left the United States under the item labeled "special handling instructions and additional information";

(2) sign the manifest and retain one copy in accordance with §336.14(c) of this title (relating to Record-keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste); and

(3) return a signed copy of the manifest to the generator.

(h) The transporter must deliver the entire quantity of municipal hazardous waste or Class I waste which he has accepted from a generator or a transporter to:

(1) the designated facility listed on the manifest;

(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery;

(3) the next designated transporter; or

(4) the place outside the United States designated by the generator.

(i) If the transporter cannot deliver the waste in accordance with subsection (h) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

§336.12. Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.

(a) No owner or operator of a storage, processing, or disposal facility may accept delivery of solid waste for which a manifest is required under §336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), for off-site storage, processing, or disposal unless:

(1) a manifest accompanies the shipment which designates that facility to receive the waste; and

(2) the owner or operator signs the manifest and immediately gives at least one copy of the signed manifest to the transporter;

(3) retains one copy of the manifest in accordance with §336.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); and

(4) within 30 days after the delivery, sends a copy of the manifest to the generator.

(b) If a facility recives, from a rail or water (bulk shipment) transporter, municipal hazardous waste or Class I waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall:

(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the municipal hazardous waste or Class I waste covered by the manifest or the shipping paper was received;

(2) immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(3) within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

(4) retain at the facility a copy of each shipping paper and manifest in accordance with §336.15(a) of this title (relating to Record-keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(c) If a facility receives municipal hazardous waste or Class I waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment), by a shipping paper, the owner or operator, or his agent, must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) manifest discrepancies are differences between the quantity or type of municipal hazardous waste or Class I waste designated on the manifest or shipping paper, and the quantity or type of municipal hazard ous waste or Class I waste a facility actually received. Significant discrepancies in type ar obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid or toxic constituents not reported in the manifest or shipping paper. Significant discrepancies in quantity are:

(A) for bulk weight, variations greater than 10% inweight; and

(B) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

§336.13. Record-keeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste.

(a) The generator shall retain a copy of each manifest required by §336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste) for a minimum of three years from the date of shipment by the generator.

(b) The generator, including any person exporting hazardous waste to a foreign country, shall prepare a monthly summary from the manifests, regardless of whether shipments were made during the month, summarizing the quantity and classification of each waste shipment itemized by manifest document number. Such monthly summary shall be submitted to the Texas Water Commission on the 25th day of each month for shipments originating during the previous month on monthly summary forms provided or approved by the executive director. A generator must keep a copy of each summary for a period of at least three years from the due date of the summary. A generator required to comply with this subsection shall continue to prepare and submit monthly summaries, regardless of whether shipments were made during a particular month, by preparing and submitting a monthly summary indicating that no shipments were made during that month. Upon request of the generator, the executive director may authorize a modification in the reporting period.

(c) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(d) In addition to the requirements of this section, generators of hazardous waste are subject to the reporting and record-keeping requirements of §336.70 of this title (relating to Recordkeeping) and §336.71 of this title (relating to Annual Reporting).

(e) A generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date that the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the municipal hazardous waste or Class I industrial solid waste.

(f) A generator must submit an exception report to the commission if he has not received a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45

days of the date that the waste was accepted by the initial transporter. The exception report must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the municipal hazardous waste or Class I industrial solid waste and the results of those efforts.

§336.14. Record-keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste.

(a) A transporter of municipal hazardous waste or Class I industrial solid waste shall retain a copy of each manifest signed by the generator, the transporter, and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §336.11(e) of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of municipal hazardous waste or Class Iwaste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §336.11(f)(2) of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste) for a period of three years from the date the municipal hazardous waste or Class I waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the municipal hazardous waste or Class I waste was accepted by the initial transporter.

(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the municipal hazardous waste or Class I waste left the United States for a minimum of three years from the date of initial shipment.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

§336.15. Record-keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities. This section does not apply to owners and operators that store, process or dispose of municipal hazardous waste or Class I industrial solid waste on-site and do not receive any Class I waste from off-site sources.

(1) the owner or operator of the storage, processing, or disposal facility designated on the manifest shall retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator.

(2) the owner or operator shall prepare a monthly summary from his copy of all manifests received during the month (in those cases where a manifest is required), summarizing the quantity, character, and the method of storage, processing, and disposal of each municipal hazardous waste or Class I waste shipment received, itemized by manifest document number. Such monthly summary report shall be submitted to the Texas Water Commission on the 25th day of each month for wastes or manifests received during the prior month and on monthly summary forms provided or approved by the executive director. Persons who store, process, or dispose of hazardous waste are subject to the further requirements of §336.114(a) of this title (relating to Reporting Requirements) and §336.154(a) of this title (relating to Reporting Requirements for Owners and Operators) for the preparation of a monthly summary. The appropriate abbreviations from Appendix I, Tables 1 and 2 of 40 Code of Federal Regulations Parts 264 or 265 are to be used for units of measure and for handling codes for storage, processing, and disposal methods.

(3) the owner or operator shall submit a monthly report on forms provided or approved by the executive director sumarizing the types and volumes of any municipal hazardous waste or Class I waste received without manifests, as in the case of shipments by rail or water (bulk shipments) without shipping papers. This report shall be prepared with respect to any Class I waste or municipal hazardous waste received without a manifest, regardless of quantity, and shall include the following information:

(A) the Environmental Protection Agency (EPA) identification number (applicable to hazardous waste only), name, and address of the facility;

(B) the date the facility received the waste,

(C) the EPA identification number (applicable to hazardous waste only), name, and address of the generator and the transporter, if available;

(D) a description and the quantity of each municipal hazardous waste or Class I industrial solid waste the facility received which was not accompanied by a manifest;

(E) the method of storage, processing, or disposal for each municipal hazardous waste or Class I industrial solid waste;

(F) the certification signed by the owner or operator of the facility or his authorized representative; and

(G) a brief explanation of why the waste was unaccompanied by a manifest, if known.

(4) The owner or operator shall retain a copy of each summary required by paragraphs (2) and (3) of this subsection for a minimum of three years from the date of each summary.

(5) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

§336.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials. For the purposes of the definition of solid waste in this title (relating to Definitions) and §336.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) a spent material is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(2) sludge has the same meaning used in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2.

(3) a byproduct is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form in which it is produced by the process;

(4) a material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(5) a material is used or reused if it is either:

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metalcontaining secondary materials); or

(B) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(6) scrap metal is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wires) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars),

which when worn or superfluous can be recycled.

(7) a material is recycled if it is used, reused, or reclaimed.

(8) a material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40 Code of Federal Regulations §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

§336.18. Variances from Classification as a Solid Waste. In accordance with the standards and criteria in §336.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and the procedures in §336.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste orto be Classified as a Boiler), the executive director may determine on a case-by-case basis that the following recyclable materials and nonhazardous recyclable materials are not solid wastes:

(1) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §336.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials));

(2) materials that are reclaimed and then reused within the original primary production process in which they were generated; or

(3) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

§336.19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a vari ance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following standards and criteria:

(1) the manner in which the material is expected to berecycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of part practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) the reason that the applicant has accumulated the material for one or more years without recycling 75% of the weight or volume accumulated at the beginning of the year;

(3) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) the extent to which the material is handled to minimize loss;

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original primary production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) the prevalence of the practice on an industry-wide basis;

(3) the extent to which the material is handled before reclamation to minimize loss;

(4) the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(5) the location of the reclamation operation in relation to the production process;

(6) whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(7) whether the person who generates the material also reclaims it;

(8) other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

(1) the degree of processing the material has undergone and the degree of further processing that is required;

(2) the value of the material after it has been reclaimed,

(3) the degree to which the reclaimed material is like an analogous raw material;

(4) the extent to which an end market for the reclaimed material is guaranteed;

(5) the extent to which the reclaimed material is handled to minimize loss;

(6) other relevant factors.

§336.20. Variance to be Classified as a Boiler. In accordance with the standards and criteria in §336.1 of this title (relating to Definitions) (definition of boiler), and the procedures in §336.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler), the executive director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in §336.1 of this title (relating to Definitions), after considering the following criteria:

(1) The extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(2) The extent to which the combustion chamber and energy recovery equipment are of integral design;

(3) The efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;

(4) The extent to which exported energy is utilized;

(5) The extent to which the device is in common and customary use as a boiler functioning primarily to produce steam, heated fluids, or heated gases; and

(6) Other factors, as appropriate.

§336.21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler. The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers.

(1) The application must address the relevant criteria contained in §336.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and §336.20 of this title (relating to Variance to be Classified as a Boiler).

(2) The executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the hearing (if any). Any person affected by a final

decision of the executive director may petition the commission to review the decision. Any person affected by the final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 273 of this title (relating to Procedures after Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a.

§336.22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-By-Case Basis.

(a) The commission may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §336.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) should be regulated under §336.24(d) and (e) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. The procedures for this decision are set forth in §336.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities). In making this decision, the commission will consider the following factors:

(1) the types of materials accumulated or stored and the amounts accumulated or stored;

(2) the method of accumulation or storage;

(3) the length of time the materials have been accumulated or stored before being reclaimed;

(4) whether any contaminants are being released into the environment, or are likely to be so released; and

(5) other relevant factors.

§336.23. Procedures for Case-By-Case Regulation of Hazardous Waste Recycling Activities. The commission will use the following procedures when determining whether to regulate hazardous waste recycling activities described in §336.24(b) (3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) under the provisions of §336.24(d) and (e) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), rather than under the provisions governing recyclable materials utilized for Precious Metal Recovery under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) If a generator is accumulating the waste, the commission will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), respectively. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the commission will hold a public hearing The commission will provide notice of the hearing to the public and allow public participation at the hearing. The commission will issue a final order after the hearing stating whether or not compliance with Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), respectively, is required. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 273 of this title (relating to Procedures After Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a.

(2) If the person is accumulating the recyclable material at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions; Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures before Public Hearing); Chapter 267 of this title (relating to Procedures during Public Hearing); Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner); Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission); and Chapter 273 of this title (relating to Procedures after Final Decision). The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the commission's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The proposal for decision accompanying the permit will include the reasons for the commission's determination. The question of whether the commission's decision was proper will remain open for consideration during the public comment period and in any subsequent hearing.

§336.24. Requirements For Recyclable Materials and Nonhazardous Recyclable Materials.

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d)-(f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Non hazardous industrial wastes that are recycled will be known as non hazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) and (i) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions; Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures before Public Hearing); Chapter 267 of this title (relating to Procedures during Public Hearing); Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner); Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission); and Chapter 273 of this title (relating to Procedures after Final Decision):

(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B-I of this chapter, (relating to Hazardous Waste Management-General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, and Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Prohibition on Open Dumps), respectively, or Chapter 305 of this title (relating to Consolidated Permits), or Chapter 261 of this title (relating

to Introductory Provisions; Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures before Public Hearing); Chapter 267 of this title (relating to Procedures during Public Hearing); Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner); Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission); and Chapter 273 of this title (relating to Procedures after Final Decision), except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed;

(2) used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

(3) used oil that exhibits one or more of the characteristics of hazardous waste;

(4) scrap metal;

(5) fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(6) oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility; or

(7) coke from the iron and steel industry that contains hazardous waste from the iron and steel production process.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirements of §336.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits) and Chapter 261 of this title (relating to Introductory Provisions; Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures before Public Hearing); Chapter 267 of this title (relating to Procedures during Public Hearing); Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner); Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission); and Chapter 273 of this title (relating to Procedures after Final Decision), and the notification requirement under §336.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a)-(c) of this section:

(1) notification requirements under §336.6 of this title (relating to Notification Requirements);

(2) §336.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(g) Except as provided in subsection (h) of this section, recyclable materials (excluding those listed in subsections (c)(1) and (5)-(7) of this section), remain subject to the requirements of §336.4 of this title (relating to General Prohibitions), §336.6 of this title (relating to Notification Requirements), and §§336.9-336.15 of this title (relating to Shipping and Reporting Procedures Applicable to Generators), §336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §336.11 of this title (relating to Shipping Requirements for Transporters of Class I Industrial Solid Waste), §336.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §336.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §336.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste), and §336.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable.

(h) Industrial solid wastes that are nonhazardous recyclable materials; recyclable materials listed in subsection (b)(4) and subsections (c)(2)-(c)(4) of this section; hazardous waste fuels that are spent materials and by products and that are hazardous only because they exhibit a characteristic of hazardous waste; and hazardous waste fuels produced from hazardous waste by blending or other processing by a person who neither generated the waste nor burns the fuel remain subject to the requirements of §336.4 of this title (relating to General Prohibitions) and §336.6 of this title (relating to Notification Requirements). Such wastes may also be subject to the requirements of §336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §336.11 of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste), §336.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing or Disposal Facilities), §336.13 of this title (relating to Record-Keeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), §336.14 of this title (relating to Record-Keeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste), and §336.15 of this title (relating to Record-Keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irriate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into non-harmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(9) other relevant factors.

(i) Except as provided in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, 4(f)(1), facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;

(2) whether hazardous and nonhazardous wastes that are incompatible are stored and/or processed in the same or connected units;

(3) Whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;

(4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(7) the potential for the objectionable constituent to degrade into nonharmful constituents;

(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(12) other relevant factors.

§336.30. Appendix I. The following appendix will be used for the purposes of this subchapter which relate to municipal hazardous waste and industrial solid waste.

Table 1

Types of Containers

DM = Metal drums, barrels, kegs

DW = Wooden Drums, barrels, kegs

DF = Fiberboard or plastic drums, barrels, kegs

TP = Tanks portable

TT = Cargo tanks (tank trucks)

TC = Tank cars

DT = Dump truck

CY = Cylinders

CM = Metal boxes, cartons, cases (including roll-offs)

CW = Wooden boxes, cartons, cases

CF = Fiber or plastic boxes, cartons, cases

BA = Burlap, cloth, paper or plastic bags.

TEXAS WATER COMMISSION
P.O. Box 13087, Capitol Station
Austin, Texas 78711-3087

Please print or type (Form designed for use on elite (12-pitch) typewriter)

Form approved OMB No. 2000-0404 Expires 7-31-86

UNIFORM HAZARDOUS WASTE MANIFEST

1 Generator's US EPA ID No. | Manifest Document No. | 2 Page 1 of | Information in the shaded areas is not required by Federal law

3 Generator's Name and Mailing Address

4 Generator's Phone ( )

A State Manifest Document Number

B State Generator's ID

5 Transporter 1 Company Name | 6 US EPA ID Number

C State Transporter's ID

D Transporter's Phone

7 Transporter 2 Company Name | 8 US EPA ID Number

E State Transporter's ID

F Transporter's Phone

9 Designated Facility Name and Site Address | 10 US EPA ID Number

G. State Facility's ID

H Facility's Phone

11A HM	11 US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)	12 Containers No	12 Containers Type	13 Total Quantity	14 Unit Wt/Vol	I Waste No
	a					
	b					
	c					
	d					

J Additional Descriptions for Materials Listed Above

K Handling Codes for Wastes Listed Above

15 Special Handling Instructions and Additional Information

16 **GENERATOR'S CERTIFICATION**: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations

Unless I am a small quantity generator who has been exempted by statute or regulation from the duty to make a waste minimization certification under Section 3002(b) of RCRA, I also certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the method of processing, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment

GENERATOR

Printed/Typed Name | Signature | Month Day Year

17 Transporter 1 Acknowledgement of Receipt of Materials | Date

Printed/Typed Name | Signature | Month Day Year

18 Transporter 2 Acknowledgement of Receipt of Materials | Date

Printed/Typed Name | Signature | Month Day Year

TRANSPORTER

19 Discrepancy Indication Space

20 Facility Owner or Operator Certification of receipt of hazardous materials covered by this manifest except as noted in Item 19 | Date

Printed/Typed Name | Signature | Month Day Year

FACILITY

EPA Form 8700-22 (Rev. 4-85) Previous edition is obsolete. White - original Pink-TSD Facility Yellow-Transporter Green-Generator's first copy
TWC 0311 (Rev 09 01 85)

Please print or type. (Form designed for use on elite (12-pitch) typewriter.)

Form approved OMB No 2000-0404 Expires 7-31-86

UNIFORM HAZARDOUS WASTE MANIFEST
(Continuation Sheet)

21 Generator's US EPA ID No. | Manifest Document No

22 Page | Information in the shaded areas is not required by Federal law

23 Generator's Name

L State Manifest Document Number

M State Generator's ID

24. Transporter ____ Company Name | 25 US EPA ID Number

N State Transporter's ID

O Transporter's Phone

26. Transporter ____ Company Name | 27. US EPA ID Number

P State Transporter's ID

Q. Transporter's Phone

28A HM	28 US DOT Description (including Proper Shipping Name, Hazard Class, and ID Number)	29 Containers No	29 Containers Type	30 Total Quantity	31 Unit Wt/Vol	R Waste No
	a.					
	b					
	c.					
	d					
	e					
	f					
	g					
	h					
	i					

S Additional Descriptions for Materials Listed Above

T Handling Codes for Wastes Listed Above

32 Special Handling Instructions and Additional Information

GENERATOR

33 Transporter ____ Acknowledgement of Receipt of Materials | Date

Printed/Typed Name | Signature | Month Day Year

34 Transporter ____ Acknowledgement of Receipt of Materials | Date

Printed/Typed Name | Signature | Month Day Year

TRANSPORTER

35 Discrepancy Indication Space

FACILITY

EPA Form 8700-22 (3-84) White - original Pink-TSD Facility Yellow-Transporter Green-Generator's first copy

TDWR-0311B

When using the Uniform Waste Manifest for rail or water (bulk shipment) or international shipments refer to the applicable TWC regulations.

REPORT SPILLS AND/OR DISCHARGES TO THE TEXAS SPILL RESPONSE CENTER AT 512/463-7727 (24 HOURS)

INSTRUCTIONS TO GENERATOR (Please Type or Print Clearly)

(1) Enter the generator's U S EPA twelve digit identification number and the unique five digit number assigned to this manifest by the generator if you are shipping hazardous waste

(2) Enter the total number of pages used to complete this manifest

(3) Enter the company name and mailing address

(4) Provide a phone number where an authorized agent of your firm may be reached in the event of an emergency.

(5) Enter the company name of the first transporter and their U S EPA ID Number.

(6) If applicable, enter the company name of the second transporter and their U S EPA ID Number If more than two transporters are used, enter each additional transporter's information on the Continuation Sheet (EPA form 8700-22A)

(7) Enter the company name, site address, and U S EPA ID Number of the facility designated to receive the waste listed on this manifest

(8) **COMPLETE ALL STATE OF TEXAS INFORMATION A. THROUGH H. IN THE SHADED AREAS.**

(9) Complete the waste description table as follows

(A) ITEM 11A—When shipping an EPA/DOT regulated hazardous waste or material in conjunction with solely state regulated waste enter an "x" in the HM box before each EPA/DOT regulated wate/material description.

(B) ITEM 11—Enter the U S DOT Proper Shipping Name, Hazard Class, and ID Number (UN/NA) for each waste identified. If it is a Class I nonhazardous waste use the Texas Waste Code description

(C) ITEM 12—Enter the number of containers for each waste and the appropriate abbreviation for type located in Subchapter A of the TWC Industrial Solid Waste Rules

(D) ITEM 13—Enter the total quantity of waste described on each line

(E) ITEM 14—Enter the appropriate letter from the table below for the unit of measure.

G = Gallons (liquids only)	L = Liter (liquids only)
P = Pounds	K = Kilograms
T = Tons (2000 lbs)	M = Metric Tons (1000 kg)
Y = Cubic Yards	N = Cubic Meters

(F) ITEM I—Enter the appropriate TWC State Waste Code for each waste you are shipping

(10) The Generator must read, sign (by hand), and date the certification statement. If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water or air) inserted in the space below.

(11) The manifest must be signed and dated by the first transporter in the presence of the Generator If more than one transporter is to be used, the Generator must provide additional copies for their use

*(12) Generator retains green copy, sending remaining copies with the driver

INSTRUCTIONS FOR THE TRANSPORTER (Please Type or Print Clearly)

(1) As driver of the transport vehicle, you are responsible for ensuring that all waste received by you arrives at the specified destination

(2) Sign and date the space provided, certifying the waste amounts in **PART I** were received for transport **NOTE:** If you are unable to carry out the delivery of the shipment as specified, dial the emergency phone numbers given in **PART I** notifying the **GENERATOR**

(3) Upon delivery of the shipment, the **TSD** Facility Owner/Operator is to sign for the shipment in your presence and fill in "date received"

*(4) Separate the yellow copy and retain for your records Leave the remaining copies with the **TSD** Facility Owner/Operator

INSTRUCTIONS TO TREATMENT, STORAGE AND DISPOSAL (TSD) FACILITY OWNER/OPERATOR (Please Type or Print Clearly)

(1) The authorized representative of the designated (or alternate) facility's owner or operator must note in **ITEM 19** any significant discrepancy between the waste described on the manifest and the waste actually received at the facility

(2) Enter date received and sign in the presence of the driver declaring receipt of the wastes and verifying the quantities in the table in **PART I**

(4) Retain the pink copy for your records and return the completed original (white) copy to the **GENERATOR**

* U S. EPA and TWC regulations require that copies of this Uniform Hazardous Waste Manifest be retained for a period of three (3) years in your company records Do not send to TWC unless otherwise notified by these departments.

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

TRD-8601887 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.

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Subchapter B. Hazardous Waste Management General Provisions

★31 TAC §§336.41, 336.43-336.47

These 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 this state, and to establish and approve all general policy of the commission. These sections are also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.41. Purpose, Scope, and Applicability.

(a) The purpose of this chapter is to implement a state hazardous waste program which controls from point of generation to ultimate disposal those wastes which have been identified by the administrator of the United States Environmental Protection Agency (EPA) in 40 Code of Federal Regulations Part 261.

(b) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage Processing, or Disposal Facilities) and §336.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §336.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) do not apply to an owner or operator of a totally enclosed treatment facility, as defined in §336.1 of this title (relating to Definitions).

(c) Except as provided in §336.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) do not apply to:

(1) the owner or operator of a publicly owned treatment works (POTW) which processes, stores, or disposes of hazardous waste; and

(2) persons disposing of hazardous waste by means of underground injection. However, Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) do apply to the above ground storage or processing of hazardous waste before it is injected underground.

(d) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) do not apply to:

(1) the owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §336.1 of this title (relating to Definitions);

(2) persons engaged in processing or containment activities during immediate response to a discharge of a hazardous waste; an imminent and substantial threat of discharge of hazardous waste; or a discharge of a material which, when discharged, becomes a hazardous waste, except that such person must comply with all applicable requirements of 40 Code of Federal Regulations Part 264, Subparts C and D, and 40 Code of Federal Regulations Part 265, Subparts C and D. Any person who continues or initiates hazardous waste processing or containment activities after the immediate response is over is subject to all applicable requirements of Subchapter E (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) (incorporating by reference 40 Code of Federal Regulations Part 265), Subchapter I (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) (incorporating by reference 40 Code of Federal Regulations Part 264) and Chapter 305 of this title (relating to Consolidated Permits); and

(3) persons adding absorbent material to waste in a container, as defined in §336.1 of this title (relating to Definitions) and persons adding waste to absorbent material in a container, provided that these actions occur at the time that waste is first placed in the container, and that in the case of permitted facilities, 40 Code of Federal Regulations §§264.17(b), 264.171, and 264.172, are complied with, and for all other facilities, 40 Code of Federal Regulations §§265.17(b), 265.171, and 265.172, are complied with.

(e) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) does not apply to:

(1) a person who stores, processes, or disposes of hazardous waste on-site and meets the requirements of §336.61(c) of this title (relating to Purpose, Scope, and Applicability); or

(2) a person who stores, processes, or disposes of hazardous waste in quantities less than 1000 kilograms in a calendar month at a facility under the jurisdiction of the Texas Department of Health (TDH).

(f) The following requirements apply to residues of hazardous waste in containers.

(1) Subchapters B-F of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) do not apply to any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in paragraph (2) of this subsection. This exemption does not apply to any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty.

(2) For purposes of determining whether a container is empty under this subsection, the following provisions apply.

(A) a container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e), is empty if:

(i) all wastes have been removed that can be, using the practices commonly employed to remove materials from

that type of container, e.g. pouring, pumping, and aspirating; and

(ii) no more than 2.5 centimeters (one inch) of residue remains on the bottom of the or container or inner liner; or

(iii) no more than 3.0% by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or no more than 0.3% by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(B) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmosphere.

(C) A container or an inner liner removed from a container that has held an acute hazardous waste listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e), is empty if:

(i) the container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

(g) Subchapters B-F of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) do not apply to hazardous waste which is managed as a recyclable material described in §336.24(b) and (c) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), except to the extent that requirements of these subchapters are referred to in Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

§336.43. Permit Required.

(a) Except as provided in subsection (b) of this section and §336.2 of this title (relating to Permit Required), no person shall store, process, or dispose of hazardous waste without first having obtained a permit from the Texas Water Commission.

(b) Any person who has commenced on-site storage, processing, or disposal of hazardous waste on or before November 19, 1980, and who has filed a hazardous waste permit application with the commission on or before November 19, 1980, and in accordance with the rules and regulations of the commission, may continue the on-site storage, processing, or disposal of hazardous waste until such time as the Texas Water Commission approves or denies the application. Owners and operators of hazardous waste management facilities who have commenced the on-site storage, processing, or disposal of hazardous waste as defined in subsection (c) of this section, or of hazardous waste management facilities in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, that render the facility subject to the requirement to have a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than:

(1) six months after the date of publication of regulations by the United States Environmental Protection Agency, pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or

(2) 30 days after the date they first become subject to the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); whichever first occurs.

(c) The following words and terms, when used in subsection (b) of this section, shall have the following meanings unless the text clearly indicates otherwise.

(1) On-site storage, processing, or disposal—On-site storage, processing, or disposal occurs when industrial solid waste is:

(A) collected, handled, stored, processed, or disposed of within the property boundaries of a tract of land owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial waste; and

(B) the industrial solid waste is not collected, handled, stored, processed, or disposed of with solid waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an other source with respect to other plants and operations owned by the same person.

(2) Commenced on-site storage, processing, or disposal of hazardous waste—A person has commenced on-site storage, processing, or disposal of hazardous waste if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(A) a continuous physical, on-site construction program has begun; or

(B) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) Subsection (b) of this section shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated.

§336.44. Application for Existing On-Site Facilities.

(a) In order to satisfy the application deadline specified in §336.43(b) of this title (relating to Permit Required), an application must be submitted prior to that date which contains information defining the following:

(1) owner(s) and operator(s) of the facility;

(2) description of the site;

(3) description of the facility and all facility components;

(4) identification of wastes generated, stored, processed, or disposed, together with quantities and sources; and

(5) methods and types of operations used in the storage, processing, or disposal of wastes.

(b) In addition to the information required in subsection (a) of this section, a complete application, required prior to action on an application by the commission, must include the following:

(1) engineering plans and specifications and other documentation necessary to demonstrate that all components of the facility design, construction, and operation conform to standards established by the commission; and

(2) information describing actions necessary to bring existing facilities into compliance with commission standards and a schedule for completion of such actions.

(c) An application form can be obtained from the executive director for each geographical location for which the storage, processing, or disposal of hazardous waste is proposed.

(d) The application shall be signed by the applicant or by a duly authorized agent, employee, officer, or representative of the applicant and shall be verified before a notary public.

§336.45. Effect on Existing Facilities.

(a) Effect on permitted off-site facilities. Subchapters B-E of this chapter

(relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; and Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), provide minimum requirements applicable to all persons generating, transporting, storing, processing, and disposing of hazardous waste. All persons holding permits or any other authorizations from the commission, or its predecessor agencies, which relate to hazardous waste, shall meet the requirements of Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) until final administrative disposition of their permit application pursuant to standards prescribed by Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) is made. However, where the permit or authorization specifies additional or more stringent requirements, the provisions of the permit or authorization shall be complied with.

(b) Effect on off-site facilities without a permit to reuse, recycle, or reclaim hazardous waste. Any person who has commenced, on or before July 5, 1985, the off-site storage, processing, or disposal of those hazardous wastes or activities that are listed, identified, or described by the administrator of the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 261, as amended by the regulations published on January 4, 1985, at 50 *Federal Register* 614, shall file an application with the commission on or before July 5, 1985, which includes the applicable information required by §336.44 of this title (relating to Application for Existing On-site Facilities). Any person who has commenced off-site storage, processing, or disposal of hazardous waste on or before July 5, 1985, who has filed a hazardous waste permit application with the commission on or before July 5, 1985, in accordance with the rules and regulations of the commission, and who complies with requirements in this chapter applicable to such activities, may continue the off-site storage, processing, or disposal of the newly listed or identified wastes or waste activities until such time as the Texas Water Commission approves or denies the application. Facilities that have received a permit for the reuse, recycling, or reclamation of hazardous waste in accordance with Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) are not required to comply with this subsection and may operate pursuant to their existing permit. Such permits, however, are subject to amendment under §305.62 of this title (relating to Amendment) to reflect new regulatory requirements.

§336.46. Sharing of Information. Any information obtained or used by the commission in the administration of a hazardous waste program authorized under the Resource Conservation and Recovery Act of 1976, §3006, and 40 Code of Federal Regulations Part 271 shall be available to the Environmental Protection Agency upon request without restriction. If the information has been submitted to the commission under a claim of confidentiality, the commission shall submit that claim to the Environmental Protection Agency when providing information under this section. Any information obtained from the commission and subject to a claim of confidentiality will be treated by the Environmental Protection Agency in accordance with 40 Code of Federal Regulations Part 2. If the Environmental Protection Agency obtains information that is not claimed to be confidential, the Environmental Protection Agency may make that information available to the public without further notice.

§336.47. Special Requirements for Persons Eligible for a Federal Permit by Rule.

(a) The following persons are eligible for a permit by rule under 40 Code of Federal Regulations §270.60:

(1) the owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal;

(2) the owner or operator of a publicly owned treatment works (POTW) which accepts hazardous waste for treatment; and

(3) the owner or operator of an injection well used to dispose of hazardous waste.

(b) To be eligible for a permit by rule, such person shall comply with the requirements of 40 Code of Federal Regulations §270.60 and the following rules:

(1) 40 Code of Federal Regulations §264.11 (EPA identification number);

(2) 40 Code of Federal Regulations §264.72 (manifest discrepancies);

(3) 40 Code of Federal Regulations §264.73(a) and (b)(1) (operating record);

(4) 40 Code of Federal Regulations §264.76 (unmanifested waste report);

(5) Section 336.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and §336.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners of Storage, Processing, or Disposal Facilities) (shipping and reporting procedures); and

(6) Section 336.15 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) (annual and monthly reports).

(c) In addition to the requirements stated in subsection (b) of this section, the owner or operator of an injection well used to dispose of hazardous waste shall:

(1) comply with the applicable personnel training requirements of 40 Code of Federal Regulations §264.16;

(2) when abandonment is completed, submit to the executive director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in §331.46 of this title (relating to Plugging and Abandonment Standards); and

(3) for underground injection control permits issued after November 8, 1984, comply with §336.167 of this title (relating to Corrective Action for Solid Waste Management Units). Persons who dispose of hazardous waste by means of underground injection must obtain a permit under the Texas Water Code, Chapter 27.

(d) In addition to the requirements stated in subsection (b) of this section, the owner or operator of a publicly owned treatment works (POTW) which accepts hazardous waste for treatment shall:

(1) meet all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe or, similar conveyance, and

(2) for National Pollutant Discharge Elimination System (NPDES) permits issued after November 8, 1984, comply with §336.167 of this title (relating to Corrective Action for Solid Waste Management Units).

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

TRD-8601888 James K. Rourke, Jr.
General Counsel
Texas Water Commission

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

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Subchapter C. Standards Applicable to Generators of Hazardous Waste

★31 TAC §§336.61-336.63, 336.65-336.71, 336.73, 336.73-336.76

These 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 this state, and to establish and approve all general policy of the commission. These sections are also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum stan-

dards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.61. Purpose, Scope, and Applicability.

(a) Except as provided in subsections (b) and (c) of this section, this subchapter establishes standards for generators of hazardous waste. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) The provisions of this subchapter with which a generator who stores, processes, or disposes of hazardous waste on-site must comply are §336.62 of this title (relating to Hazardous Waste Determination), §336.63 of this title (relating to EPA Identification Numbers) and §336.70 of this title (relating to Recordkeeping).

(c) Generators of small quantities of hazardous waste are subject to the following requirements:

(1) A generator is a small quantity generator in a calendar month if he generates less than 1000 kilograms of hazardous waste in that month.

(2) Except for those wastes identified in paragraphs (5)-(8) of this subsection, a small-quantity generator is not subject to regulation under this subchapter, provided the generator complies with the requirements of paragraphs (6)-(8) of this subsection. Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) applicable to generators of municipal hazardous waste or Class I waste.

(3) Hazardous waste that is recycled and that is excluded from regulation under §336.24(b)(4) and (c) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), or §336.227 of this title (relating to Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste) is not included in the quantity determinations of this subsection and is not subject to any requirements of this section. Hazardous waste that is subject to the requirements of §336.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §§336.211-336.214 of this title (relating to Recyclable Materials Used in a Manner Constituting Disposal), §§336.221-336.227 of this title (relating to Hazardous Waste Burned for Energy Recovery), and §336.241 of this title (relating to Applicability and Requirements) is included in the quantity determination of this subsection and is subject to the requirements of this section.

(4) In determining the quantity of hazardous waste he or she generates, a generator need not include:

(A) his or her hazardous waste when it is removed from on-site storage; or

(B) hazardous waste produced by on-site processing of his hazardous waste.

(5) A small quantity generator who generates acutely hazardous waste in a calendar month in quantities greater than those set forth as follows is subject to the requirements of this subchapter:

(A) a total of one kilogram of acute hazardous wastes listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e); or

(B) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 Code of Federal Regulations §§261.31, 261.32, or 261.33(e).

(6) In order for hazardous wastes generated by a small quantity generator of acutely hazardous wastes in quantities equal to or less than those set forth in paragraph (5)(A) or (B) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements.

(A) The small quantity generator shall comply with §336.62 of this title (relating to Hazardous Waste Determination);

(B) The small quantity generator may accumulate acutely hazardous waste on-site. If he or she accumulates at any time acutely hazardous wastes in quantities greater than those set forth in paragraph (5)(A) or (B) of this section, all those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under this chapter and Chapter 305 of this title (relating to Consolidated Permits). The time period of §336.69 of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit;

(C) A small quantity generator may either process or dispose of his or her hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing, or disposal facility, either of which is:

(i) permitted by the U. S. Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

(ii) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(iii) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulation Part 271;

(iv) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(v) a facility which beneficially uses or reuses, or legitimately recycles or reclaims its waste; or processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(7) In order for a generator generating quantities of hazardous waste less than 100 kilograms during a calendar month to be excluded from regulation under this subsection, the generator must comply with the following requirements.

(A) The small quantity generator shall comply with §336.62 of this title (relating to Hazardous Waste Determination).

(B) The small quantity generator may accumulate hazardous waste on-site. If he or she accumulates at any time more than a total of 1000 kilograms of this hazardous waste, all of those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under this chapter and Chapter 305 of this title (relating to Consolidated Permits). The time period of §336.69 of this title (relating to Accumulation Time) for accumulation of wastes on-site begins for a small quantity generator when the accumulated wastes exceed 1000 kilograms.

(C) A small quantity generator may either process or dispose of his or her hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing, or disposal facility, either of which is:

(i) permitted by the Environmental Protection Agency under 40 Code of Federal Regulations Part 270;

(ii) in interim status under 40 Code of Federal Regulations Parts 270 and 265;

(iii) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulations Part 271;

(iv) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(v) a facility which beneficially uses or reuses, or legitimately recycles or reclaims his waste; or processes the waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(8) In order for hazardous waste generated by a small quantity generator in a quantity greater than 100 kilograms but less than 1000 kilograms during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements.

(A) The small quantity generator shall comply with §336.62 of this title (re-

lating to Hazardous Waste Determination).

(B) A small quantity generator may accumulate hazardous waste on-site. If he or she accumulates at any time more than a total of 1000 kilograms of his or her hazardous waste, all those accumulated wastes for which the accumulation limit was exceeded are subject to regulation under this chapter and Chapter 305 of this title (relating to Consolidated Permits).

(C) Beginning August 5, 1985, for any hazardous waste shipped off-site, the generator must ensure that such waste is accompanied by a copy of the manifest (EPA form 8700-22) signed by him or her and containing the following requirements.

(i) the name and address of the generator of the waste;

(ii) the U.S. Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA);

(iii) the number and type of containers;

(iv) the quantity of waste being transported; and

(v) the name and address of the facility designated to receive the waste.

(D) A small quantity generator may either process or dispose of his or her hazardous waste in an on-site facility, or ensure delivery to an off-site storage processing or disposal facility, either of which is:

(i) permitted by the U.S. Environmental Protection Agency under 40 Code of Federal Regulation Part 270;

(ii) in interim status under 40 Code of Federal of Regulations Parts 270 and 265;

(iii) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 Code of Federal Regulation Part 271.

(iv) permitted, licensed, or registered by a state to manage municipal or industrial solid waste; or

(v) a facility which beneficially uses or reuses, or legitimately recycles or reclaims its waste; or processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

(9) A generator of hazardous waste subject to the reduced requirements of this subsection may mix the hazardous waste with nonhazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this subsection, unless the mixture meets any of the characteristics of hazardous wastes identified in 40 Code of Federal Regulations Part 261, Subpart C.

(10) A small quantity generator who mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this subsection is subject to regulation under this subchapter.

(d) Any person who imports hazardous waste into the state from a foreign country shall comply with standards applicable to generators of such waste.

(e) An owner or operator who initiates a shipment of hazardous waste from a processing, storage, or disposal facility must comply with the generator standards contained in §336.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste) and §336.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste), and this subchapter. The provisions of §336.69 of this title (relating to Accumulation Time) are applicable to on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §336.69 of this title (relating to Accumulation Time) only apply to owners or operators who are shipping hazardous waste which they generate at that facility.

(f) A farmer who generates waste pesticides which are hazardous waste and who complies with §336.76 of this title (relating to Farmers) is not required to comply with this chapter with respect to those pesticides.

§336.62. Hazardous Waste Determination. A person who generates a solid waste must determine if that waste is hazardous using the following method.

(1) He should first determine if the waste is listed as a hazardous waste in 40 Code of Federal Regulations Part 261, Subpart D.

(2) If the waste is not listed as a hazardous waste in 40 Code of Federal Regulations Part 261, Subpart D, he or she must then determine whether the waste is identified in 40 Code of Federal Regulations Part 261, Subpart C, by either:

(A) testing the waste according to methods set forth in 40 Code of Federal Regulations Part 261, Subpart C, or according to an equivalent method approved by the administrator under 40 Code of Federal Regulations, §260.21; or

(B) applying knowledge of the hazardous characteristic of the waste in light of the materials or process used.

§336.63. EPA Identification Numbers.

(a) A generator must not store, process, dispose of, transport, or offer for transportation, hazardous waste without having received an Environmental Protection Agency (EPA) identification number.

(b) A generator must not offer hazardous waste to transporters or to storage, processing, or disposal facilities that have not received an EPA identification number.

§336.65. Packaging. Before transporting hazardous waste or offering hazardous waste for transportation off-site, a generator must package the waste in accordance with the applicable Department of Transportation regulations on packaging under 49 Code of Federal Regulations Parts 173, 178, and 179.

§336.66. Labeling. Before transporting or offering hazardous waste for transportation off-site, a generator must label each package in accordance with applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations Part 172.

§336.67. Marking.

(a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations Part 172.

(b) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 Code of Federal Regulations §172.304:

Hazardous Waste—
Federal law prohibits improper disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency. Generator's name and address _____
Manifest document number_____

§336.68. Placarding. Before transporting or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 Code of Federal Regulations Part 172, Subpart F.

§336.69. Accumulation Time.

(a) A generator may accumulate hazardous waste on-site without a permit for 90 days or less, provided that:

(1) the waste is placed in containers and the generator complies with the provisions adopted by reference in §336.112(a)(8) of this title (relating to Standards), or the waste is placed in tanks, and the generator complies with the requirements adopted by reference in §336.112(a)(9) of this title (relating to Standards), except 40 Code of Federal Regulations §265.193,

(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

(3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, hazardous waste; and

(4) the generator complies with the requirements for owners or operators contained in 40 Code of Federal Regulations Part 265, Subparts C and D, as incorporated by reference in §336.112 of this title (relating to Standards), 40 Code of Federal Regulations §265.16, and §336.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(b) A generator who accumulates hazardous waste for more than 90 days is an

operator of a hazardous waste storage facility and is subject to the requirements of this chapter applicable to such owners and operators, unless he has been granted an extension to the 90-day period. Such extension may be granted by the commission if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this title (Relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) applicable to generators of Class I waste.

(d) A generator may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 Code of Federal Regulations §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit and without complying with subsection (a) of this section provided he:

(1) complies with 40 Code of Federal Regulations §§265.171, 265.172, and 265.173(a); and

(2) marks his containers either with the words "hazardous waste" or with other words that identify the contents of the containers.

(e) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 40 Code of Federal Regulations §261.33(e) in excess of the amounts listed in subsection (d) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this section or other applicable provisions of this chapter. During the three-day period, the generator must continue to comply with subsection (d) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

§336.70. Record-keeping.

(a) A generator of hazardous waste must keep records of any test results, waste analyses, or other determinations made in accordance with §336.62 of this title (relating to Hazardous Waste Determination) for at least three years from the date that the waste was last sent to an on-site or off-site storage, processing or disposal facility.

(b) The generator shall keep a copy of each annual report and exception report required by this title for a period of at least three years from the due date of the report.

(c) The periods of record retention required by subsections (a) and (b) of this section are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the executive director.

§336.71. Annual Reporting. Any generator who stores, processes, or disposes of hazardous waste on-site shall prepare and submit a single copy of an annual report to the executive director by January 21 of each year. The annual report must cover facility activities during the previous calendar year and must include the following information:

(1) the Environmental Protection Agency (EPA) identification number, name, and address of the generator;

(2) the calendar year covered by the report;

(3) a description and the quantity of each hazardous waste generated during the year and a description and the quantity of the hazardous waste stored, processed, or disposed of at each facility component during the year;

(4) the method of processing, storage, or disposal for each hazardous waste, as described by codes in Appendix I, Table 2, Handling Code for Storage, Processing, and Disposal Methods, of 40 Code of Federal Regulations Parts 264 and 265;

(5) monitoring data under §336.117 (a)(2)(B) and (C) and (b)(2) of this title (relating to Recordkeeping and Reporting), where required;

(6) the most recent closure cost estimated under the financial requirements adopted by reference in §336.112(a)(7) of this title (relating to Standards) and for disposal facilities, the most recent postclosure cost estimate under the financial requirements adopted by reference in §336.112(a)(7) of this title (relating to Standards);

(7) a description of the efforts undertaken during the year to reduce the volume and toxicity of waste generated;

(8) a description of the changes in volume and toxicity of waste actually achieved during the year in comparison to previous years to the extent such information is available for years prior to 1984; and

(9) the certification signed by the generator or his or her authorized representative.

§336.73. Additional Reporting. The executive director may require generators to furnish additional reports concerning the quantities and disposition of wastes identified or listed in 40 Code of Federal Regulations Part 261, Subparts C and D.

§336.74. Notification Requirements for Interstate Shipments. In the case of interstate shipments of hazardous waste for which a manifest has not been returned within 45 days of acceptance of the waste by the initial transporter, the generator shall notify the appropriate regulatory agency of the state in which the designated facility is located and the appropriate regulatory agency of the state in which the shipment may have been delivered. If a state required to be notified under this section has not received interim or final authorization pursuant to the Resource Conservation and Recovery Act of 1976, §3006, the generator shall notify the administrator that the manifest has not been returned.

§336.75. International Shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section.

(b) When shipping hazardous waste outside the United States, the generator must:

(1) require that the foreign consignee confirm the delivery of the waste in the foreign country. A copy of the manifest signed by the foreign consignee may be used for this purpose; and

(2) meet the requirements under §336.10(b) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste) for the manifest, except that:

(A) in the place of the name, address, and Environmental Protection Agency (EPA) identification number of the designated facility, the name and address of the foreign consignee must be used; and

(B) the generator must identify the point of departure from the United States through which waste must travel before entering a foreign country. This information must be placed in the item labeled "special handling instructions and additional information" on the manifest; and

(3) when exporting hazardous waste to a foreign country, notify the administrator pursuant to 40 Code of Federal Regulations §262.50 in writing four weeks before the initial shipment of hazardous waste to each country in each calendar year.

(c) A generator must submit an exception report to the executive director if:

(1) he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter; or

(2) within 90 days from the date the waste was accepted by the initial transporter, the generator has not received written confirmation from the foreign consignee that the hazardous waste was received.

(d) When importing hazardous waste into the state from a foreign country, a person must meet the requirements of §336.10(b) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste) for the manifest except that:

(1) in place of the generator's name, address, and EPA identification number, the name and address of the foreign generator and the importer's name, address, and

EPA identification number must be used; and

(2) in place of the generator's signature on the certification statement, the U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter.

§336.76. Farmers. A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with this chapter for those wastes provided that he triple rinses each emptied pesticide container in accordance with §336.41(f)(2)(C) of this title (relating to Purpose, Scope, and Applicability) and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

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TRD-8601889 James K. Rourke, Jr.
General Counsel
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For further information, please call (512) 463-8070.

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Subchapter D. Standards Applicable to Transporters of Hazardous Waste

★31 TAC §§336.91-336.94

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 Water Code and other laws of this state and to establish and approve all general policy of the commission. These sections are also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, 4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.91. Scope.

(a) This subchapter establishes standards for transporters transporting hazardous waste to off-site storage, processing, or disposal facilities. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) This subchapter does not apply to on-site transportation of hazardous waste by generators or by owners or operators of storage, processing, or disposal facilities.

(c) A transporter of hazardous waste must also comply with any standards applicable to generators of hazardous waste if he:

(1) transports hazardous waste into the state from a foreign country; or

(2) mixes hazardous waste of different Department of Transportation shipping descriptions by placing them into a single container.

(d) Transporters who store hazardous waste are owners or operators of storage facilities and, as such, are also subject to the permit requirements and storage standards contained in this chapter.

§336.92. EPA Identification Number. A transporter must not transport hazardous wastes without having received an Environmental Protection Agency (EPA) identification number.

§336.93. Hazardous Waste Discharges.

(a) In the event of a discharge of hazardous waste during transportation, the transporter shall notify the commission as soon as possible and not later than 24 hours after the occurrence, according to the provisions of the Texas Water Code, §26.039, and the procedures set out in the State Oil and Hazardous Substances Spill Contingency Plan, and also take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge).

(b) If a discharge of hazardous waste occurs during transportation and a commission official acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

(c) An air, rail, highway, or water transporter who has discharged hazardous waste must also:

(1) give notice, if required by 49 Code of Federal Regulations §171.15, to the National Response Center ((800) 424-8802 or (202) 426-2675); and

(2) report in writing as required by 49 Code of Federal Regulations §171.16 to the Director, Office of Hazardous Waste Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 Code of Federal Regulations §153.203 for oil and hazardous substances.

(e) A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by the commission so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

§336.94. Transfer Facility Requirements.

(a) Unless the executive director determines that a permit should be required in order to protect human health and the environment, a transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of §336.65 of this title (relating to Packaging) at a transfer facility for a period of 10 days or less is not subject to the requirement for a permit under §336.2 of this title (relating to Permit Required), with respect to the storage of those wastes provided that the transporter complies with the following sections:

(1) 40 Code of Federal Regulations §265.14 (relating to Security);

(2) 40 Code of Federal Regulations §265.15 (relating to General Inspection Requirements);

(3) 40 Code of Federal Regulations §265.16 (relating to Personnel Training);

(4) 40 Code of Federal Regulations Part 265, Subpart C;

(5) 40 Code of Federal Regulations Part 265, Subpart D (except §265.56(j)), and §336.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator.);

(6) 40 Code of Federal Regulations Part 265, Subpart I.

(b) The executive director may require a permit for that portion of a facility otherwise exempted from that requirement under subsection (a) of this section, with respect to the storage of hazardous waste in containers, if the facility's operation also includes other storage and processing of hazardous waste which is not exempt under subsection (a) of this section.

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TRD-8601892 James K. Rourke, Jr.
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Texas Water Commission

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

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Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities.

★31 TAC §§336.111-336.126

These 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 this state, and to establish and approve all general policy of the commission. These sections are also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.111. Purpose, Scope, and Applicability. The purpose of this subchapter is to establish minimum requirements that define the acceptable management of hazardous waste prior to the issuance or denial of a hazardous waste permit and until certification of final closure or, if the facility is subject to postclosure requirements, until postclosure responsibilities are fulfilled. This subchapter applies to owners and operators of hazardous waste storage, processing, or disposal facilities.

§336.112. Standards.

(a) Except to the extent that they are clearly inconsistent with the express provisions of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the rules of the commission (including the provisions set forth in this subchapter), the following regulations contained in 40 Code of Federal Regulations Part 265 (including all appendices to Part 265) which are in effect as of October 1, 1985, are adopted by reference:

(1) Subpart B—General Facility Standards;

(2) Subpart C—Preparedness and Prevention;

(3) Subpart D—Contingency Plan and Emergency Procedures, except 40 Code of Federal Regulations §265.56(d);

(4) Subpart E—Manifest System, Recordkeeping, and Reporting, except 40 Code of Federal Regulations §§265.71, 265.72, 265.75, 265.76, and 265.77.

(5) Subpart F—Groundwater Monitoring, except 40 Code of Federal Regulations §265.90 and §265.94;

(6) Subpart G—Closure and Postclosure, except 40 Code of Federal Regulations §265.112(c) and (d) and §265.118 (c) and (d);

(7) Subpart H—Financial Requirements;

(8) Subpart I—Use and Management of Containers;

(9) Subpart J—Tanks;

(10) Subpart K—Surface Impoundments;

(11) Subpart L—Waste Piles, except 40 Code of Federal Regulations §265.253;

(12) Subpart M—Land Treatment, except 40 Code of Federal Regulations §§265.272, 265.279, and 265.280;

(13) Subpart N—Landfills, except 40 Code of Federal Regulations §§265.302, 265.314, and 265.315;

(14) Subpart O—Incinerators;

(15) Subpart P—Thermal Treatment; and

(16) Subpart Q—Chemical, Physical, and Biological Treatment.

(b) Where there is a reference in the Environmental Protection Agency (EPA) regulations adopted by reference in this section to the regional administrator, the reference is more properly made, for purposes of state law, to the executive director of the Texas Water Commission or to the Texas Water Commission, consistent with the organization of the agency as set forth in the Texas Water Code, Chapter 5, Subchapter B. Where there is a reference in the EPA regulations to the term "treatment," the reference is more properly made, for purposes of state law, to the term "processing." A copy of 40 Code of Federal Regulations Part 265 is available for inspection at the library of the Texas Water Commission, located on the fifth floor of the Stephen F. Austin State Office Building, 1700 North Congress, Austin.

§336.113. Reporting of Emergency Situations by Emergency Coordinator. If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, he must report his findings as follows.

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate local officials decide whether local areas should be evacuated.

(2) He must immediately notify the commission according to procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The report must include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and place of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known;

(E) the extent of injuries, if any; and

(F) the possible hazards to human health or the environment outside the facility.

§336.114. Reporting Requirements.

(a) An owner or operator required to file a monthly summary under §336.15(b) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) shall include the following information in that report:

(1) the EPA identification number, name, and address of the facility;

(2) the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the month; for imported shipments, the report must give the name and address of the foreign generator;

(3) a description and the quantity of each hazardous waste the facility received during the month, listed according to the EPA identification number of each generator;

(4) the certification signed by the owner or operator of the facility or his authorized representative.

(b) The owner or operator must prepare and submit a single copy of an annual report to the executive director by January 21 of each year. The report shall include the following information:

(1) the EPA identification number, name, and address of the facility;

(2) the calendar year covered by the report;

(3) monitoring data under §336.117 (a)(2)(B) and (C) and (b)(2) of this title (relating to Recordkeeping and Reporting), where required;

(4) the most recent closure cost estimated under 40 Code of Federal Regulations §265.142 and for disposal facilities, the most recent postclosure cost estimate under 40 Code of Federal Regulations §265.144; and

(5) the certification signed by the owner or operator of the facility or his authorized representative.

§336.115. Additional Reports. In addition to submitting the annual report and waste reports described in §336.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities) and §336.114 of this title (relating

to Reporting Requirements), the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations §265.56(j);

(2) groundwater contamination and monitoring data as specified in 40 Code of Federal Regulations §265.93 and §336.117 of this title (relating to Recordkeeping and Reporting); and

(3) facility closure as specified in 40 Code of Federal Regulations §265.115.

§336.116. Applicability of Groundwater Monitoring Requirements.

(a) On November 19, 1981, the owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste must implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as provided in subsection (c) of this section.

(b) Except as provided in subsections (c) and (d) of this section, the owner or operator must install, operate, and maintain a groundwater monitoring system which meets the requirements of 40 Code of Federal Regulations §265.91, and must comply with 40 Code of Federal Regulations §265.92 and §265.93, and §336.117 of this title (relating to Recordkeeping and Reporting). This groundwater monitoring program must be carried out during the active life of the facility, and for disposal facilities during the postclosure care period as well.

(c) All or part of the groundwater monitoring requirements of this subchapter may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells (domestic, industrial, or agricultural) or to surface water. This demonstration must be in writing and must be kept at the facility. This demonstration must be certified by a qualified geologist or geotechnical engineer and must establish the following:

(1) the potential for migration of hazardous waste constituents from the facility to the uppermost aquifer, by an evaluation of:

(A) a water balance of precipitation, evapotranspiration, runoff, and infiltration; and

(B) unsaturated zone characteristics (i.e., geologic materials, physical properties, and depth to ground water); and

(2) the potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water, by an evaluation of:

(A) saturated zone characteristics (i.e., geologic materials, physical properties, and rate of groundwater flow); and

(B) the proximity of the facility to water supply wells or surface water.

(d) If an owner or operator assumes (or knows) that groundwater monitoring of indicator parameters in accordance with 40 Code of Federal Regulations §265.91 and §265.92 would show statistically significant increases (or decreases in the case of pH) when evaluated under 40 Code of Federal Regulations §265.93(b), he may install, operate, and maintain an alternate groundwater monitoring system (other than the one described in 40 Code of Federal Regulations §265.91 and §265.92). If the owner or operator does decide to use an alternate groundwater monitoring system he must:

(1) prior to November 19, 1981, submit to the executive director a specific plan certified by a qualified geologist or geotechnical engineer which satisfies the requirements of 40 Code of Federal Regulations §265.93(d)(3), for an alternate groundwater monitoring system;

(2) prior to November 19, 1981, initiate the determinations specified in 40 Code of Federal Regulations §265.93(d)(4);

(3) prepare and submit a written report in accordance with 40 Code of Federal Regulations §265.93(d)(5);

(4) continue to make the determinations specified in 40 Code of Federal Regulations §265.93(d)(4) on a quarterly basis until final closure of the facility; and

(5) comply with the recordkeeping and reporting requirements in §336.117 of this title (relating to Recordkeeping and Reporting).

(e) The groundwater monitoring requirements of this subchapter may be waived with respect to any surface impoundment that:

(1) is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristic under 40 Code of Federal Regulations Part 261.22 or are listed as hazardous wastes in 40 Code of Federal Regulations Part 261, Subpart D, only for this reason; and

(2) contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstrations must establish, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

(f) For owners and operators who have not established background concentrations or values in accordance with 40 Code of Federal Regulations §265.92(c) by November 19, 1982, the executive director may require the implementation of a groundwater assessment plan under 40 Code of Federal Regulations §265.93, whenever he determines that existing data indicates that there is a substantial likelihood that hazardous waste or hazardous constituents from the facility have entered the uppermost aquifer.

§336.117. Recordkeeping and Reporting.

(a) Unless the groundwater is monitored to satisfy the requirements of 40 Code of Federal Regulations §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses required in 40 Code of Federal Regulations §265.92(c) and (d), the associated groundwater surface elevations required in 40 Code of Federal Regulations §265.92(e), and the evaluations required in §336.93(b) of this title (relating to Hazardoud Waste Discharges) throughout the active life of the facility, and, for disposal facilities, throughout the postclosure care period as well; and

(2) report the following groundwater monitoring information to the executive director:

(A) during the first year, when initial background concentrations are being established for the facility, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(1) for each groundwater monitoring well within 15 days after completing each quarterly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III of 40 Code of Federal Regulations Part 265;

(B) quarterly, during the initial year of ground water monitoring, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(2) and (3) for each groundwater monitoring well. Annually thereafter, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under 40 Code of Federal Regulations §265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with 40 Code of Federal Regulations §265.93(c)(1). During the active life of the facility, this information must be submitted as part of the annual report required under §336.114 of this title (relating to Reporting Requirements). In addition, concentration of the groundwater quality parameters listed in 40 Code of Federal Regulations §265.92(b)(2) shall be reported annually;

(C) as a part of the annual report required under §336.114 of this title (relating to Reporting Requirements), results of the evaluation of groundwater surface elevations under 40 Code of Federal Regulations §265.93 (f), and a description of the response to that evaluation where applicable.

(b) If the groundwater is monitored to satisfy the requirements of 40 Code of Federal Regulations §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses and evaluations specified in the plan which satisfies the requirements of 40 Code of Federal Regulations §265.93(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the postclosure care period as well; and

(2) annually, until final closure of the facility, submit to the executive director a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period. This report must be submitted as part of the annual report required under §336.114 of this title (relating to Reporting Requirements).

(c) The owner or operator shall submit, upon request of the executive director, the following static information for each groundwater monitoring well:

(1) date of well construction;

(2) total depth of well (based on mean sea level);

(3) type of well (trench lysimeter, piezometer, well cluster, multiple screen, pressure vacuum, lysimeter);

(4) latitude/longitude (based on United States geological survey topographic map);

(5) geologic age of aquifer sampled;

(6) aquifer name/geologic formation and age.

(d) The owner or operator shall submit, upon request of the executive director, the following information on each sampling event for each groundwater monitoring well sampled:

(1) date of observation;

(2) depth to water level (based upon mean sea level);

(3) sample collection method (i.e. pumped well, bailer, probe, air-lift pump, jetted, peristaltic pump, centrifugal pump, or pitcher pump);

(4) depth to the top of the sample interval which is measured in the number of feet below the land surface datum (LSD);

(5) depth to the bottom of the sample interval which is measured in feet below the LSD.

§336.118. Closure Plan; Submission and Approval of Plan.

(a) The owner or operator must submit his closure plan to the executive director at least 180 days before the date he expects to begin closure. The owner or operator must submit his closure plan to the executive director no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, §3008, as amended, or the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, to cease receiving wastes or close.

(b) The date when closure commenced should be within 30 days after the date on which the owner or operator expects to receive the final volume of wastes.

(c) The executive director will provide the owner or operator and the public, through newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The executive director will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of receipt. If the executive director does not approve the plan, the owner or operator must modify the plan or submit a new plan within 30 days. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved closure plan. The executive director's decision must assure that the approved closure plan is consistent with 40 Code of Federal Regulations §265.111, and §§265.113-265.115, and the applicable closure requirements contained in this chapter for specific waste management methods. A copy of this modified plan must be mailed to the owner or operator. If the owner or operator plans to begin closure before November 19, 1981, he must submit the closure plan by May 19, 1981.

§336.119. Postclosure Plan; Submission and Approval of Plan.

(a) The owner or operator of a disposal facility must submit his postclosure plan to the executive director at least 180 days before the date he expects to begin closure. The date when he expects to begin closure should be immediately after the date on which he expects to receive the final volume of wastes. The owner or operator must submit his closure plan to the executive director no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, §3008, as amended, or the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, to cease receiving wastes or close.

(b) The date when closure commences should be within 30 days after the date on which the owner or operator expects to receive the final volume of wastes.

(c) The executive director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan, including modification of the 30-year postclosure period required in 40 Code of Federal Regulations §265.117 within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the postclosure plan. The executive director will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments, and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of its receipt. If the executive director does not approve the plan, the owner or operator must modify the plan or submit a new plan for approval within 30 days. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved postclosure plan. The executive director must base his decision upon the criteria required of petitions under 40 Code of Federal Regulations §265.118(f)(1)(i). A copy of this modified plan must be mailed to the owner or operator If an owner or operator plans to begin closure before November 19, 1981, he must submit the postclosure plan by May 19, 1981.

§336.120. Containment for Waste Piles. If leachate or run-off from a pile is a hazardous waste, then either:

(1) the pile must be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage; the owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 100-year storm; the owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100-year storm; and collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously to maintain design capacity of the system;

(2) the pile is managed such that:

(A) the pile must be protected from precipitation and run-on by some other means; and

(B) no liquids or wastes containing free liquids may be placed in the pile.

§336.121. General Operating Requirements (Land Treatment Facilities).

(a) Hazardous waste must not be placed in or on a land treatment facility unless the waste can be made less hazardous or nonhazardous by biological degradation or chemical reactions occurring in or on the soil.

(b) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portions of the facility during peak discharge from at least a 100-year storm.

(c) The owner or operator must design, construct, operate, and maintain a run-off management system capable of collecting and controlling a water volume at least equivalent to a 24-hour, 100-year storm.

(d) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(e) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

§336.122. Recordkeeping. The owner of a land treatment facility must keep records of the application dates, application rates, quantities, and location of each hazardous waste placed in the facility, in the operating record required in 40 Code of Federal Regulations §265.73 of this title (relating to Operating Record).

§336.123. Closure and Postclosure (Land Treatment Facilities).

(a) In the closure plan under 40 Code of Federal Regulations §265.112 and the postclosure plan under 40 Code of Federal Regulations §265.118, the owner or operator must address the following objectives and indicate how they will be achieved:

(1) control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

(2) control of the release of contaminated run-off from the facility into surface water;

(3) control of the release of airborne particulate contaminants caused by wind erosion; and

(4) compliance with 40 Code of Federal Regulations §265.276, concerning the growth of food-chain crops.

(b) The owner or operator must consider at least the following factors addressing the closure and postclosure care objectives of subsection (a) of this section:

(1) type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

(2) the mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to groundwater, surface water, and drinking water sources);

(4) climate, including amount, frequency, and pH or precipitation;

(5) geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(6) unsaturated zone monitoring information obtained under 40 Code of Federal Regulations §265.278; and

(7) type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(c) The owner or operator must consider at least the following methods in addressing the closure and postclosure care objectives of subsection (a) of this section:

(1) removal of contaminated soils;

(2) placement of a final cover, considering:

(A) functions of the cover (e.g., infiltration control, erosion and run-off control, and wind erosion control); and

(B) characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover;

(3) collection and treatment run-off;

(4) diversion structures to prevent surface water run-on from entering the treated area; and

(5) monitoring of soil, soil-pore water, and groundwater.

(d) In addition to the requirements of 40 Code of Federal Regulations Part 265, Subpart G, relating to closure and postclosure, §336.118 of this title (relating to Closure Plan; Submission and Approval of Plan) and §336.119 of this title (relating to Postclosure Plan; Submission and Approval Plan), during the closure period, the owner or operator of a land treatment facility must:

(1) continue unsaturated zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

(2) maintain the run-on control system required under §336.121(b) of this title (relating to General Operating Requirements (Land Treatment Facilities));

(3) maintain the run-off management system required under §336.121(c) of this title (relating to General Operating Requirements (Land Treatment Facilities)); and

(4) control wind dispersal of particulate matter which may be subject to wind dispersal.

(e) For the purpose of complying with 40 Code of Federal Regulations §265.115 (relating to Certification of Closure), when closure is completed, the owner or operator may submit to the executive director certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(f) In addition to the requirements of 40 Code of Federal Regulations §265.117 (relating to Postclosure Care and Use Of Property), during the postclosure care period the owner or operator of a land treatment unit must:

(1) continue soil-pore monitoring by collecting and analyzing samples in a manner and frequency specified in the postclosure plan;

(2) restrict access to the unit as appropriate for its postclosure use;

(3) assure that growth of food chain crops complies with 40 Code of Federal Regulations §265.276 (relating to Food Chain Crops); and

(4) control wind dispersal of hazardous waste.

§336.124. General Operating Requirements (Landfills).

(a) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 100-year storm.

(b) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume resulting from a 24-hour, 100-year storm.

(c) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(d) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind must cover or otherwise manage the landfill so that wind dispersal of the hazardous waste is controlled.

(e) As required by 40 Code of Federal Regulations §265.13, the waste analysis plan must include analyses needed to comply with 40 Code of Federal Regulations §265.312 (relating to Special Requirements for Ignitable or Reactive Waste) and 40 Code of Federal Regulations §265.313 (relating to Special Requirements for Incompatible Wastes). As required by 40 Code of Federal Regulations §265.73 (relating to Operating Record), the owner or operator must place the results of these analyses in the operating record of the facility.

§336.125. Special Requirements for Bulk and Containerized Waste.

(a) Bulk or containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if prior to disposal, the liquid waste or waste containing free liquids is processed or stabilized, chemically or physically (e.g., by

mixing with an absorbent solid), so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not absorbents have been added) in any landfill is prohibited.

(c) A container holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

(1) the container is designed to hold liquids or free liquids for use other than storage, such as a capacitor or battery;

(2) the container is very small, such as an ampule; or

(3) the container is disposed of in accordance with 40 Code of Federal Regulations §265.316.

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods. (EPA Publication SW-846).

(e) The date for compliance with subsection(a) of this section is November 19, 1981. The date for compliance with subsection (c) of this section is March 22, 1982.

(f) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the executive director or the executive director determines that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions).

§336.126. Special Requirements for Containers.

(a) An empty container must be crushed flat, shredded, or similarly reduced in volume before it is buried beneath the surface of a landfill.

(b) Owners or operators must be in compliance with this section by November 19, 1981.

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

TRD-8601893 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.

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Subchapter F. Permitting Standards for Owners and Operators, Hazardous Waste, Storage, Processing or Disposal Facility

★31 TAC §§336.151-336.177

These 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 this state and to establish and approve all general policy of the commission. These sections are also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.151. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is to establish minimum standards to define the acceptable management of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste, pursuant to the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, and in the evaluation of an investigation report to implement groundwater protection requirements relating to compliance monitoring and corrective action; and in the evaluation of corrective action measures to be instituted pursuant to §336.167 of this title (relating to Corrective Action for Solid Waste Management Units). For facilities that store, process, or dispose of industrial solid waste, in addition to hazardous waste, nothing herein shall be construed to restrict or abridge the commission's authority to implement the provisions of the Texas Water Code, Chapter 26, and §336.4 of this title (relating to General Prohibitions), with respect to those activities.

(b) The standards in this subchapter apply to owners and operators of all facilities which process, store, or dispose of hazardous waste, except as specifically provided for in §336.41 of this title (relating to Purpose, Scope, and Applicability).

§336.152. Standards.

(a) Except to the extent that they are clearly inconsistent with the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the rules of the commission (including the provisions set forth in this subchapter), the following regulations contained in 40 Code of Federal Regulations Part 264 (including all appendices to Part 264), which are in effect as of October 1, 1985, are adopted by reference:

(1) Subpart B—General Facility Standards;

(2) Subpart C—Preparedness and Prevention;

(3) Subpart D—Contingency Plan and Emergency Procedures, except 40 Code of Federal Regulations §264.56(d);

(4) Subpart E—Manifest System, Recordkeeping, and Reporting, except 40 Code of Federal Regulations §§264.71, 264.72, 264.75, 264.76, and 264.77;

(5) Subpart G—Closure and Postclosure;

(6) Subpart H—Financial Requirements;

(7) Subpart I—Use and Management of Containers;

(8) Subpart J—Tanks;

(9) Subpart K—Surface Impoundments, except 40 Code of Federal Regulations §264.221 and §264.228;

(10) Subpart L—Waste Piles, except 40 Code of Federal Regulations §264.251;

(11) Subpart M—Land Treatment, except 40 Code of Federal Regulations §264.273 and §264.280;

(12) Subpart N—Landfills, except 40 Code of Federal Regulations §§264.301, 264.310, 264.314, and 264.315;

(13) Subpart O—Incinerators.

(b) The provisions of 40 Code of Federal Regulations §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§336.201-336.206 of this title (relating to Location Standards for Hazardous Waste Storage, Processing, or Disposal). A copy of 40 Code of Federal Regulations §264.18(b) is available for inspection at the library of the Texas Water Commission, located on the fifth floor of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin.

(c) Where there is reference in the Environmental Protection Agency regulations adopted by reference in this section to the regional administrator, the reference is more properly made, for purposes of state law, to

the executive director of the Texas Water Commission or the commission, consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5, Subchapter B. Where there is a reference in the Environmental Protection Agency regulations to the term "treatment," the reference is more properly made, for purposes of state law, to the term "processing." A copy of 40 Code of Federal Regulations Part 264 is available for inspection at the library of the Texas Water Commission, located on the fifth floor of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin.

§336.153. Reporting of Emergency Situations by Emergency Coordinator. If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health or the environment outside the facility, he must report his findings as follows.

(1) If his assessment indicates that evacuation of local areas may be advisable, he must immediately notify appropriate local authorities. He must be available to help appropriate local officials decide whether local areas should be evacuated.

(2) He must immediately notify the commission according to procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The report must include:

(A) name and telephone number of reporter;

(B) name and address of facility;

(C) time and place of incident (e.g., release, fire);

(D) name and quantity of material(s) involved, to the extent known;

(E) the extent of injuries, if any; and

(F) the possible hazards to human health, or the environment outside the facility.

§336.154. Reporting Requirements for Owners and Operators.

(a) An owner or operator required to file a monthly summary under §336.15(b) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) shall include the following information in that report:

(1) the EPA identification number, name, and address of the facility;

(2) the EPA identification number of each hazardous waste generator from which the facility received a hazardous waste during the month for imported shipments, the report must give the name and address of the foreign generator;

(3) a description and the quantity of each hazardous waste the facility received during the month, listed according to the EPA identification number of each generator;

(4) the method of storage, processing, and disposal for each hazardous waste; and

(5) the certification signed by the owner or operator of the facility or his authorized representative.

(b) The owner or operator of a facility where hazardous waste is processed, stored, or disposed of on-site must prepare and submit a single copy of an annual report to the executive director by January 21 of each year. The report shall include the calendar year covered by the report and the information stated in subsection (a) of this section, except that required by subsection (a)(2) of this section.

§336.155. Additional Reports. In addition to submitting the annual report and waste reports described in §336.15 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), the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations §264.56(j);

(2) facility closure as specified in 40 Code of Federal Regulations §264.115;

(3) as otherwise required by 40 Code of Federal Regulations, Part 264, Subparts F and K-N.

§336.156. Applicability of Groundwater Monitoring and Response.

(a) Except as provided in subsection (b) of this section, the rules pertaining to groundwater monitoring and response apply to owners and operators of facilities that process, store, or dispose of hazardous waste.

(1) The owner or operator must satisfy those requirements of paragraph (2) of this subsection for all wastes (or constituents thereof) contained in any such waste management unit at the facility, regardless of the time at which waste was placed in the units.

(2) All solid waste management units must comply with the requirements in §336.167 of this title (relating to Corrective Action for Solid Waste Management Units). A surface impoundment, waste pile, and land treatment unit as landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a regulated unit) must comply with the requirements of §§336.157-336.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program), in lieu of §336.167 of this title (relating to Corrective Action for Solid Waste Management Units) for purposes of detecting, characterizing, and responding to release to the uppermost aquifer. The financial responsibility requirements of §336.167 of this title (relating to Corrective Action for Solid Waste Management Units) apply to regulated units.

(b) The owner or operator's regulated unit or units are not subject to regulation for releases into the uppermost aquifer under this section and §§336.157-336.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) if:

(1) he is exempted under 40 Code of Federal Regulations §264.1;

(2) he operates a unit which the commission finds:

(A) is an engineered structure;

(B) does not receive or contain liquid waste or waste containing free liquids;

(C) is designed and operated to exclude liquid, precipitation, and other run-on and run-off;

(D) has both inner and outer layers of containment enclosing the waste;

(E) has a leak detection system built into each containment layer for which continuing operation and maintenance will be provided during the active life of the unit and the closure and postclosure care periods; and

(F) to a reasonable degree of certainty, will not allow hazardous constituents to migrate beyond the outer containment layer prior to the end of the postclosure care period.

(3) the commission finds, pursuant to 40 Code of Federal Regulations §264.280 (d), that the treatment zone of a land treatment unit that qualifies as a regulated unit does not contain levels of hazardous constituents that are above background levels of those constituents by an amount that is statistically significant, and if an unsaturated zone monitoring program meeting the requirements of 40 Codes of Federal Regulations §264.278 has not shown a statistically significant increase in hazardous constituents below the treatment zone during the operating life of the unit. An exemption under this paragraph can only relieve an owner or operator of responsibility to meet the requirements of this subchapter relating to groundwater monitoring and response during the postclosure care period; or

(4) the commission finds that there is no potential for migration of liquid from a regulated unit to the uppermost aquifer during the active life of the regulated unit (including the closure period) and the postclosure care period specified under 40 Code of Federal Regulations §264.117. This demonstration must be certified by a qualified geologist or geotechnical engineer. In order to provide an adequate margin of safety in the prediction of potential migration of liquid, the owner or operator must base any

predictions on assumptions that maximize the rate of liquid migration;

(5) he designs and operates a pile in compliance with 40 Code of Federal Regulations §264.250(c).

(c) This section and §§336.157-336.166 of this title (relating to Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) apply during the active life of the regulated unit (including the closure period). After closure of the regulated unit, these sections:

(1) do not apply if all waste, waste residues, contaminated containment system components, and contaminated subsoils are removed or decontaminated at closure;

(2) apply during the postclosure care period under 40 Code of Federal Regulations §264.117 if the owner or operator is conducting a detection monitoring program under §336.164 of this title (relating to Detection Monitoring Program); or

(3) apply during the compliance period under §336.162 of this title (relating to Compliance Period) if the owner or operator is 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).

§336.157. Required Programs.

(a) Owners and operators subject to §336.156 of this title (relating to Applicability of Groundwater Monitoring and Response); this section and §§336.158-336.166 of this title (relating to Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program) must conduct a monitoring and response program as follows.

(1) Whenever hazardous constituents under §336.159 of this title (relating to Hazardous Constituents) from a regulated unit are detected at the compliance point under §336.161 of this title (relating to Point of Compliance), the owner or operator must institute a compliance monitoring program under §336.165 of this title (relating to Compliance Monitoring Program).

(2) Whenever the groundwater protection standard under §336.158 of this title (relating to Groundwater Protection Standard) is exceeded, the owner or operator must institute a corrective action program under §336.166 of this title (relating to Corrective Action Program).

(3) Whenever hazardous constituents under §336.159 of this title (relating to Hazardous Constituents) from a regulated unit exceed concentration limits under §336.160 of this title (relating to Concentration Limits) in groundwater between the compliance point under §336.161 of this title (relating to Point of Compliance) and the downgradient facility property boundary, the owner or operator must institute a corrective action program under §336.166 of this title (relating to Corrective Action Program).

(4) In all other cases, the owner or operator must institute a detection monitoring program under §336.164 of this title (relating to Detection Monitoring Program).

(b) The commission will specify in the facility permit or in a compliance plan the specific elements of the monitoring and response program. The commission may include one or more of the programs identified in subsection (a) of this section in the facility permit or in a compliance plan as may be necessary to protect human health and the environment and will specify the circumstances under which each of the programs will be required. The commission will establish the programs specified in subsections (a)(1)-(3) of this section in a compliance plan. If the owner or operator is not otherwise subject to compliance monitoring, the detection monitoring program will be established in the facility permit. In deciding whether to require the owner or operator to be prepared to institute a particular program, the commission will consider the potential adverse effects on human health and the environment that might occur before final administrative action to incorporate such a program could be taken.

§336.158. Groundwater Protection Standard. The owner or operator must comply with conditions specified in the facility permit that are designed to ensure that Hazardous constituents under §336.159 of this title (relating to Hazardous Constituents) entering the groundwater from a regulated unit do not exceed the concentration limits under §336.160 of this title (relating to Concentration Limits) in the uppermost aquifer underlying the waste management area beyond the point of compliance under §336.161 of this title (relating to Point of Compliance) during the compliance period under §336.162 of this title (relating to Compliance Period). The commission will establish this groundwater protection standard in the compliance plan when hazardous constituents have entered the groundwater from a regulated unit.

§336.159. Hazardous Constituents.

(a) The commission will specify in the compliance plan the hazardous constituents to which the groundwater protection standard of §336.158 of this title (relating to Groundwater Protection Standard) applies. Hazardous constituents are constituents identified in Appendix VIII of 40 Code of Federal Regulations Part 261 that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the commission has excluded them under subsection (b) of this section.

(b) The commission will exclude an Appendix VIII constituent from the list of hazardous constituents specified in the compliance plan if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to grant an exemption, the commission will consider the following:

(1) potentially adverse effects on groundwater quality, considering:

(A) the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity of groundwater and the direction of groundwater flow;

(D) the proximity and withdrawal rates of groundwater users;

(E) the current and future uses of groundwater in the area;

(F) the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) the potential for health risks caused by human exposure to waste constituents;

(H) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(I) the persistence and permanence of the potentially adverse effects; and

(2) potentially adverse effects on hydraulically connected surface water quality, considering:

(A) the volume and physical and chemical characteristics of the waste in the regulated unit;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity and quality of groundwater, and the direction of groundwater flow;

(D) the patterns of rainfall in the region;

(E) the proximity of the regulated unit to surface waters;

(F) the current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) the existing quality of surface water, including other sources of contamination and the cumulative impact on surface water quality;

(H) the potential for health risks caused by human exposure to waste constituents;

(I) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(J) the persistence and permanence of the potentially adverse effects.

(c) In making any determination under subsection (b) of this section about the use of groundwater in the area around the facility, the commission will consider any identification of underground sources of drinking water and exempted aquifers made under §331.13 of this title (relating to Exempted Aquifer).

§336.160. Concentration Limits.

(a) The commission will specify in the compliance plan concentration limits in the groundwater for hazardous constituents established under §336.159 of this title (relating to Hazardous Constituents). The concentration of a hazardous constituent:

(1) must not exceed the background level of that constituent in the groundwater at the time that limit is specified in the plan; or

(2) for any of the constituents listed in Table 1 of subsection (b)(1) of this section, must not exceed the respective value given in that table if the background level of the constituent is below the value given in Table 1; or

(3) must not exceed an alternate limit established by the commission under subsection (b) of this section.

(b) The commission will establish an alternate concentration limit for a hazardous constituent if it finds that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In establishing alternate concentration limits, the commission will consider the following:

(1) potentially adverse effects on groundwater quality, considering the maximum concentration of constituents for groundwater protection described in the following Table 1 and:

Table 1
Maximum Concentration of Constituents for Groundwater Protection

Constituent	Maximum Concentration[1]
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1, 2, 3, 4, 10.10-hexachloro-1, 7-epoxy-1, 4, 4a, 5, 6, 7, 8, 9a-octahydro-1, 4-endo, endo5, 8-dimethano naphthalene)	0.0002
Lindane (1, 2, 3, 4, 5, 6-hexachlorocyclohexane, gamma isomar)	0.004
Methoxychlor (1, 1,1-Trichloro-2, 2-bis (p-methoxyphenylethane)	0.1
Toxaphene (C(--H(--Cl, Technical chlorinated camphene, 67-69 percent chlorine)	0.005
2-4-D (2, 4-Dichlorophenoxyacetic acid)	0.1
2, 4, 5-TP Silvex (2, 4, 5-Trichlorophenoxypropionic acid	0.01

[1]Milligrams per liter.

(A) the physical and chemical characteristics of the waste in the regulated unit, including its potential for migration;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity of groundwater and the direction of groundwater flow;

(D) the proximity and withdrawal rates of groundwater users;

(E) the current and future uses of groundwater in the area;

(F) the existing quality of groundwater, including other sources of contamination and their cumulative impact on the groundwater quality;

(G) the potential for health risks caused by human exposure to waste constituents;

(H) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(I) the persistence and permanence of the potentially adverse effects; and

(2) potentially adverse effects on hydraulically connected surface-water quality, considering:

(A) the volume and physical and chemical characteristics of the waste in the regulated unit;

(B) the hydrogeological characteristics of the facility and surrounding land;

(C) the quantity and quality of groundwater, and the direction of groundwater flow;

(D) the patterns of rainfall in the region;

(E) the proximity of the regulated unit to surface waters;

(F) the current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(G) the existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality;

(H) the potential for health risks caused by human exposure to waste constituents;

(I) the potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(J) the persistence and permanence of the potentially adverse effects.

(c) In making any determination under subsection (b) of this section about the use of groundwater in the area around the facility, the commission will consider any identification of underground sources of drinking water and exempted aquifers made under §331.13 of this title (relating to Exempted Aquifer).

§336.161. Point of Compliance.

(a) The commission will specify in the facility permit the point of compliance at which the groundwater protection standard of §336.158 of this title (relating to Groundwater Protection Standard) applies and at which monitoring must be conducted. The point of compliance is a vertical surface located at the hydraulically downgradient limit of the waste management area that extends down into the uppermost aquifer underlying the regulated units.

(b) The waste management area is the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit.

(1) the waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit;

(2) if the facility contains more than one regulated unit, the waste management area may be described in the following manner:

(A) by an imaginary line circumscribing the several regulated units; or

(B) by an imaginary line circumscribing geographically proximate regulated units; or

(C) by an imaginary line circumscribing individually regulated units; or

(D) a combination of subparagraphs (B) and (C) of this paragraph.

§336.162. Compliance Period.

(a) The commission will specify in the compliance plan the compliance period during which the groundwater protection standard of §336.158 of this title (relating to Groundwater Protection Standard) applies. The compliance period is the number of years equal to the active life of the waste management area (including any waste management activity prior to permitting and the closure period).

(b) The compliance period begins when the owner or operator initiates a compliance monitoring program meeting the requirements of §336.165 of this title (relating to Compliance Monitoring Program).

(c) If the owner or operator is engaged in a corrective action program at the end of the compliance period specified in subsection (a) of this section, the compliance period is extended until the owner or operator can demonstrate that the groundwater protection standard of §336.158 of this title (relating to Groundwater Protection Standard) has not been exceeded for a period of three consecutive years.

§336.163. General Groundwater Monitoring Requirements. If a facility contains more than one waste management area, separate groundwater monitoring systems must be installed. The owner or operator must comply with the following requirements for any groundwater monitoring program developed to satisfy §§336.164-336.166 of this title (relating to Detection Monitor-

ing Program, Compliance Monitoring Program; and Corrective Action Program).

(1) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(A) represent the quality of background water that has not been affected by leakage from a regulated unit; and

(B) represent the quality of groundwater passing the point of compliance.

(2) If a waste management area contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit, provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(3) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring-well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater.

(4) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum the program must include procedures and techniques for:

(A) sample collection;

(B) sample preservation and shipment;

(C) analytical procedures; and

(D) chain of custody control.

(5) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(6) The groundwater monitoring program must include a determination of the groundwater surface elevation each time groundwater is sampled.

(7) Where appropriate, the groundwater monitoring program must establish background groundwater quality for each of the hazardous constituents or monitoring parameters or constituents specified in the permit.

(A) In the detection monitoring program under §336.164 of this title (relating to Detection Monitoring Program), background groundwater quality for a monitoring parameter or constituent must be based on data from quarterly sampling of wells upgradient from the waste management area for one year.

(B) In the compliance monitoring program under §336.165 of this title (relating to Compliance Monitoring Program), background groundwater quality for a hazardous constituent must be based on data from upgradient wells that:

(i) is available before the compliance plan is approved;

(ii) accounts for measurement errors in sampling and analysis; and

(iii) accounts, to the extent feasible, for seasonal fluctuations in background groundwater quality if such fluctuations are expected to affect the concentration of the hazardous constituent.

(C) Background quality may be based on sampling of wells that are not upgradient from the waste management area where:

(i) hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; or

(ii) sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells

(D) In developing the data base used to determine a background value for each parameter or constituent, the owner or operator must take a minimum of one sample from each well and a minimum of four samples from the entire system used to determine background groundwater quality each time the system is sampled.

(8) The owner or operator must use the following statistical procedure in determining whether background values or concentration limits have been exceeded.

(A) If, in a detection monitoring program, the level of a constituent at the compliance point is to be compared to the constituent's background value and that background value has a sample coefficient of variation less than 1.00:

(i) the owner or operator must take at least four portions from a sample at each well at the compliance point and determine whether the difference between the mean of the constituent at each well (using all portions taken) and the background value for the constituent is significant at the 0.05 level using the Cochran's Approximation to the Behrens-Fisher Student's t-test as described in 40 Code of Federal Regulations Part 264, Appendix IV. If the test indicates that the difference is significant, the owner or operator must repeat the same procedure (with at least the same number of portions as used in the first test) with a fresh sample from the monitoring well. If this second round of analyses indicates that the difference is significant, the owner or operator must conclude that a statistically significant change has occurred; or

(ii) the owner or operator may use an equivalent statistical procedure for determining whether a statistically significant change has occurred. The commission will specify such a procedure in the facility permit if it finds that the alternative procedure reasonably balances the probability of falsely identifying a noncontaminating regulated unit and the probability of failing to identify a contaminating regulated unit in a manner that is comparable to that of the statistical procedure described in paragraph (8)(A)(i) of this section.

(B) In all other situations in a detection monitoring program and in a compliance monitoring program, the owner or operator must use a statistical procedure providing reasonable confidence that the migration of hazardous constituents from a regulated unit into and through the aquifer will be indicated. The commission will specify a statistical procedure in the facility permit or a compliance plan that it finds:

(i) is appropriate for the distribution of the data used to establish background values or concentration limits; and

(ii) provides a reasonable balance between the probability of falsely identifying a noncontaminating regulated unit and the probability of failing to identify a contaminating regulated unit.

§336.164. Detection Monitoring Program. An owner or operator required to establish a detection monitoring program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The commission will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(A) the types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(B) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(C) the detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(D) the concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §336.161 of this title (relating to Point of Compliance). The groundwater monitoring system must comply with §336.163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) The owner or operator must establish a background value for each monitoring parameter or constituent specified in the permit pursuant to paragraph (1) of this section. The permit will specify the background values for each parameter or specify the pro-

cedures to be used to calculate the background values.

(A) The owner or operator must comply with §336.163(7) of this title (relating to General Groundwater Monitoring Requirements) in developing the data base used to determine background values.

(B) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under §336.163(8) of this title (relating to General Groundwater Monitoring Requirements).

(C) In taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with §336.163(1)(A), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(4) The owner or operator must determine groundwater quality at each monitoring well at the compliance point at least semiannually during the active life of a regulated unit (including the closure period) and the postclosure care period. The owner or operator must express the groundwater quality at each monitoring well in a form necessary for the determination of statistically significant increases under §336.163(8) of this title (relating to General Groundwater Monitoring Requirements).

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(6) The owner or operator must use procedures and methods for sampling and analysis that meet the requirements of §336.163 of this title (relating to General Groundwater Monitoring Requirements).

(7) The owner or operator must determine whether there is a statistically significant increase over background values for any parameter or constituent specified in the permit pursuant to paragraph (1) of this section each time he determines groundwater quality at the compliance point under paragraph (4) of this section.

(A) In determining whether a statistically significant increase has occurred, the owner or operator must compare the groundwater quality at each monitoring well at the compliance point for each parameter or constituent to the background value for that parameter or constituent, according to the statistical procedure specified in the permit under §336.163(8) of this title (relating to General Groundwater Monitoring Requirements).

(B) The owner or operator must determine whether there has been a statistically significant increase at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The commission will specify that time period in the facility permit, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(8) If the owner or operator determines, pursuant to paragraph (7) of this section, that there is a statistically significant increase for parameters or constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what parameters of constituents have shown statistically significant increases;

(B) immediately sample the groundwater in all monitoring wells and determine the concentration of all constituents identified in Appendix VIII of 40 Code of Federal Regulations Part 261 that are present in groundwater and indicate if there are other unidentified compounds present in the groundwater;

(C) establish a background value for each Appendix VIII constituent that has been found at the compliance point under paragraph (8)(B) of this section, as follows:

(i) the owner or operator must comply with §336.163(7) of this title (relating to General Groundwater Monitoring Requirements) in developing the data base used to determine background values;

(ii) the owner or operator must express background values in a form necessary for the determination of statistically significant increases under §336.163(8) of this title (relating to General Groundwater Monitoring Requirements); and

(iii) in taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with §336.163(1)(A), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements);

(D) within 90 days, submit to the executive director an investigation report describing a compliance monitoring program meeting the requirements of §336.165 of this title (relating to Compliance Monitoring Program). The report must include the following information:

(i) an identification of the concentration of any Appendix VIII constituents found in the groundwater at each monitoring well at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of §365.165 of this title (relating to Compliance Monitoring Program);

(iii) any proposed changes to the monitoring frequency, sampling, and analysis procedures or methods, or statistical procedures used at the facility necessary to meet the requirements of §336.165 of this title (relating to Compliance Monitoring Program);

(iv) for each hazardous constituent found at the compliance point, a proposed concentration limit under §336.160 (a) (1) or (2) of this title (relating to Concentration Limits), or a notice of intent to seek a variance under §336.160(b) of this title (relating to Concentration Limits); and

(E) within 180 days, submit to the executive director:

(i) all data necessary to justify any variance sought under §336.160(b) of this title (relating to Concentration Limits); and

(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirements of §336.166 of this title (relating to Corrective Action Program), unless:

(I) all hazardous constituents identified under paragraph (8)(B) of this section are listed in Table 1 of §336.160 of this title (relating to Concentration Limits) and their concentrations do not exceed the respective values given in that table; or

(II) the owner or operator has sought a variance under §336.160 of this title (relating to Concentration Limits) for every hazardous constituent identified under paragraph (8)(B) of this section.

(9) If the owner or operator determines, pursuant to paragraph (7) of this section, that there is a statistically significant increase of parameters or constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he may demonstrate that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting an investigation report under paragraph (8)(D) of this section, he is not relieved of the requirement to submit an investigation report within the time specified in paragraph (8)(D) of this section, unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(A) notify the executive director in writing within seven days of determining a statistically significant increase at the compliance point that he intends to make a demonstration under this subparagraph;

(B) within 90 days, submit a report to the executive director which demonstrates that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation;

(C) within 90 days, submit to the executive director an application for a permit amendment to make any appropriate changes to the detection monitoring program at the facility; and

(D) continue to monitor in accordance with the detection monitoring program established under this section.

(10) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this

section, he must, within 90 days, submit an application for a permit modification to make any appropriate changes to the program.

(11) The owner or operator must assure that monitoring and corrective action measures necessary to achieve compliance with the groundwater protection standard under §336.158 of this title (relating to Groundwater Protection Standard) are taken during the term of the permit and within the compliance schedule established in the compliance plan.

§336.165. Compliance Monitoring Program. An owner or operator required to establish a compliance monitoring program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under §336.158 of this title (relating to Groundwater Protection Standard). The commission will specify the groundwater protection standard in the compliance plan, including:

(A) a list of the hazardous constituents identified under §336.159 of this title (relating to Hazardous Constituents);

(B) concentration limits under §336.160 of this title (relating to Concentration Limits) for each of those hazardous constituents;

(C) the compliance point under §336.161 of this title (relating to Point of Compliance), and

(D) the compliance period under §336.162 of this title (relating to Compliance Period)

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §336.161 of this title (relating to Point of Compliance). The groundwater monitoring system must comply with §336.163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) Where a concentration limit established under paragraph (1)(B) of this section is based on background groundwater quality, the commission will specify the concentration limit in the plan as follows.

(A) If there is a high temporal correlation between upgradient and compliance point concentrations of the hazardous constituents, the owner or operator may establish the concentration limit through sampling at upgradient wells each time groundwater is sampled at the compliance point. The commission will specify the procedures used for determining the concentration limit in this manner in the plan. In all other cases, the concentration limit will be the mean of the pooled data on the concentration of the hazardous constituent.

(B) If a hazardous constituent is identified on Table 1 under §336.160 of this title (relating to Concentration Limits) and the difference between the respective concentration limit in Table 1 and the background value of that constituent under §336.163(7) of this title (relating to General Groundwater Monitoring Requirements) is not statistically significant, the owner or operator must use the background value of the constituent as the concentration limit. In determining whether this difference is statistically significant, the owner or operator must use a statistical procedure providing reasonable confidence that a real difference will be indicated. The statistical procedure must:

(i) be appropriate for the distribution of the data used to establish background values; and

(ii) provide a reasonable balance between the probability of falsely identifying a significant difference and the probability of failing to identify a significant difference.

(C) The owner or operator must:

(i) comply with §336.163(7) of this title (relating to General Groundwater Monitoring Requirements) in developing the data base used to determine background values;

(ii) express background values in a form necessary for the determination of statistically significant increases under §336.163(8) of this title (relating to General Groundwater Monitoring Requirements); and

(iii) use a groundwater monitoring system that complies with §336.163(1)(A), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(4) The owner or operator must determine the concentration of hazardous constituents in groundwater at each monitoring well at the compliance point at least quarterly during the compliance period. The owner or operator must express the concentration at each monitoring well in a form necessary for the determination of statistically significant increases under §336.163(8) of this title (relating to General Groundwater Monitoring Requirements).

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(6) The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix VIII of 40 Code of Federal Regulations Part 261 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer. If the owner or operator finds Appendix VIII constituents in the groundwater that are not identified in the permit as hazardous constituents, the owner or operator must report the concentrations of these additional constituents to the executive director within seven days after completion of the analysis.

(7) The owner or operator must use procedures and methods for sampling and analysis that meet the requirements of §336.163(4) and (5) of this title (relating to General Groundwater Monitoring Requirements).

(8) The owner or operator must determine whether there is a statistically significant increase over the concentration limits for any hazardous constituents specified in the permit pursuant to paragraph (1) of this section each time he determines the concentration of hazardous constituents in groundwater at the compliance point.

(A) In determining whether a statistically significant increase has occurred, the owner or operator must compare the groundwater quality at each monitoring well at the compliance point for each hazardous constituent to the concentration limit for that constituent according to the statistical procedure specified in the plan under §336.163(8) of this title (relating to General Groundwater Monitoring Requirements).

(B) The owner or operator must determine whether there has been a statistically significant increase at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The commission will specify that time period in the plan after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(9) If the owner or operator determines, pursuant to paragraph (8) of this section, that the groundwater protection standard is being exceeded at any monitoring well at the point of compliance, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded;

(B) submit to the executive director an investigation report to establish a corrective action program meeting the requirements of §336.166 of this title (relating to Corrective Action Program) within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the executive director under §336.164(8)(E) of this title (relating to Detection Monitoring Program). The report must, at a minimum include the following information:

(i) a detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under paragraph (1) of this section; and

(ii) a plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(10) If the owner or operator determines pursuant to paragraph (8) of this section, that the groundwater protection standard is being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regu-

lated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. While the owner or operator may make a demonstration under this paragraph in addition to or in lieu of submitting an investigation report under paragraph (9)(B) of this section, he is not relieved of the requirement to submit an investigation report application within the time specified in paragraph (9)(B) of this section unless the demonstration made under this section successfully shows that a source other than a regulated unit caused the increase or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this subsection, the owner or operator must:

(A) notify the executive director in writing within seven days that he intends to make a demonstration under this section;

(B) within 90 days submit a report to the executive director which demonstrates that a source other than a regulated unit cause the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(C) within 90 days, submit to the executive director an application for a compliance plan amendment to make any appropriate changes to the compliance monitoring program at the facility; and

(D) continue to monitor in accord with the compliance monitoring program established under this section.

(11) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

(12) The owner or operator must assure that monitoring and corrective action measures necessary to achieve compliance with the groundwater protection standard under §336.158 of this title (relating to Groundwater Protection Standard) are taken during the term of the permit.

(13) The owner or operator shall prepare an annual summary to include the groundwater quality data and groundwater flow rate and direction required under paragraphs (4) and (5) of this section. Such annual summary shall be submitted to the executive director by January 21 of each year on forms provided or approved by the executive director. An owner or operator must keep a copy of the summary for a period of at least three years from the due date of the summary. The period of record retention required by this section is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

§336.166. Corrective Action Program. An owner or operator required to establish a correction action program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under §336.158 of this title (relating to Groundwater Protection Standard). The commission will specify the groundwater protection standard in the compliance plan, including:

(A) a list of the hazardous constituents identified under §336.159 of this title (relating to Hazardous Constituents);

(B) concentration limits under §336.160 of this title (relating to Concentration Limits) for each of those hazardous constituents;

(C) the compliance point under §336.161 of this title (relating to Point of Compliance); and

(D) the compliance period under §336.162 of this title (relating to Compliance Period).

(2) The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The plan will specify the specific measures that will be taken.

(3) The owner or operator must begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The commission will specify that time period in the plan. If a compliance plan includes a corrective action program in addition to a compliance monitoring program, the plan will specify when the corrective action will begin and such a requirement will operate in lieu of §336.165 (9)(B) of this title (relating to Compliance Monitoring Program).

(4) In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under §336.165 of this title (relating to Compliance Monitoring Program) and must be as effective as that program in determining compliance with the groundwater protection standard under paragraph (5) of this section, where appropriate.

(5) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under §336.159 of this title (relating to Hazardous Constituents) that exceed concentration limits under §336.160 of this title (relating to Concentration Limits) in groundwater between the compliance point under §336.161 of this title (relating to Point of Compliance) and the downgradient facility property boundary. The plan will specify the measures to be taken.

(A) Corrective action measures under this section must be initiated and completed within a reasonable period of time considering the extent of contamination.

(B) Corrective action measures under this section may be terminated once the concentration of hazardous constituents under §336.159 of this title (relating to Hazardous Constituents) is reduced to levels below their respective concentration under §336.160 of this title (relating to Concentration Limits).

(6) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate, based on data from the groundwater monitoring program under paragraph (4) of this section, that the groundwater protection standard of §336.158 of this title (relating to Groundwater Protection Standard) has not been exceeded for a period of three consecutive years.

(7) The owner or operator must report in writing to the executive director on the effectiveness of the corrective action program. The owner or operator must submit these reports semi-annually.

(8) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

§336.167. Corrective Action for Solid Waste Management Units.

(a) The owner or operator of a facility seeking a permit for the processing, storage, or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) Corrective action will be specified in the compliance plan under §305.401 of this title (relating to Groundwater Compliance Plan). The plan will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit or plan) and assurances of financial responsibility for completing such corrective action.

§336.168. Design and Operating Requirements (Surface Impoundments).

(a) Any surface impoundment that is not covered by subsection (c) of this section or 40 Code of Federal Regulations §265.221

must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with §336.169 (a)(1)of this title (relating to Closure and Postclosure Care (Surface Impoundments)). For impoundments that will be closed in accordance with §336.169(a)(2) of this title (relating to Closure and Postclosure Care (Surface Impoundments)), the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(b) The owner or operator will be exempted from the requirements of subsections (a) and (i) of this section if the commission finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see §336.159 of this title (relating to Hazardous Constituents)) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new surface impoundment, each new surface impoundment unit at an existing facility, each replacement of an existing surface impoundment unit, and each lateral expansion of an existing surface impoundment unit must install two or more liners and a leachate collection system between such liners. The liners and leachate collection system must protect human health and the environment. The requirements of this subsection shall apply with respect to all waste received after the issuance of the permit. The requirement for the installation of two or more liners in this subsection may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any postclosure monitoring period), and a lower liner designed, operated, and constructed to prevent the migration of any constituent through such liner during such period. A lower liner shall be deemed to satisfy this requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1 X 10^{-7} centimeter per second.

(d) Subsection (c) of this section will not apply if the owner or operator demonstrates to the commission and the commission finds for such surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as such liners and leachate collection systems.

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in 40 Code of Federal Regulations §261.24, and is in compliance with either of the following requirements.

(1) The monofill:

(A) has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this subsection, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (c) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate postclosure requirements, including but not limited to groundwater monitoring and corrective action;

(B) is located more than one-quarter mile from an underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions); and

(C) in compliance with groundwater monitoring requirements of this subchapter; or

(2) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind, and wave action; rainfall; run-off, malfunctions of level controllers, alarms, and other equipment; and human error.

(g) A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(h) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(i) A surface impoundment (except for an existing portion of a surface impoundment) that will be closed in accordance with §336.169(a)(2) of this title (relating to Closure and Postclosure Care (Surface Impoundments)) must have an additional liner to that required in subsection (a) of this section which:

(1) prevents any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the postclosure care period; and

(2) minimizes the rate of migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water so as not to pose a substantial present or potential hazard to human health and the environment.

§336.169. Closure and Postclosure Care (Surface Impoundments).

(a) At closure, the owner or operator must:

(1) remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and

manage them as hazardous waste unless 40 Code of Federal Regulations §261.3(d) applies; or

(2) eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues; stabilize remaining wastes to a bearing capacity sufficient to support final cover; and cover the surface impoundment with a final cover designed and constructed to:

(A) provide long-term minimization of the migration of liquids through the closed impoundment;

(B) function with minimum maintenance,

(C) promote drainage and minimize erosion or abrasion of the final cover;

(D) accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with all postclosure requirements contained in 40 Code of Federal Regulations §§264.117-264.120, including maintenance and monitoring throughout the postclosure care period (specified in the permit under 40 Code of Federal Regulations §264.117). The owner or operator must:

(1) maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of §§336.156-336.166 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

(3) prevent run-on and run-off from eroding or otherwise damaging the final cover.

(c) If an owner or operator plans to close a surface impoundment in accordance with subsection (a)(1) of this section, and the impoundment does not comply with the liner requirements of §336.168(a) of this title (relating to Design and Operating Requirements (Surface Impoundments)) and is not exempt from them in accordance with §336.168 (b) of this title (relating to Design and Operating Requirements (Surface Impoundments)) then:

(1) the closure plan for the impoundment under 40 Code of Federal Regulations §264.112 must include both a plan for complying with subsection (a)(1) of this section and a contingent plan for complying with subsection (a)(2) of this section, in case not all contaminated subsoils can be practicably removed at closure; and the owner or operator must prepare a contingent postclosure plan under 40 Code of Federal Regulations §264.118 for complying with subsection (b) of this section, in case not all contaminated subsoils can be practicably removed at closure;

(2) the cost estimates calculated under 40 Code of Federal Regulations §264.142 and §264.144 for closure and postclosure care of an impoundment subject to this subsection must include the cost of complying with the contingent closure plan and the contingent postclosure plan, but are not required to include the cost of expected closure under subsection (a)(1) of this section.

§336.170. Design and Operating Requirements (Waste Piles).

(a) A waste pile (except for an existing portion of a waste pile) must have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility. The liner must be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) a leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The commission will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 centimeters (one foot). The leachate collection and removal system must be:

(A) constructed of materials that are:

(i) chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and,

(B) designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) The owner or operator will be exempted from the requirements of subsection (a) of this section if the commission finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 100-year storm.

(d) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(e) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(f) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the pile to control wind dispersal.

(g) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

§336.171. Design and Operating Requirements (Land Treatment Units). The commission will specify in the facility permit how the owner or operator will design, construct, operate, and maintain the land treatment unit in compliance with this section.

(1) The owner or operator must design, construct, operate, and maintain the unit to maximize the degradation, transformation, and immobilization of hazardous constituents in the treatment zone. The owner or operator must design, construct, operate, and maintain the unit in accord with

all design and operating conditions that were used in the treatment demonstration under 40 Code of Federal Regulations §264.272. At a minimum, the commission will specify the following in the facility permit:

(A) the rate and method of waste application to the treatment zone;

(B) measures to control soil pH;

(C) measures to enhance microbial or chemical reactions (e.g., fertilization, tilling); and

(D) measures to control the moisture content of the treatment zone.

(2) The owner or operator must design, construct, operate, and maintain the treatment zone to minimize run-off of hazardous constituents during the active life of the land treatment unit.

(3) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the treatment zone during peak discharge from at least a 100-year storm.

(4) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(5) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain the design capacity of the system.

(6) If the treatment zone contains particulate matter which may be subject to wind dispersal, the owner or operator must manage the unit to control wind dispersal.

(7) The owner or operator must inspect the unit weekly and after storms to detect evidence of:

(A) deterioration, malfunctions, or improper operation of run-on and run-off control systems; and

(B) improper functioning of wind dispersal control measures.

§336.172. Closure and Postclosure Care (Land Treatment Units).

(a) During the closure period, the owner or operator must:

(1) continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under §336.171(1) of this title (relating to Design and Operating Requirements (Land Treatment Units)), except to the extent such measures are inconsistent with paragraph (8) of this subsection.

(2) continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under §336.171 (3) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(3) maintain the run-on control system required under §336.171(3) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(4) maintain the run-off management system required under §336.171(4) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(5) control wind dispersal of hazardous waste if required under §336.171(6) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(6) continue to comply with any prohibitions or conditions concerning growth of food-chain crops under 40 Code of Federal Regulations §264.276;

(7) continue unsaturated zone monitoring in compliance with 40 Code of Federal Regulations §264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

(8) establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover must be capable of maintaining growth without extensive maintenance.

(b) For the purpose of complying with 40 Code of Federal Regulations §264.115, when closure is completed the owner or operator may submit to the executive director certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the postclosure care period, the owner or operator must:

(1) continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that such measures are consistent with other postclosure care activities;

(2) maintain a vegetative cover over closed portions of the facility;

(3) maintain the run-on control system required under §336.171(3) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(4) maintain the run-off management system required under §336.171(4) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(5) control wind dispersal of hazardous waste if required under §336.171(6) of this title (relating to Design and Operating Requirements (Land Treatment Units));

(6) continue to comply with any prohibition or conditions concerning growth of food-chain crops under 40 Code of Federal Regulations §264.276; and

(7) continue unsaturated zone monitoring in compliance with 40 Code of Federal Regulations §264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

(d) The owner or operator is not subject to regulation under subsections (a)(8) and (c) of this section if the commission finds that the level of hazardous constituents in the treatment zone does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in paragraph (3) of this subsection. The owner or operator may submit such a demonstration to the executive director at any time during the closure or postclosure care periods.

(1) the owner or operator must establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under 40 Code of Federal Regulations §264.271(b).

(A) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

(B) The owner or operator must express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under paragraph (3) of this subsection.

(2) In taking samples used in the determination of background and treatment zone values, the owner or operator must take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by solid waste or leakage from the treatment zone, and the soil within the treatment zone, respectively.

(3) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator must use a statistical procedure that:

(A) is appropriate for the distribution of the data used to establish background values; and

(B) provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(e) The owner or operator is not subject to regulation under §§336.156-336.166 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; and Corrective Action Program) if the commission finds that the owner or operator satisfies subsection (d) of this section and if

unsaturated zone monitoring under 40 Code of Federal Regulations §264.278 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

§336.173. Design and Operating Requirements (Landfills).

(a) Any landfill that is not covered by subsection (c) of this section or 40 Code of Federal Regulations §265.301(a) must have a liner system for all portions of the landfill (except for existing portions of such landfill). The liner system must have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner during the active life of the facility. The liner must be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) a liner that:

(A) prevents any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the postclosure care period; and

(B) minimizes the rate of migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water so as not to pose a substantial present or potential hazard to human health and the environment; and

(3) a leachate collection and removal system immediately above the top liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. The commission will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 centimeters (one foot). The leachate collection and removal system must be:

(A) constructed of materials that are:

(i) chemically resistant to the waste managed in the landfill and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(B) designed and operated to function without clogging through the scheduled closure of the landfill.

(b) The owner or operator will be exempted from the requirements of subsection (a) of this section if the commission finds, based on a demonstration by the owner or operator, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see §336.159 of this title (relating to Hazardous Constituents)) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the landfill and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new landfill, each new landfill unit at an existing facility, each replacement of an existing landfill unit, and each lateral expansion of an existing landfill unit must install two or more liners and a leachate collection system above and between the liners. The liners and leachate collection systems must protect human health and the environment. The requirement for the installation of two or more liners in this subsection may be satisfied by the installation of a top liner designed, operated and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any postclosure monitoring period), and a lower liner designed, operated and constructed to prevent the migration of any constituent through such liner during such period. A lower liner shall be deemed to satisfy this requirement if it is constructed of at least a three-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(d) Subsection (c) of this section will not apply if the owner or operator demonstrates to the commission and the commission finds for such landfill that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as such liners and leachate collection systems.

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the EP toxicity characteristics in 40 Code of Federal Regulations §261.24, and is in compliance with either paragraph (1) or (2) of this subsection:

(1) The monofill:

(A) has at least one liner for which there is no evidence that such liner is leaking;

(B) is located more than one-quarter mile from an underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions); and

(C) is in compliance with groundwater monitoring requirements of this subchapter.

(2) The owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the landfill during peak discharge from at least a 100-year storm.

(g) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(h) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(i) If the landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill to control wind dispersal.

(j) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

§336.174. Closure and Postclosure Care (Landfills).

(a) At final closure of the landfill or upon closure of any cell, the owner or operator must cover the landfill or cell with a final cover designed and constructed to:

(1) provide long-term minimization of migration of liquids through the closed landfill;

(2) function with minimum maintenance;

(3) promote drainage and minimize erosion or abrasion of the cover;

(4) accommodate settling and subsidence so that the cover's integrity is maintained; and

(5) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) After final closure, the owner or operator must comply with all postclosure requirements contained in 40 Code of Federal Regulations §§264.117-264.120, including maintenance and monitoring throughout the postclosure care period (specified in the permit under 40 Code of Federal Regulations §264.117). The owner or operator must:

(1) maintain the integrity and effectiveness of the final cover, including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) continue to operate the leachate collection and removal system until leachate is no longer detected;

(3) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of §§336.156-336.166 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; and Corrective Action Program);

(4) prevent run-on and run-off from eroding or otherwise damaging the final cover; and

(5) protect and maintain surveyed benchmarks used in complying with 40 Code of Federal Regulations §264.309.

§§336.175. Special Requirements for Bulk and Containerized Waste.

(a) Bulk or noncontainerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically (e.g., by mixing with an absorbent solid), so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not absorbents have been added) in any landfill is prohibited.

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in Test Methods for Evaluating Solid Wastes, Physical Chemical Methods. (EPA Publication SW-846)

(d) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited, unless the owner or operator of such landfill demonstrates to the commission, or the commission determines, that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains or may reasonably be anticipated to contain hazardous waste; and

(2) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions).

(d) Containers holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

(1) the container is very small, such as an ampule;

(2) the container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(3) the container is a lab pack as defined in 40 Code of Federal Regulations §264.316 and is disposed of in accordance with 40 Code of Federal Regulations §264.316.

§336.176. Special Requirements for Containers. Unless they are very small, such as an ampule, containers must be crushed, shredded, or similarly reduced in volume to the maximum extent practical before burial in a landfill.

§336.177. General Performance Standard. No person may cause, suffer, allow, or permit the storage, processing, or disposal of hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of hazardous waste, hazardous or non-hazardous constituents, or any other materials resulting from industrial solid waste activities, including but not limited to reaction products, into or adjacent to the waters in the state without specific authorization for such discharge from the Texas Water Commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health or welfare.

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

TRD-8601894 James K. Rourke, Jr.
General Counsel
Texas Water Commission

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

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Subchapter G. Location Standards for Hazardous Waste Storage, Processing, or Disposal

★31 TAC §§336.201-336.206

These new sections are 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 this state, and to establish and approve all general policy of the commission. These sections are also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.201. Purpose, Scope, and Applicability.

(a) This subchapter establishes minimum standards for the location of facilities used for the storage, processing, and disposal of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste. This subchapter applies to permit applications for new hazardous waste management facilities and areal expansions of existing hazardous waste management facilities filed on or after September 1, 1984. These sections do not apply to the following:

(1) permit applications submitted pursuant to §336.2(c) of this title (relating to Permit Required) and §336.43 (b) of this title (relating to Permit Required), including any revision submitted pursuant to §305.51 of this title (relating to Revision of Applications, for Hazardous Waste Permits); and

(2) permit applications filed pursuant to §336.2(a) of this title (relating to Permit Required) which have been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which have been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984.

(b) The purpose of this subchapter is to condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a site that reasonably minimizes possible contamination of surface water and groundwater; to define the characteristics that make

an area unsuitable for a hazardous waste management facility; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable, unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics. Nothing herein is intended to restrict or abrogate the commission's general authority under the Solid Waste Disposal Act to review site suitability for all facilities which manage municipal hazardous waste or industrial solid waste.

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

Aquifer—A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs. Portions of formations, such as clay beds, which are not capable of yielding a significant amount of groundwater to wells or springs are not aquifers.

Areal expansion of an existing facility—The enlargement of a land surface area of an existing hazardous waste management facility from that described in a solid waste permit authorizing the facility.

Existing hazardous waste management facility—Any facility used or proposed to be used for the storage, processing, or disposal of hazardous waste and which is authorized by a solid waste permit. Facilities identified in the following pending applications will also be considered existing hazardous waste management facilities pending final action on the application by the commission:

(A) an application submitted pursuant to §336.2(c) of this title (relating to Permit Required) and §336.43(b) of this title (relating to Permit Required), including any revisions made in accordance with §305.51 of this title (relating to Revision of Applications for Hazardous Waste Permits); or

(B) an application filed pursuant to §336.2(a) of this title (relating to Permit Required) which has been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which has been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984.

New hazardous waste management facility—Any facility to be used for the storage, processing, or disposal of hazardous waste and which is not an existing hazardous waste management facility.

One hundred-year floodplain—Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

Regional aquifer—An aquifer which has been identified by the Texas Water Commission as a major or minor aquifer. Major aquifers yield large quantities of water in large areas of the state. Minor aquifers yield large quantities of water in small areas of the state or small quantities of water in large areas of the state. (These aquifers are identified in Appendix B of the Texas Department of Water Resources Report No. 238).

Secondary containment—A system designed and constructed to collect rainfall runoff, to prevent rainfall run-on from outside the structure, and to contain waste spills, leaks, or discharges within the structure until such waste can be removed.

Sole-source aquifer—An aquifer designated pursuant to the Safe Drinking Water Act of 1974, §1424(e), which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health. The Edwards Aquifer has been designated a sole-source aquifer by the U. S. Environmental Protection Agency. The Edwards Aquifer Recharge Zone is specifically that area delineated on maps in the offices of the executive director.

Storage surface impoundment—A surface impoundment from which all wastes and waste-contaminated soils are removed at the time of closure of the impoundment.

Wetlands—Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

§336.203. Site Selection to Protect Groundwater or Surface Water. The commission may not issue a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility unless it finds that the proposed site, when evaluated in light of proposed design, construction, and operational features, reasonably minimizes possible contamination of surface water and groundwater. In making this determination, the commission shall consider the following factors:

(1) active geologic processes such as flooding, erosion, subsidence, submergence, and faulting;

(2) groundwater conditions such as groundwater flow rate, groundwater quality, length of flow path to points of discharge, and aquifer recharge or discharge conditions;

(3) soil conditions such as stratigraphic profile and complexity, hydraulic conductivity of strata, and separation distance from the facility to the aquifer and points of discharge to surface water; and

(4) climatological conditions.

§336.204. Unsuitable Site Characteristics.

(a) Storage or processing facilities (excluding storage surface impoundments).

(1) A storage or processing facility (excluding storage surface impoundments) may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A storage or processing facility (excluding storage surface impoundments) may not be located in wetlands.

(3) A storage or processing facility (excluding storage surface impoundments) may not be located on the recharge zone of a sole-source aquifer unless secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges.

(4) A storage or processing facility (excluding storage surface impoundments) may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the facility by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} centimeters per second (cm/sec), or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) secondary containment is provided to preclude migration to groundwater from spills, leaks, or discharges.

(5) A storage or processing facility (excluding storage surface impoundments) may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) secondary containment is provided to preclude migration to groundwater or surface water from spills, leaks, or discharges; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(b) Land treatment facilities.

(1) A land treatment facility may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A land treatment facility may not be located in wetlands.

(3) A land treatment facility may not be located in the recharge zone of a sole-source aquifer.

(4) A land treatment facility may not be located in areas overlying regional aquifers unless:

(A) it is an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate of the facility by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the treatment zone; or

(B) the regional aquifer is separated from the base of the treatment zone by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec, or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A land treatment facility may not be located in areas where soil units(s) within five feet of the treatment zone have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec, unless:

(A) it is in an area where the average annual evaporation exceeds average annual rainfall plus the hydraulic loading rate by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) A land treatment facility may not be located within 1,000 feet of an established residence, church, school, or dedicated public park which is in use at the time the notice of intent to file a permit application is filed with the commission, or if no such notice is filed, at the time the permit application is filed with the commission. This provision shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the commission as of September 1, 1985.

(c) Waste piles.

(1) A waste pile may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A waste pile may not be located in wetlands.

(3) A waste pile may not be located on the recharge zone of a sole-source aquifer.

(4) A waste pile may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) secondary containment is provided to preclude pollutant migration to groundwater from spills, leaks, or discharges.

(5) A waste pile may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) secondary containment is provided to preclude pollutant migration to groundwater or surface water from spills, leaks, or discharges; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(d) Storage surface impoundments.

(1) A storage surface impoundment may not be located in the 100-year floodplain unless it is designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A storage surface impoundment may not be located in wetlands.

(3) A storage surface impoundment may not be located on the recharge zone of a sole-source aquifer.

(4) A storage surface impoundment may not be located in areas overlying regional aquifers unless:

(A) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration; or

(B) the impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment.

(5) A storage surface impoundment may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) The impoundment is double-lined and has an intervening leak detection system or the facility has an equivalent design which provides commensurate or greater assurance of waste containment; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(e) Landfills. Any surface impoundment to be closed as a landfill (where wastes will remain after closure of the impoundment) is subject to the requirements for landfills.

(1) A landfill may not be located in the 100-year floodplain existing prior to site development except in areas with flood depths less than three feet. Any landfill within the 100-year floodplain must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood.

(2) A landfill may not be located in wetlands.

(3) A landfill may not be located on the recharge zone of a sole-source aquifer.

(4) A landfill may not be located in areas overlying regional aquifers unless:

(A) it is in an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches and the depth to the regional aquifer is greater than 100 feet from the base of the containment structure; or

(B) the regional aquifer is separated from the base of the containment structure by a minimum of 10 feet of material with a hydraulic conductivity toward the aquifer not greater than 10^{-7} cm/sec or a thicker interval of more permeable material which provides equivalent or greater retardation to pollutant migration.

(5) A landfill may not be located in areas where soil unit(s) within five feet of the containment structure have a Unified Soil Classification of GW, GP, GM, GC, SW, SP, or SM, or a hydraulic conductivity greater than 10^{-5} cm/sec unless:

(A) it is in an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(6) a landfill may not be located within 1,000 feet of an established residence, church, school, or dedicated public park which is in use at the time the notice of intent to file a permit application is filed with the commission, or if no such notice is filed, at the time the permit application is filed with the commission. This provision shall not apply to a facility for which a notice of intent to file an application, or an application, has been filed with the commission as of September 1, 1985.

(7) A landfill at which hazardous waste is received for a fee may not be located in the 100-year floodplain of a perennial stream, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, VO, or V1-30. This provision shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the commission as of September 1, 1985.

(f) Injection wells. The placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave is prohibited.

§336.205. Prohibition of Permit Issuance.

(a) The commission shall not issue a permit for a new hazardous waste management facility or an areal expansion of an existing facility if the facility or expansion does not meet the requirements of §336.204 of this title (relating to Unsuitable Site Characteristics).

(b) The commission shall not issue a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed of at the landfill.

(c) Nothing in this subchapter shall be construed to require the commission to issue a permit, notwithstanding a finding that the proposed facility would satisfy the requirements of §336.203 of this title (relating to Site Selection to Protect Groundwater or Surface Water) and notwithstanding the absence of site characteristics which would disqualify the site from permitting pursuant to §336.204 of this title (relating to Unsuitable Site Characteristics).

§336.206. Petitions for Rulemaking. Local governments may petition the commission for a rule which restricts or prohibits the siting of a new hazardous waste management facility in areas including, but not limited to,

those meeting one or more of the characteristics delineated in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c)(7), and §336.204 of this title (relating to Unsuitable Site Characteristics). Such petitions shall be submitted in writing and shall comply with the requirements of §301.59 of this title (relating to Petition for Adoption of Rules). No rule adopted by the commission under this section shall affect the siting of a new hazardous waste management facility if an application or a notice of intent to file an application with respect to such facility has been filed with the commission prior to the filing of a petition under this section.

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Subchapter H. Standards for the mangement of Specific Wastes and Specific Wastes and Specific Types of Facilities

Recyclable Materials Used in a Manner Constituting Disposal

★31 TAC §§336.211-336.214

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 Water Code and other laws of this state, and to establish and approve all general policy of the commission. The sections are also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate new sections consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§335.211. Applicability.

(a) The regulations of §§336.211-336.214 of this title (relating to Recyclable Materials Used in a Manner Constituting Disposal) apply to recyclable materials that are applied to or placed on the land:

(1) without mixing with any other substance(s);

(2) after mixing with any other substance(s), unless the recyclable material undergoes a chemical reaction so as to become inseparable from the other substance(s) by physical means; or

(3) after combination with any other substance(s) if the resulting combined material is not produced for the general public's use. These materials will be referred to in §§336.211-336.214 of this title (relating to Recyclable Materials Used in a Manner Constituting Disposal) as materials used in a manner that constitutes disposal.

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means. Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation.

§336.212. Standards Applicable to Generators and Transporters of Materials Used in a Manner That Constitutes Disposal. Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the applicable requirements of Subchapter A of this chapter (relating to Solid Waste and Municipal Hazardous Waste Management in General), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirement under §336.6 of this title (relating to Notification Requirements).

§336.213. Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users. Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), Chapter 273 of this title (relating to Procedures after Final Decision), and the notification requirement under §336.6 of this title (relating to Notification Requirements).

§336.214. Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal.

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management—General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), Chapter 273 of this title (relating to Procedures after Final Decision), and the notification requirement under §336.6 of this title (relating to Notification Requirements). These requirements do not apply to products which contain these recyclable materials under the provisions of §336.211(b) of this title (relating to Applicability).

(b) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability) for dust suppression or road treatment is prohibited.

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Hazardous Waste Burned for Energy Recovery

★31 TAC §§336.221-336.227

These 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 this state, and to establish and approve all general policy of the commission. These sections are also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.221. Applicability.

(a) The regulations of §§336.221-336.227 of this title (relating to Hazardous Waste Burned for Energy Recovery) apply to hazardous wastes that are burned for energy recovery in any boiler or industrial furnace that is not regulated under the provisions governing incinerators that are adopted by reference in §336.112(a)(14) of this title (relating to Standards), except as provided by subsection (b) of this section. Such hazardous wastes burned for energy recovery are termed "hazardous waste fuel." However, except as provided under §336.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), hazardous waste fuels produced from hazardous waste by blending or other processing by a person who neither generated the waste nor burns the fuel are not subject to regulation under this chapter.

(b) The following hazardous wastes are not regulated under §§336.221-336.227 of this title (relating to Hazardous Waste Burned for Energy Recovery):

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C;

(2) hazardous wastes that are exempt from regulation under the provisions of 40 Code of Federal Regulations §261.4 and hazardous wastes that are subject to the special requirements for small quantity generators under the provisions of §336.61(c) of this title (relating to Purpose, Scope, and Applicability).

§336.222. Prohibitions.

(a) Except as provided in subsection (b) of this section, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than 500,000 (based on the most recent census statistics), unless such kiln fully complies with regulations under this chapter that are applicable to incinerators.

(b) This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more of the characteristics of hazardous waste in 40 Code of Federal Regulations Part 261, Subpart C.

§336.223. Standards Applicable to Generators of Hazardous Waste Fuel.

(a) Generators of hazardous waste fuel are subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste), except that §336.227 of this title (relating to Conditional Exemption for Spent Materials and By-Products Exhibiting a Characteristic of Hazardous Waste) exempts certain spent materials and byproducts from these provisions.

(b) Generators who are marketers also must comply with §336.225 of this title (relating to Standards Applicable to Marketers of Hazardous Waste Fuel).

(c) Generators who are burners also must comply with §336.226 of this title (relating to Standards Applicable to Burners of Hazardous Waste Fuel).

§336.224. Standards Applicable to Transporters of Hazardous Waste Fuel.

(a) Transporters of hazardous waste fuel from generator to marketer, or from a generator to a burner, are subject to the requirements of Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), except that §336.227 of this title (relating to Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste) exempts certain spent materials and byproducts from these provisions.

(b) Transporters of hazardous waste fuel are not presently subject to regulation when they transport hazardous waste fuel from marketers, who are not also the generators of the waste, to burners or other marketers.

§336.225. Standards Applicable to Marketers of Hazardous Waste Fuel.

(a) Persons who market hazardous waste fuel are called marketers. Marketers include generators who market hazardous waste fuel directly to a burner, and persons who receive hazardous waste from generators and produce, process, or blend hazardous waste fuel from these hazardous wastes. Persons who distribute but do not process or blend hazardous waste fuel are also marketers, but are not presently subject to regulation.

(b) Marketers who are generators are subject to the requirements of §336.69 of this title (relating to Accumulation Time), or to Subchapter B of this chapter (relating to Hazardous Waste Management—General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), and Chapter 273 of this title (relating to Procedures after Final Decision), except as provided by §336.227 of this title (relating to Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste) for certain spent materials and byproducts.

(c) Marketers who receive hazardous wastes from generators, and produce, process, or blend hazardous waste fuel from these hazardous wastes, are subject to regulation under all applicable provisions of Subchapter B of this chapter (relating to Hazardous Waste Management—General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions),

Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), and Chapter 273 of this title (relating to Procedures after Final Decision), except as provided by §336.227 of this title (relating to Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste) for certain spent materials and byproducts.

(d) The following requirements apply to the labelling of fuel containing hazardous waste.

(1) Except as provided in paragraphs (2)-(4) of this subsection, after February 6, 1985, it shall be unlawful for any person who produces, distributes, or markets any fuel that contains a hazardous waste to distribute or market such fuel if the invoice or the bill of sale fails:

(A) to bear the following statement: "Warning: This fuel contains hazardous waste;" and

(B) to list the hazardous wastes contained therein. Such statement must be located in a conspicuous place on every such invoice or bill sale and must appear in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the invoice or bill of sale.

(2) This requirement does not apply to fuels produced from petroleum refining hazardous waste containing oil if;

(A) such materials are generated and reinserted on-site into the refining process;

(B) contaminants are removed; and

(C) such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a Standard Industrial Classification (SIC) number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) This requirement does not apply to fuels produced from oily materials resulting from normal petroleum refining production and transportation practices, if:

(A) contaminants are removed; and

(B) such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(4) This requirement does not apply to petroleum refinery hazardous wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more of the characteristics of hazardous waste in 40 Code of Federal Regulations Part 261, Subpart C.

§336.226. Standards Applicable to Burners of Hazardous Waste Fuel. Burners that store hazardous waste fuel prior to burning are subject to the requirements of §336.69 of this title (relating to Accumulation Time), or to all applicable requirements in Subchapter B of this chapter (relating to Hazardous Waste Management—General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), and Chapter 273 of this title (relating to Procedures after Final Decision), with respect to such storage, except as provided by §336.227 of this title (relating to Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste) for certain spent materials and byproducts.

§336.227. Conditional Exemption for Spent Materials and Byproducts Exhibiting a Characteristic of Hazardous Waste.

(a) Except as provided in subsection (b) of this section and §336.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), hazardous waste fuels that are spent materials and byproducts and that are hazardous only because they exhibit a characteristic of hazardous waste are not subject to the requirements of Subchapters A-F of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management-General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), and Chapter 273 of this title (relating to Procedures after Final Decision).

(b) This exemption does not apply when the spent material or byproduct is stored in a surface impoundment prior to burning.

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Recyclable Materials Utilized for Precious Metal Recovery

★31 TAC §336.241

The new section is 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 Water Code and other laws of this state, and to establish and approve all general policy of the commission. The new section is also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste, and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.241. Applicability and Requirements.

(a) The regulations of this section apply to recyclable materials that are reclaimed to recover economically significant amounts

of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport, or store recyclable materials that are regulated under this section are subject to the following requirements:

(1) §336.4 of this title (relating to General Prohibitions);

(2) §336.6 of this title (relating to Notification Requirements); and

(3) §§336.9-336.12 of this title (relating to Shipping and Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste; Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) for generators, transporters, or persons who store, as applicable.

(c) Persons who store recyclable materials that are regulated under this section shall keep the following records to document that they are not accumulating these materials speculatively, as defined in §336.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) records showing the volume of these materials stored at the beginning of the calendar year;

(2) the amount of these materials generated or received during the calendar year; and

(3) the amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under this section that are accumulated speculatively, as defined in §336.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), are subject to all applicable provisions of this chapter (excluding this subchapter), Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing Before the Full Commission), and Chapter 273 of this title (relating to Procedures after Final Decision).

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Spent Lead-Acid Batteries Being Reclaimed.

★31 TAC §336.251

The new section is 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 Water Code and other laws of this state and to establish and approve all general policy of the commission. The new section is also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.251. Applicability and Requirements.

(a) The regulations of this section apply to persons who reclaim spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, or who store spent batteries but do not reclaim them, are not subject to regulation under this chapter, Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), Chapter 273 of this title (relating to Procedures after Final Decision).

(b) Owners or operators of facilities that store spent batteries before reclaiming them are subject to the following requirements:

(1) all applicable provisions in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management—General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), except for the requirements in §336.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) and 40 Code of Federal Regulations §265.13; and

(2) all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits), Chapter 261 of this title (relating to Introductory Provisions), Chapter 263 of this title (relating to General Rules), Chapter 265 of this title (relating to Procedures before Public Hearing), Chapter 267 of this title (relating to Procedures during Public Hearing), Chapter 269 of this title (relating to Procedures after Public Hearing before an Examiner), Chapter 271 of this title (relating to Procedures after Public Hearing before the Full Commission), and Chapter 273 of this title (relating to Procedures after Final Decision).

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Subchapter I. Prohibition on Open Dumps

★31 TAC §§336.301-336.308

These 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 new sections necessary to carry out its powers and duties under the Water Code and other laws of this state and to establish and approve all general policy of the commission. The new sections are also adopted on an emergency basis under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate rules consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including rules relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect

to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities.

§336.301. Purpose. This purpose of this subchapter is to authorize the executive director to evaluate nonhazardous industrial solid waste land disposal facilities and practices in order to determine whether the facilities or practices constitute open dumps.

§336.302. Prohibitions.

(a) Any solid waste management practice or disposal of industrial solid waste which constitutes the open dumping of industrial solid waste is prohibited, except in the case of any practice or disposal of industrial solid waste under a timetable or schedule for compliance established under the Resource Conservation and Recovery Act of 1976, §4005(c), and §336.304 of this title (relating to Classification of Facilities).

(b) Where a schedule for compliance has not been established by the executive director, no person may cause, suffer, allow, or permit any activity of disposal of industrial solid waste at a facility which has been classified as an open dump by the executive director.

§336.303. Criteria for Classification of Solid Waste Disposal Facilities and Practices. Except to the extent that they are clearly inconsistent with the express provisions of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the rules of the commission, the regulations contained in 40 Code of Federal Regulations Part 257 are adopted by reference. The executive director will maintain in the offices of the commission a set of the regulations contained in 40 Code of Federal Regulations Part 257 and adopted by reference herein. The regulations may be examined in the Library of Texas Water Commission, Stephen F. Austin Building, 1700 North Congress, Austin.

§336.304. Classification of Facilities. The executive director may evaluate all existing solid waste disposal facilities, except those exempted under 40 Code of Federal Regulations §257.1, according to the criteria in 40 Code of Federal Regulations Part 257. The executive director shall classify as open dumps all facilities which fail to satisfy these criteria and shall prepare a list of those facilities. This list shall be submitted to the U.S. Environmental Protection Agency for inclusion in the open dump inventory under the Resource Conservation and Recovery Act of 1976, §4005.

§336.305. Upgrading or Closing of Open Dumps.

(a) All existing industrial solid waste disposal facilities which are classified as open dumps shall be upgraded or closed in accordance with measures specified by the commission so that the facility or practice no longer violates the criteria in 40 Code of Federal Regulations Part 257.

(b) The executive director may establish a timetable or schedule of compliance for any facility classified as an open dump where the facility owner or operator has demonstrated that other public or private alternatives to comply with the prohibition on open dumping have been considered and such alternatives to so comply cannot be utilized. The schedule of compliance shall specify a schedule of remedial measures and an enforceable sequence of actions leading to compliance within a reasonable time, not to exceed five years from the date of publication of the inventory under the Resource Conservation and Recovery Act of 1976, §4005.

(c) Nothing in this section precludes the executive director from seeking any relief deemed necessary for violation of this subchapter, any provision of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or any other regulations of the commission, nor does this section establish any prerequisite for seeking that relief.

§336.306. List of Interested or Affected Persons. The commission shall maintain a current list of agencies, organizations, and individuals affected by or interested in the state plan developed pursuant to the Resource Conservation and Recovery Act of 1976, Subtitle D, which shall include any parties that request to be on the list, the owner or operator of each facility classified as an open dump, and any other parties which the commission determines to be affected or interested in the plan.

§336.307. Notification of Classification by Commission.

(a) Upon determination by the commission that a facility or practice violates any of the criteria set forth in 40 Code of Federal Regulations Part 257 and should be in the open dump inventory under the Resource Conservation and Recovery Act of 1976, §4005(b), the owner or operator of such facility shall be so notified in writing by the commission at least 30 days prior to the initial submission of the classification to the U.S. Environmental Protection Agency. If the owner or operator wishes to contest that determination, he must so notify the commission within 20 days of the date of the notification and include any information indicating that the facility does not violate any of the criteria classification set forth in 40 Code of Federal Regulations Part 257. If the owner or operator fails to respond to the notification, or if the commission determines that the information provided by the owner or operator does not affect its initial determination, the commission shall forward the name of the facility to the U.S. Environmental Protection Agency for publication in the Federal Register. The commission may delete the name of a facility from the list to be forwarded to the U.S. Environmental Protection Agency if, in the opinion of the commission, the information presented by the owner or operator pursuant to this subsection shows that the facility or practice does not violate any of the criteria set forth in 40 Code of Federal Regulations Part 257.

(b) The commission shall also provide written notification of the availability of the results of any classifications pursuant to §336.304 of this title (relating to Classification of Facilities) to all other persons on the list required by §336.306 of this title (relating to List of Interested or Affected Persons) at least 30 days prior to the initial submission of any classifications to the U.S. Environmental Protection Agency.

§336.308. Complaints. To encourage public participation, the commission shall respond to complaints and other information received from the public which relate to any facility evaluated under this subchapter.

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

TRD-8601939 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.

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 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter E. Banking House and Other Facilities

★7 TAC §3.91

The State Finance Commission, Banking Section proposes new §3.91, concerning the establishment of remote facilities by banks domiciled in Texas. The recent amendment to Texas Civil Statutes, Article 342-903, provides for the establishment of an additional facility to be located within 20,000 feet of the central banking building. This proposed new section encompasses this statutory provision. This proposed new section was originally published in the December 27, 1985, issue of the *Texas Register* (10 TexReg 4494). It is withdrawn and reproposed to include suggestions made by people commenting on the original proposal.

Jorge A. Gutierrez, 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. Gutierrez 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 a clearer understanding in the banking industry of matters pertaining to the establishment and operations of drive-in/walk-up facilities and secured teller lobbies. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Jorge A. Gutierrez, General Counsel, Banking Department of Texas, 2601 North Lamar, Austin, Texas 78705.

The new section is proposed under Texas Civil Statutes, Article 342-113, which provide the banking section of the Finance Commission with the authority to promulgate rules which are not inconsistent with the Constitution and statutes of this state.

§3.91. Drive-In/Walk-Up Facilities.

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

(1) Facility—A single, continuous parcel of land, owned or leased by the bank, over which the bank has sole and exclusive control, or within which the bank leases space over which the bank has sole and exclusive control.

(2) Secured teller lobby—An area used by the bank to offer banking service in which the teller work area is secure from the public such that there is some physical barrier between the teller and the general public.

(3) Boundary—The outer limit of the facility.

(4) Bank—State, national, or private bank.

(b) Establishment of a drive-in/walk-up facility. A bank may establish drive-in/walk-up facilities pursuant to Texas Civil Statutes, Article 342-903(c) and (d), no more than 10,500 and 20,000 feet (one at each distance is permitted), from its central building. Notice must be given to the banking commissioner of Texas prior to the establishment of a facility. The bank may use more than one building or structure located on each facility if the buildings or structures are incidental to each other in the provision of banking services. It is the department's view that they must be no more than 500 feet apart at their nearest walls to be considered incidental. Any banking services may be offered at the drive-in/walk-up facility or in a building tht has a secured teller lobby. All forms of banking services are not required to be offered at a facility.

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-8602245 Jorge A. Guiterrez
General Counsel
Texas Department of Banking

Earliest possible date of adoption:
April 14, 1986
For further information, please call (512) 479-1200.

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TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Community Affairs

Chapter 9. Texas Community Development Program

Subchapter A. Allocation of Program Funds

★10 TAC §9.3, §9.4

The Texas Department of Community Affairs proposes amendments to §9.3 and §9.4, concerning the standards and procedures to allocate economic development and planning/capacity building project funds to eligible units of general local government in Texas beginning with the expenditure of federal fiscal year 1986 Community Development Block Grant funds. The amendment to §9.3 provides clarification, changes the competition cycle from four times per year to three times per year, and decreases the amount, from $500,000 to $350,000, a local government may receive during a program year. The amendment to §9.4 provides clarification, opens the Technical Review Committee meetings for brief presentations by applicants, and changes the selection criteria.

Douglas C. Brown, general counsel, 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.

Kelly Myrick, director, Local Government Assistance Division, also has determined that for each year of the first five years the sections is in effect the public benefit anticipated as a result of enforcing the sections will be the more equitable allocation of economic development and planning/capacity building project funds to eligible units of general local governments in Texas. 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 Douglas C. Brown, General Counsel, 8317 Cross Park Drive, Box 13166, Austin, Texas 78711, within 30 days after the date of this publication.

The amendments are proposed under Texas Civil Statutes, Article 4413(201), §4A, which provide the Texas Department of Community Affairs with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities in accordance with rules and regulations adopted by the Texas Department of Community Affairs.

§9.3. Economic Development Project Fund.

(a) (No change.)

(b) Funding cycle. This fund will be allocated **three times per year** [on a quarterly basis] to eligible units of general local government on a statewide competitive basis. A local government may only submit one application for each **competition** [quarter]. An applicant may receive more than one contract during a program year, as long as the total amounts of the contracts do not exceed **$350,000** [$500,000] for that program year. Applications for funding for each **competition** [quarter] must be received by the Local Government Assistance Division of the TDCA by 5 p.m. on the dates specified in the most recent application package for this fund.

(c) Selection procedures. Scoring and recommended ranking of projects will be done by a five member Technical Review Committee with input from the Regional Review Committees. The Technical Review Committee will consist of program or division directors selected by the executive director of the TDCA from within the TDCA or other appropriate state agencies (e.g., the Texas Economic Development Commission). The application and selection procedures consist of the following steps:

(1) Prior to the submission deadline, each eligible jurisdiction may submit one application for funding under the Economic Development Project Fund. Copies of the applications should be provided to both the Regional Review Committee and the TDCA/ Local Government Assistance Division. An unsuccessful application from a previous **competition** [quarter] will only be considered for funding if it is submitted as a new application with updated attachments.

(2)-(3) (No change.)

(4) The Technical Review Committee generates scores on factors related to project design. Each application will be scored on how the proposed project resolves the identified economic development need within the applicant. This information and comments provided by the Regional Review Committees will be used by the Technical Review Committee to generate the scores on project design. An applicant may attend Technical Review Committee scoring meetings except during discussions of confidential financial information concerning a project proposed by another applicant. **An applicant may also make a brief presentation to the Technical Review Committee to provide pertinent information regarding its project.**

(5)-(10) (No change.)

(d) (No change.)

§9.4. Planning/Capacity Building.

(a) General provisions. This fund is intended to provide an opportunity for units of general local government to prepare comprehensive community development plans, develop strategies, assess needs, and build or improve local capacity to undertake future community development projects or to prepare other needed planning elements. Eligible units of general local government are to be the direct recipients of planning contracts. Units of general local government may submit one application for planning funds semiannually.

(1) A community which is currently receiving or applying for funding under [either] the Community Development Project Fund, [or] the Statewide Area Revitalization Fund, **or the Special Impact Fund** may only submit an application under this section if the proposed planning/capacity building project is unrelated to activities for which the local government has received funding under the Community Development Project Fund, [or] the Statewide Area Revitalization Fund, or **the Special Impact Fund or**, for which the local government is applying for funding under the community development project fund, [or] the Statewide Area Revitalization Fund, **or the Special Impact Fund.**

(2) In addition to the threshold requirements of §9.1(g) of this subchapter (relating to General Provisions), in order to be eligible to apply for planning/capacity building funding, an applicant under this section must document that at least 51% of the persons in the area who would benefit from the implementation of the proposed planning activity are of low and moderate income.

(b) (No change.)

(c) Selection procedures. Scoring and the recommended ranking of projects will be done by a five-member Technical Review Committee with input from the Regional Review Committees. The Technical Review Committee will be designated by the executive director of the TDCA from within the TDCA or other appropriate state agencies (e.g., the Governor's Office of Planning and Intergovernmental Relations). The application and selection procedures consist of the following steps.

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

(4) Technical Review Committee generates scores on factors related to project design. Each application will be scored on how the proposed planning activities resolve the identified community/economic development needs of the local government. This information, as well as any comments made by the Regional Review Committee, will be used by the Technical Review Committee to generate scores on the project factors. **An applicant may make a short oral presentation to the Technical Review Committee to provide pertinent materials and to respond to questions.**

(5) The TDCA generates scores on selection criteria relating to community distress[, benefits to low- and moderate-income persons,] and minority hiring. **Scores on the factors in these [three] categories are derived from standardized data from the Census Bureau, other state or federal sources, or from information provided by the applicant.**

(6)-(9) (No change.)

(d) Selection criteria. The following is an outline of the selection criteria to be used by the TDCA, the Technical Review Committee, and the State Review Committee for selection of the projects under the Planning/ Capacity Building Fund. **Seven hundred** [Eight hundred ninety-five] points are available.

(1) (No change.)

[(2) Percentage of Texas Community Development Progam funds that directly benefit low- and moderate-income persons (Total - 200 Points) - This factor score is based only on those residents of the applicant that are determined to be direct beneficiaries of the applicant's proposed activities, as defined by the TDCA in the current application package for this fund.]

(2)[(3)] Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community (Total - **80**[100] points). In the event less than 2.0% of the applicant's population base is composed of minority residents or the applicant does not have any permanent employees, the applicant will be assigned the average score on this factor for all applicants. The terms used in this paragraph are defined in the current application package.

(3)[(4)] Need for planning effort (Total-**200**[175] points).

(A) Program priority (total - 100 points)

[(A) Increase/decrease in population of the applicant, based on percent change ..... 50]

***(i)* Activities which address basic community services such as housing, water, sewer, and employment....51-100**

***(ii)* Activities which address streets, drainage, or transportation circulation 26-50**

***(iii)* Activities which address recreation, historic preservation, or community centers.....0-25**

(B) Previous planning (total - 100 points).

[(B)Program priority - 100]

***(i)* Applicants which have not previously received a planning/capacity building contract.....no more than 100**

***(ii)* Applicants which have received only partial or limited planning/capacity building funding.no more than 50**

***(iii)* Applicants which have received a planning/capacity building contract and can demonstrate that either the planning recommendations under such contract have been implemented or conditions have changed to warrant new planningno more than 25**

[(C) Initial planning versus updating plans.....25

(4)[(5)] Proposed planning effort (Total - 300 points)

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

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

Issued in Austin, Texas, on March 7, 1986.

TRD-8602328 Douglas C. Brown
General Counsel
Texas Department of Community Affairs

Earliest possible date of adoption:
April 14, 1986
For further information, please call (512) 834-6106.

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TITLE 16. ECONOMIC REGULATION

Part IV. Department of Labor and Standards

Chapter 69. Manufactured Housing Division

Titling

★16 TAC §69.208

(Editor's note: The Department of Labor and Standards proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is published in the Emergency Rules section of this issue.)

The Texas Department of Labor and Standards proposes new §69.208, concerning the recording of tax liens on manufactured homes.

John P. Steele, director, Manufactured Housing Division, 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. Steele 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 a central location for the recording of tax liens for manufactured homes in Texas. The anticipated economic cost to individuals who are required to comply with the proposed section will be a $10 fee for any research on a title document each year from 1986-1990.

Comments on the proposal may be submitted to John P. Steele, Director, Manufactured Housing Division, P.O. Box 12157, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 5221f, which provide the commissioner of the department with the authority to promulgate any and all reasonable rules and regulations which may be necessary for the purpose of enforcing the provisions of this Act.

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

Issued in Austin, Texas, on March 10, 1986.

TRD-8602345 Allen Parker, Sr.
Commissioner
Texas Department of Labor and Standards

Earliest possible date of adoption:
April 14, 1986
For further information, please call (512) 463-3127.

TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 185. Physician Assistants

★22 TAC §§185.1, 185.2, 185.4, 185.6, 185.7-185.12

The Texas State Board of Medical Examiners proposes amendments to §§185.1, 185.2, 185.4, 185.6, and 185.7-185.12, concerning physician assistants. The amendments are referable to areas of consent and identification of the physician assistant (P.A.), supervision of the P.A.'s performance by the physician, tasks and limitations of delegations to the P.A., guidelines for employment of the P.A., and other sections. The amendments contain provisions for allowance of two P.A.s per supervising physician. Other proposed changes include general streamlining of the rules.

Florence Allen, business manager, and Jean Davis, program administrator, have 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.

Ms. Davis 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 a better understanding by the public of the P.A.'s role in health care. 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 Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing is scheduled for sometime between June 9-12 (tentative). More information on the exact date and time can be obtained later.

The amendments are proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

§185.1. Purpose. The purpose of these rules and regulations is to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified physician assistants where such delegation is consistent with the patient's health and welfare; and under standards of supervision which take into account the skill, training, and experience of the physician and physician assistant. The board recognizes that the delivery of quality health care requires expertise and assistance of many dedicated individuals in the allied health profession. These sections are not intended to, and shall not be construed to, restrict the physician from delegating administrative and technical or clinical tasks not involving the exercise of independent medical judgment to those specially trained individuals instructed and directed by a licensed physician who accepts responsibility for the acts of such allied health personnel. [Likewise, nothing in these sections shall be construed as to prohibit a physician from instructing a technician, assistant, or other employee who is not a "physician assistant" as defined in this chapter to perform delegated tasks so long as the physician retains supervision and control of the technician, assistant, or employee.] Nothing in these rules and regulations shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients.

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

Physician assistant, assistant, or P.A. —Refers specifically to a person who is a graduate of a physician assistant training program approved by the committee [Council] on Allied Health Education Accreditation of the American Medical Association or a person who has passed the examination given by the National Commission on the Certification of Physician's Assistants.

§185.4. Grounds for Denial or Revocation of Approval. The board may deny an application or withdraw its approval previously granted under §185.3 of this title (relating to Application for Approval to Supervise) for any of the following causes on the part of the physician assistant:

(1)-(8) (No change.)

(9) working in the capacity of a physician assistant under a physician or other person who has not received the approval of the board to supervise a physician assistant, except as provided in §185.10 of this title

(relating to [Limitation of] Employment Guidelines).

(10)-(11) (No change.)

§185.6. Consent and Identification.

(a) No physician assistant shall render general medical services nor any permitted tasks as hereinafter stated to any patient unless said patient has been informed that such assistant is not a physician and that the patient has the right to insist at any time on seeing the supervising physician, and services will be rendered by the physician assistant only after patient has consented **and documentation entered on the chart.** [thereto in writing. The physician shall obtain the patient's consent on a separate form, 8½ inches by 11 inches in size, with the following language printed in not smaller than 10-point type: [I, (patient's name), hereby authorize (physician's name and office address) to instruct (his)(her) physician assistant to assist (him) (her) in certain aspects of my medical care. I understand that a physician assistant is not a licensed physician and may not treat or diagnose any illness, injury, or medical condition except under the supervision and direction of a licensed physician. I further understand that I may revoke this authorization at any time and that, at any time, I may request to be seen by (physician's name).'' The consent must be signed and dated by the patient and shall become part of the physician's permanent office records of that patient. It shall be the responsibility of the supervising physician to ensure that patient consent herein required is obtained, and failure to do so may result in the withdrawal by the board of approval to supervise an assistant. The consent obtained shall remain in effect until withdrawn by the patient.

(b) **In the locations of employment of the P.A., patient education information must be plainly visible and easily available to all patients. This information should explain the meaning of the term "Physician Assistant" and the functions delegated to the physician assistant.** [In the supervising physician's office, a notice plainly visible to all patients shall be posted in a prominent place by the supervising physician explaining the meaning of the term "physician assistant" and the functions delegated to the physician assistant. The notice shall be printed on a sign not less than 8½ inches by 11 inches in size and in bold-faced letters not less than ¼ inch in height. Patients shall be encouraged, in this notice, to discuss with the supervising physician the role and performance of the physician assistant. The notice shall state that the patient may request to be seen by the physician, rather than the physician assistant, at any time, and the desire of the patient not to be seen by the physician assistant shall be respected.]

(c) The physician assistant must wear an appropriate name tag, clearly visible, with the designation of Mr., Miss, Mrs., Ms., and the surname plus "physician assistant" so that he or she is not mistaken for a licensed physician. [The printing of the words "physician assistant" shall be not less than 3/8 inch in height.]

§185.7. Supervision of Performance.

(a) The physician assistant augments the physician's data gathering abilities necessary to reach decisions and institute patient care plans. The physician assistant will not **independently** supplant the physician in the integration of medical data or in the decision-making process required to establish a **final** diagnosis and formulate a therapeutic plan.

(b) Generally, the adequacy of the physician's supervision of the physician assistant's performance shall be reckoned by standards which take into account the skill, training, and experience of both the supervising physician and the physician assistant. [At the very least, this adequate supervision shall require active and continuous overview of the physician assistant's activities to ensure that the physician's directions and advice are in fact being implemented.] While not requiring continuous and constant physical presence of the supervising physician, the physician must make a personal review of historical and physical data on all patients and their problems.

(c) On the follow-up care, hospital visits, nursing home visits, attendance of the chronically ill at home, or in similar instances where a therapeutic regimen or other written protocol has been established by the physician and in instances covered under standing delegation orders as authorized by Chapter 193 of this title (relating to Standing Delegation Orders), the physician assistant may check and record that patient's progress within the confines of the established regimen or protocol and report the patient's progress to the physician. **After the P.A. has consulted with the supervising physician, the P.A. may initiate or change orders at the supervising physician's direct and verifiable request when a new problem arises or established parameters are exceeded.** [When a new problem arises or established parameters are exceeded, the physician assistant must not initiate treatment before he or she has consulted with the supervising physician or the supervising physician has seen the patient, and the supervising physician has ordered the method of treatment.] If the supervising physician orders treatment for a new problem or outside established parameters without seeing the patient, the supervising physician must undertake a personal review of the patient and his or her problem as soon as possible after ordering such treatment.

(d) (No change.)

(e) Physician assistants may serve as assistants in surgery at the discretion of the supervising physician and when such duties are not in conflict with hospital bylaws or rules.

§185.8. Tasks Permitted to be Delegated to a Physician Assistant. Providing the supervising physician has satisfied himself or herself as to the ability and competence of the physician assistant, and with due regard for the safety of the patient and in keeping with sound medical practice, the physician assistant may perform such duties, which do not require the exercise of independent medical judgment, as assigned by his or her supervising physician who is responsible for the performance of such tasks and who retains direct control and supervision of the physician assistant [,provided that physician assistants may perform such functions as are included within the scope of standing delegation orders as authorized by the rules of this board].

§185.9. Tasks Not Permited to be Delegated to a Physician Assistant [Limitations of Physician Assistants]. The supervising physician shall neither delegate to nor allow a physician assistant to:

[(1) perform any task or function without the supervising physician being either physically present or immediately available to provide further guidance, except in life-threatening emergencies;

[(2) make a final or definitive diagnosis of a disease or ailment or the absence thereof independent of the supervising physician;

[(3) 'independently prescribe any treatment or a regimen thereof;]

(1)[(4)] prescribe, order, or dispense medication, or sign prescriptions on behalf of the supervising physician, or have prescription blanks available that have been presigned or stamped by the physician, or order the refilling of a prescription, except as authorized by law;

[(5) replace the supervising physician in making visits in hospitals, clinics, nursing homes, emergency rooms, or homes;

[(6) initiate or change any orders on a patient's chart in hospitals, clinics, nursing homes, or other places where patient charts are used, except at the supervising physician's direct and verifiable request;

[(7) initiate treatment of any new patient before the physician has seen the patient and ordered the method of treatment, except in life-threatening emergencies, or when care is rendered under standing delegation orders as are authorized under the rules of this board;]

(2)[(8)] independently delegate a task assigned to him or her by the supervising physician;

[(9) perform endoscopic examinations on any viscus;

[(10) perform spinal puncture;

[(11) replace a physician in surgery where such a physician would be required under hospital staff bylaws or rules.

§185.10. [Limitation of] Employment Guidelines. Except as otherwise provided in this section, **two** [only one] full-time equivalent physician assistant **positions** [position] shall be allowed for each supervising physician. A supervising physician may uti-

line more than two [one] physician assistants [assistant] to allow part-time employment or the employment of a substitute during the temporary absence of a supervising physician's primary physician assistant, provided the supervising physician has obtained approval to supervise each part-time and substitute physician assistant as provided in section §185.3 of this title (relating to Application for Approval to Supervise). [A physician assistant may work for more than one supervising physician on a part-time or substitute basis, provided each supervising physician has obtained approval to supervise that physician assistant as provided in section §185.3 of this title (relating to Application for Approval to Supervise).] Part-time or substitute physician assistants supervised by a particular physician shall not work during the same hours for that supervising physician, and a supervising physician shall not utilize more than two [one] physician assistants [assistant] during the same hours. [The physician assistant shall be the individual responsibility of the supervising physician or in his or her temporary absence the physician assistant shall be the responsibility of a designated physician as provided in §185.3 of this title (relating to Application for Approval to Supervise). More than one physician may be allowed by the board to supervise the same physician assistant; however, the physician considered to be supervising the physician assistant on a given patient shall be that patient's physician.]

(1) The services of the physician assistant shall be considered as part of the global services provided by the supervising physician and there shall be no separate billing for services rendered by the P.A., except where provided by law.

(2) The physician assistant shall not be maintained in [maintain] an office practice setting separate from that [independent] of his or her [or physically separate from the] supervising physician.

[(3) The physician assistant shall not list his or her name in any commercial telephone directory intended for public use, utilizing the title "physician assistant," or "P.A.", or any term that would indicate he or she is a physician assistant.]

§185.11. Enforcement. [Texas Civil Statutes, Article 4495b, §3.08 (15) and §4.01, empower the Texas State Board of Medical Examiners to cancel, revoke, or suspend the license of any practitioner of medicine upon proof that such practitioner is guilty of aiding or abetting, directly or indirectly, the practice of medicine by any person not duly licensed to practice medicine by such board.] Any supervising physician who violates Texas Civil Statutes, Article 4495b, §§3.08 (4)(H), 3.08(12), 3.08(15) and 4.01, [these sections] shall be subject to administrative sanction or to withdrawal by the board of his or her authority to utilize a physician assistant and/or [and] having his or her license to practice medicine in Texas revoked and/or [and] suspended by the board. [under Texas Civil Statutes, Article 4495b, §3.08(15) and §4.01.]

§185.12. Exceptions. Upon written application to the board, the board may grant exceptions to the rules in §185.6 of this title (relating to Consent and Identification) and in §185.10 of this title (relating to [Limitation of] Employment guidelines) for physicians and physician assistants employed by facilities or institutions owned or operated by state agencies that have established programs of health care or institutions funded by public money. In addition to the information required in §185.3 of this title (relating to Application for Approval to Supervise) and any other information the board may require, the application for exceptions shall explain the specific exceptions requested, the reasons the exceptions are needed, the tasks that will be delegated to physician assistants covered by the exceptions, and the manner in which those physician assistants will be supervised.

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-8602254 G.V. Brindley, Jr.
Executive Director
Texas State Board of Medical Examiners

Earliest possible date of adoption:
April 14, 1986
For further information, please call (512) 452-1078.

★ ★ ★

Part XXVII. Board of Tax Professional Examiners

Chapter 623. Registration and Certification

★22 TAC §623.12

The Board of Tax Professional Examiners proposes amendments to §623.12, concerning recertification of Class IV registered professional appraisers and registered Texas assessor/collectors. This amendment raises the requried number of continuing education units (CEU) from 40 to 45 and requires at least one examined course in each five year recertification period.

Sam H. Smith, executive director has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state government or small businesses as a result of enforcing or administering the section. The effect on local government cannot be estimated.

Mr. Smith also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that obtaining 20-24 continuing education units (CEU) for a three day hour-for-hour credit course is more educational and more economical than the 3-10 CEU obtained in series of three-fourth credit hour conferences because conferences have a high non-educational content. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Sam H. Smith, Executive Director, Board of Tax Professional Examiners, P.O. Box 15920, Austin, Texas 78761-5920, (512) 834-4982.

The amendment is proposed under Texas Civil Statutes, Article 7244b, as amended by the Property Taxation Professional Certification Act of the 68th Legislature, 1983, which provide Board of Tax Professional Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and establish standards of profesional practice, conduct, and education.

§623.12. Recertification.

(a) (No change.)

(b) Certification as a Registered Professional Appraiser (RPA) or as a Registered Texas Assessor/Collector (RTA) must be renewed on the fifth anniversary date of certification and on each fifth anniversary of renewal so long as the registrant is employed under conditions which require registration with the board. To renew certification as an RPA or an RTA the registrant must:

(1) (No change.)

(2) be awarded 45 [not less than 40] continuing education units (CEUs) during the five year period.

(A) CEU must be obtained, in part, by attending at least one [CEU shall be one class hour in an] approved and examined education course which is within or related to a field of property taxation. Upon successful completion of such a course the registrant shall be awarded one CEU for each class hour.

(B) CEU shall be awarded not only for examined courses but also for unexamined or audited courses, workshops, seminars, institutes, the educational portions of conferences[,] and conventions, [involving work sessions,] property tax related board or [and] committee work for the government or private associations, publication of property tax related books or articles, teaching property tax education courses or other property tax activities of an educational nature.[,] For these activities, the board shall award [assign a number of CEUs uniformly on the basis of written policy and procedure [to be awarded and advise registrants who report participation in such activities of the number of points awarded].

(c)-(e) (No change.)

This agency hereby certifies that the pro-

posal 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-8602252 Sam H. Smith
Executive Director
Board of Tax
Professional
Examiners

Earliest possible date of adoption:
April 11, 1986
For further information, please call (512) 834-4982.

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 405. Client (Patient) Care

Subchapter A. Employment of Independent Contractors (Consultants)

★25 TAC §§405.4, 405.5, 405.7

The Texas Department of Mental Health and Mental Retardation proposes amendments to §§405.4, 405.5, and 405.6, concerning employment of independent contractors. The amendments change the effective date of the Form P-11, the contract, and Form P-11 (A), the independent contractor log, to reflect revisions made to each.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administrating the rules as proposed.

Ms. Dillard has also determined that the anticipated public benefit will be rules that are consistent with policies of the Texas Board of Mental Health and Mental Retardation and good practice. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Written comments may be submitted to Linda Logan, Rules Coordinator, TDMHMR, P.O. Box 12668, Austin, Texas 78711, within 30 days of publication.

The amendments are proposed under Texas Civil Statutes, Article 5547-202, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§405.4. Employment of an Independent Contractor (Consultant).

(a) (No change.)

(b) Approval by the head of the facility shall be evidenced by a "Contract for Consultant Services" (Texas Department of Mental Health and Mental Retardation Form Number P-11 as revised **May 1, 1986** [September 1, 1985]) illustrated by Exhibit A, which is herein adopted by reference and available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711, or in appropriate situations by an interagency contract between this department, acting through its individual facility, and the independent contractor (consultant). An interagency contract used to evidence approval for consultant services must meet all of the requirements of this subchapter. The contract for consultant services or the interagency contract, as the case may be, is to be signed by the head of the facility employing such consultant, provided that any such contract for consultant services in an amount over $1,000 shall be approved in advance by the commissioner if such services are required to study an existing or a proposed operation of project of the facility. In the case of the central office, the commissioner will sign the contract, and it will be forwarded to the director of the Office of Budget and Fiscal Services. This contract responsibility may not be delegated without written approval of the commissioner. All existing agreements through which independent contractors (consultants) are providing services to a facility of this department will, as soon as possible, be reduced to writing on Form Number P-11 (revised **May 1, 1986** [September 1, 1985]) or on an interagency contract form, as appropriate.

§405.5. Documentation of Duties Performed by an Independent Contractor (Consultant). Except in cases of surgery and other physical treatment procedures performed off campus, each independent contractor (consultant) or a responsible individual who can certify to the presence of and the duties performed by the independent contractor (consultant) will record the information required on Texas Department of Mental Health and Mental Retardation Form Number P-11(A) (revised **May 1, 1986** [March 15, 1975]), "Independent Contractor (Consultant) Log," illustrated by Exhibit B, which is herein adopted by reference and available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711.

§405.7. Retention Period for Records. Texas Department of Mental Health and Mental Retardation Form Number P-11 (revised **May 1, 1986** [September 1, 1985]) dealt with in §405.4 of this title (relating to Employment of an Independent Contractor (Consultant), and Form Number P-11(A) (revised **May 1, 1986** [March 15, 1975]), dealt with in §405.5 this title (relating to Documentation of Duties Performed by and Independent Contractor (Consultant)), will be retained for five years. These forms have been produced and stocked in central office, subject to requisition.

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 7, 1986.

TRD-8602320 R. Coke Mills
Chairman
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption:
April 14, 1986
For further information, please call (512) 465-4670.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 291. Water Rights

Subchapter A. General Provisions

★31 TAC §§291.1-291.7

(Editor's note: The Texas Water Commission proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections are published in the Emergency Rules section of this issue.)

The Texas Water Commission proposes new §§291.1-291.7, 291.21-291.37, 291.41-291.44, 291.51-291.56, 291.61, 291.62, 291.71-291.76, 291.81-291.88, 291.91, 291.92, and 291.101-291.115, concerning the regulation of the business of water and sewer utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities. These new sections are adopted on an emergency basis in this issue of the *Texas Register*.

The new sections are proposed in response to Senate Bill 249, Article C, 69th Legislature, 1984, which in pertinent part, amended the Texas Water Code. The new sections establish the substantive regulations which reflect the policies of the Texas Water Commission, as established in Senate Bill 249, regarding the assurance of water and sewer rates, operations, and services which are just and reasonable. The new sections also outline the procedures for presentation of these matters to the commission for consideration and determination. The procedures outlined in the new sections should be read together with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a (APTRA); the Texas Water Code, Chapters 11, 12, and 13; and the rules of procedure of the Texas Water Commission.

The new sections were constructed by reviewing the rules that have been used by the Public Utility Commission of Texas (PUC) pertaining to water and sewer utilities, and modifying these rules to incorporate differences between the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c, (PURA), and Senate Bill 249, Article C, and to reflect procedure and practice of the Texas Water Commission.

Subchapter A primarily states matters already found in the Texas Water Code, Chapter 13 (the Act), or adopts regulations that have been used by the PUC. Exceptions to this practice are found in new §§291.3, 291.7, and 291.8. In §291.3, the definition of "licensing" has been broadened for purposes of clarity only. New terms are also defined. These terms reflect concepts similar to "purchased power and/or energy" and "purchased power and/or energy adjustment procedure", which are part of the PUC regulations. The commission's experience with water supply issues under the Texas Water Code, Chapters 11 and 12, indicates that those services can be shared among utilities and political subdivisions, and a procedure should be available for adjusting rates accordingly without resort to an exhaustive and costly rate review procedure. New §291.7 makes clear where filings and communications to the commission regarding rates and services matters are to be delivered, and new §291.8 makes clear that all agreements among parties to proceedings before the commission must be in writing in order to be enforceable.

The Act, Chapters 11, 12, and 13, establish a large variety of ways to seek the commission's consideration of matters pertaining to water and sewer utilities' rates, operations, and services. These include surrender of exclusive original jurisdiction to the commission by governing bodies, proposals for changes in rates and complaints regarding such proposals, appeals to the commission regarding decisions of regulatory authorities with exclusive original jurisdiction, and applications for certificates of convenience and necessity and protests to such applications. Subchapter B addresses on an individual basis each of these cases. The approach of the commission is to provide in rule form a checklist so that the practitioner has a clear idea of what information must be submitted, and in what form, to successfully initiate an action before the commission. Utilities and customers will be best served by the commission if information can be collected and assimilated in the most efficient manner possible. The commission anticipates much work in this area, and must meet statutorily mandated processing deadlines in many cases. The checklist approach is intended to facilitate this processing.

Subchapter C basically incorporates the notice requirements set forth in the Act, as well as the notice requirements for hearings established by APTRA. It has already been emphasized herein that the commission's staff must receive all information in a form which facilitates efficient processing and assimilation. New §291.41 makes clear that submittals which do not conform to the requirements of Subchapter B will not be considered filed with the commission until sufficient information is provided to render the application administratively complete. In cases affected by the statutory processing deadlines set forth in the Texas Water Code, §13.187, new §291.41 makes clear that the proposed rate change cannot become effective until at least 35 days after the filing of a sufficient application. The commission will send notifications of deficiencies in writing so that the inadequacies of the submittal and the affected timelines are clear to those involved.

Subchapter D concerns evidence and procedure. New §291.51 makes clear that matters of evidence and procedure are controlled by the APTRA, the Texas Water Code, and the rules of procedure of the Texas Water Commission. New §291.52 represents no real change in the regulatory scheme because it tracks §21.84 of the rules of practice and procedure of the PUC. Likewise, new §291.53 represents no real change in the regulatory scheme because it tracks §21.163 of the rules of practice and procedure of the PUC. (Similarly, it should be noted that the Texas Water Code, §13.187(e), parallels the PURA, §43(e).) New §291.55 does, however, represent a significant change from the established regulatory scheme. The PURA, §43 (h), provides for the availability of informal procedures only to utilities with fewer than 150 customers, which utilities are not members of groups filing a consolidated tax return and are not under common control or ownership with other water or sewer utilities. By contrast, the Texas Water Code, §13.015, affords the informal process to all utilities subject to regulation under the Texas Water Code, Chapter 13, as long as a record is made which supports written findings of fact in the case. New §291.55 establishes how the informal process is to be initiated and how a record of proceedings is to be made in order to support written findings of fact.

Subchapter E tracks §23.21 and §23.23 of the substantive rules of the PUC, to the extent that these sections pertain to water and sewer rates, operations, and services. One exception is found in new §291.61(b)(1)(B), where it is made clear that allowable expenses include depreciation expense based on original cost, computed on a straight line basis over the useful life of the asset. This is intended to eliminate confusion and unnecessary argument over the period for which straight line depreciation computation is appropriate. Another departure from PUC standards is found at new §291.61(a)(1)(E), which limits allowable expenses for ordinary advertising, contributions, and donations to $300. The PUC standard was 3/10 of 1.0% of the gross receipts of the utility. Because the regulations are addressed to utilities, rather than private enterprises, there is no purpose served by recognizing a need for differences in advertising, contributions, and donations based on the size of the utility or the amount of gross receipts. The impact of this change from the PUC approach is offset somewhat by the addition of new §291.61(a)(1)(F), which specifically allows expenses for funds expended for membership in professional or trade associations, as long as such associations contribute to the professionalism of their membership.

Additional flexibility is built into new §291.61(c)(3), by including the language "unless otherwise determined by the commission, for good cause shown," to the stipulation of items not to be included in rate base calculations. The commission recognizes the possibility that justification may exist for some items not normally considered part of the rate are to be included in that calculation, in order to assure the provision of adequate service. Finally, departures from PUC policy are also found in new §291.62(b) and (c). New §291.62(b) prohibits the use of rate structures which discourage conservation, such as declining-block rate structures. High volume customers are not to be favored because of the amount of business they generate for the utility. New §291.62(c) provides guidance for use of volume charges.

Subchapter F essentially adopts in a changed format the reporting requirements imposed on water and sewer utilities by §§23.11-23.14 of the substantive rules of the PUC. The initial reporting requirement is changed to include the most recent fiscal year ending on or prior to March 1, 1985. New §291.71(d) reflects the recognition of the commission that collection of monthly or quarterly reports from all water and sewer utilities might be an unnecessary exercise which increases the cost of providing service. Therefore, annual reports only will be the general requirement, except in circumstances which require more specific investigation or monitoring. In such instances, new §291.71(d) provides that such reports may be required by the commission on a case-by-case basis. New §291.71 departs from the PUC policy by providing that the requirements regarding uniform systems of accounts can be waived by the commission if a federal regulatory body having jurisdiction over the utility imposes other requirements. This would eliminate the need for a utility to maintain more than one set of accounts.

Subchapter G adopts in large measure the contents of §§23.41-23.48 of the substantive rules of the PUC, which pertain to water and sewer utilities. One notable difference is that these new sections make no reference to provision of credit to customers. The only reference of that kind is the encouragement in new §291.84

(c) to offer a deferred payment plan to a customer who cannot pay the full bill, but is willing to pay in reasonable installments. All other credit policy is left to the individual utility and should be clearly explained in its tariff. The deposit policy found in new §291.82(a) reflects this credit policy, and also recognizes the difference between water and sewer utilities, on the one hand, and telephone and electric utilities, on the other hand, by imposing a ceiling of $50 for customer deposits.

It should be particularly noted that new §291.84(c) provides that contributions in aid of construction may be required of developers regardless of lot size or the number of lots into which property may be subdivided. The contribution would simply be determined by the amount necessary to furnish the development with facilities that conform to state requirements. This is intended to eliminate any possibility that subdividing could enable a developer to shift the cost of providing service to the utility and its other customers. Similarly, new §291.84(d) makes clear that the utility shall bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to a residential customer. The purpose of this approach is to protect utilities from being adversely affected by disorderly or spot-style development within their service areas. The commission policy is that customers who choose to move to out-of-the-way locations should be prepared to pay the cost of that decision, rather than shifting that burden to the other customers of the utility.

New §291.84(e) changes the time requirements for responses to requests for service to recognize the capital intensive nature of the work requested. The change also recognizes that immediate response is sometimes thwarted due to matters beyond the control of the utility, such as the unpreparedness of the applicant for utility service, or difficulties of interaction with local agencies (as in the acquisition of work permits).

It should also be noted that new §291.85 (b) does not distinguish between residential and commercial connections with regard to penalties for delinquent bill payments. Whereas such a distinction may be appropriately applied in cases involving telephone and electric service it did not seem appropriately applied to water and sewer service cases.

Subchapter H adopts the provisions of §23.63 and §23.64 of the substantive rules of the PUC.

Subchapter I contains few changes from pre-existing PUC regulations in this area, including the filing deadlines found in new §291.106, which have been changed to conform to the deadline established by the Texas Water Code, §13.244(b). Just as with the exception for submission of initial reports found in new §291.71(b)(2), submission of maps and other certificate-related information is not necessary if the commission can fairly expect to have that information transferred from the PUC. The details of this exception are found in new §291.106(b).

Bobbie J. Barker, chief fiscal officer, 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. The effect of these sections is merely to pickup at the Texas Water Commission work which has been occurring at the Public Utility Commission of Texas.

Ms. Barker 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 regulation of the business of water and sewer utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

The public is encouraged to comment on these proposed new sections. Written comments should be submitted within 30 days of this publication to Jim Haley, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087.

These new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

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 25, 1986.

TRD-8602226 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
April 14, 1986
For further information, please call (512) 463-8087.

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Subchapter B. Jurisdiction and Appeal, Pleading, and Petition Requirements

★31 TAC §§291.21-291.37

These new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

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 4, 1986.

TRD-8602227 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
April 14, 1986
For further information, please call (512) 453-8087.

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Subchapter C. Notice

★31 TAC §§291.41-291.44

These new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

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 4, 1986.

TRD-8602228 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
April 14, 1986
For further information, please call (512) 453-8087.

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Subchapter D. Evidence and Procedure

★31 TAC §§291.51-291.56

These new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

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 4, 1986.

TRD-8602229 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
April 14, 1986
For further information, please call (512) 453-8087.

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Subchapter E. Ratemaking Components

★31 TAC §291.61, §291.62

These new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

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 4, 1986.

TRD-8602230 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
April 14, 1986
For further information, please call
(512) 453-8087.

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Subchapter F. Records and Reports

★31 TAC §§291.71-291.76

These new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

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 4, 1986.

TRD-8602231 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
April 14, 1986
For further information, please call
(512) 453-8087.

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Subchapter G. Customer Service and Protection

★31 TAC §§291.81-291.88

These new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

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 4, 1986.

TRD-8602232 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
April 14, 1986
For further information, please call
(512) 453-8087.

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Subchapter H. Quality of Service

★31 TAC §291.91, §291.92

These new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

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 4, 1986.

TRD-8602233 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
April 14, 1986
For further information, please call
(512) 453-8087.

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Subchapter I. Certificates of Convenience and Necessity

★31 TAC §§291.101-291.115

These new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of water and sewer utilities rates, operations, and services.

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 4, 1986.

TRD-8602234 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Earliest possible date of adoption:
April 14, 1986
For further information, please call
(512) 453-8087.

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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 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter E. Banking House and Other Facilities

★7 TAC §3.91

The State Finance Commission has withdrawn from consideration for permanent adoption the proposed new section to §3.91, concerning banking house and other facilities. The text of the amended section as proposed appeared in the December 27, 1985, issue of the *Texas Register* (10 TexReg 4994).

Issued in Austin, Texas, on March 6, 1986.

TRD-8602244 Jorge A. Gutierrez
General Counsel
State Finance Commission

Filed: March 6, 1986
For further information, please call (512) 479-1200.

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Part VII. State Securities Board

Chapter 115. Dealers and Salesmen

★7 TAC §115.2

The State Securities Board has withdrawn from consideration for permanent adoption the proposed amendments to §115.2, concerning dealers and salesmen. The text of the amended section as proposed appeared in the December 13, 1985, issue of the *Texas Register* (10 TexReg 4773).

Issued in Austin, Texas, on March 6, 1986.

TRD-8602261 Denise Voigt Crawford
General Counsel
State Securities Board

Filed: March 6, 1986
For further information, please call (512) 474-2233.

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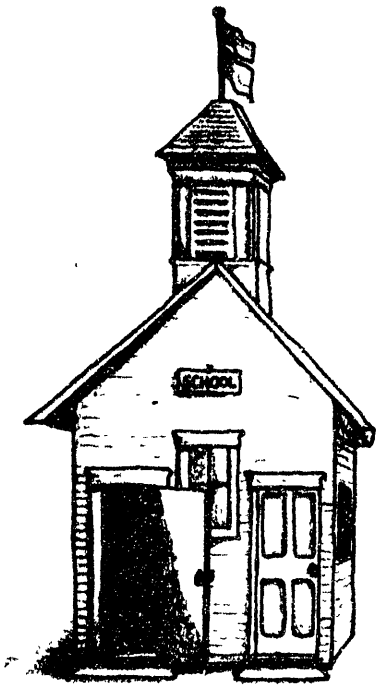

Adopted Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *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 16. ECONOMIC REGULATIONS

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter AA. Rail Safety

★16 TAC §5.612

The Railroad Commission of Texas adopts an amendment to §5.612, without changes to the proposed text published in the January 31, 1986, issue of the *Texas Register* (11 TexReg 584).

The amendment changes the telephone number for railroad accident/incident reporting.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Senate Bill 444, 69th Legislature, 1985, which empowers the Railroad Commission of Texas to adopt regulations to ensure railroad safety.

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-8602288 Jim Nugent
Chairman
Mack Wallace and
Clark Jobe
Commissioners
Railroad Commission of
Texas

Effective date: March 28, 1986
Proposal publication date: January 31, 1986
For further information, please call (512) 463-7149.

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TITLE 22. EXAMINING BOARDS

Part XV. Texas State Board of Pharmacy

Chapter 291. Pharmacies

Community Pharmacy (Class A)

★22 TAC §291.31, §291.34

The Texas State Board of Pharmacy, adopts amendments to §291.31 and §291.34. The amendment to §291.34 is adopted with changes to the proposed text published in the December 20, 1985, issue of the *Texas Register* (10 TexReg 4885). The amendment to §291.31 is adopted without changes to the proposed text, and will not be republished.

Editing and clarification changes were made to distinguish requirements for pharmacies maintaining prescription information in a manual system, as well as in a data processing system. New, nonsubstantive language was added to §291.34(l) in response to a comment received regarding clarification of purpose.

These amendments further ensure the public health, safety, and welfare by specifying requirements for records to be maintained in a Class A pharmacy.

The amendments further define procedures required in the recordkeeping requirements of refills of prescriptions maintained in a manual and data processing system, and the transfer of prescription information.

During the public comment period, several comments were received. Comments included suggestions to: require additional prescription information in §291.34 (l)(7)(E); change §291.34(l)(7)(F) to require the pharmacist in the transferring pharmacy to telephonically provide the entire prescription information to the pharmacist in the receiving pharmacy at the time of transfer; and change §291.34(l)(7)(A) to further clarify its purpose.

The Texas Pharmaceutical Association commented in favor of the amendments, but recommended changes to §291.34(l) (7)(E) and (F). The Attorney General's Office, Anti Trust Division, also commented in favor of the amendments, with a recommendation to change §291.34(l)(7)(A).

Regarding the comment about §291.34 (l)(7)(E), the agency responds that the additional information is contained in the computer and would only be duplicated. Regarding the comment about §291.34(l) (7)(F), the agency responds that this language would prohibit the electronic transfer of prescription information after store hours, and would not be in the best interest of the consumers.

The amendments are adopted under Texas Civil Statutes, Article 4542a-1, §29, which provide the Texas State Board of Pharmacy with the authority to establish by rule the standards that each pharmacy and its employees or personnel involved in the practice of pharmacy shall meet to qualify for the licensing and relicensing as a pharmacy in each classification.

§291.34. Records.

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

(d) Refills of prescriptions maintained in a data processing system.

(1)-(5) (No change.)

(6) If a pharmacy which uses a data processing system experiences downtime, the following is applicable:

(A) an auxiliary procedure shall ensure that refills are authorized by the original prescription order and that the maximum number of refills has not been exceeded or authorization from the prescribing practitioner shall be obtained prior to dispensing a refill; and

(B) all of the appropriate data shall be retained for on-line data entry as soon as the data processing system is available for use again.

(e)-(h) (No change.)

(i) Transfer of prescription information. The transfer of original prescription information, for the purpose of refill dispensing, is permissible between pharmacies, subject to the following requirements:

(1) the transfer of original prescription information for controlled substances listed in Schedules III, IV, or V is permissible between pharmacies on a one-time basis;

(2) the transfer of original prescription information for dangerous drugs is permissible between pharmacies without limitation up to the number of originally authorized refills;

(3) the transfer is communicated directly between two licensed pharmacists or as required in paragraph (7) of this subsection;

(4) both the original and the transferred prescription are maintained for a period of two years from the date of last refill;

(5) if a pharmacy maintains prescription information in a manual system, the following is applicable:

(A) the pharmacist transferring the prescription information shall:

(i) write the word "void" on the face of the invalidated prescription; and

(ii) record on the reverse of the invalidated prescription the following information:

(I) the name, address, and if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;

(II) the name of the pharmacist receiving the prescription information;

(III) the name of the pharmacist transferring the prescription information; and

(IV) the date of the transfer.

(B) The pharmacist receiving the transferred prescription information shall:

(i) write the word "transfer" on the face of the transferred prescription; and

(ii) record on the transferred prescription, the following information:

(I) original date of issuance and date of dispensing, if different from date of issuance;

(II) original prescription number and the number of refills authorized on the original prescription;

(III) number of valid refills remaining and the date of last refill;

(IV) name, address, and if a controlled substance, the DEA registration number of the pharmacy from which such prescription information is transferred; and

(V) name of the pharmacist transferring the prescription information.

(6) if a pharmacy maintains prescription information in a data processing system, the following is applicable:

(A) prescriptions may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner, provided, however, that, during downtime, for informational purposes only, a hard copy of a prescription may be made available to the patient or another pharmacist and the prescription may be read to another pharmacist by telephone;

(B) the original prescription shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes;

(C) if the data processing system has the capacity to store all the information required in paragraph (5)(A) and (B) of this subsection, the pharmacist is not required to record this information on the original or transferred prescription; and

(D) the data processing system shall have a mechanism to prohibit the transfer of controlled substance prescriptions which have been previously transferred;

(7) If electronic transfer of prescription information occurs between pharmacies accessing the same prescription records, the following requirements shall be met:

(A) the data processing system shall have a mechanism to send a message to the transferring pharmacy containing the following information:

(i) the fact that the prescription was transferred;

(ii) the unique identification number of the prescription transferred;

(iii) the name of the pharmacy to which it was transferred; and

(iv) the date and time of the transfer.

(B) a pharmacist in the transferring pharmacy shall review the message and document the review by signing and dating a hard copy of the message or a log book containing the information required on the message as soon as practical, but in no event more than 72 hours from the time of such transfer; and

(C) pharmacies not owned by the same person may electronically access the same prescription records, provided the owner or chief executive officer or each pharmacy signs an agreement allowing access to such prescription records.

(j) (No change.)

(k) confidentiality. A pharmacist shall provide adequate security of prescription records to prevent indiscriminate or unauthorized access to confidential health information.

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 6, 1986.

TRD-8602343 Fred S. Brinkley
Executive Director/
Secretary
Texas State Board
of Pharmacy

Effective date: March 31, 1986
Proposal publication date: December 20, 1985
For further information, please call
(512) 478-9827.

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Part XXVII. Board of Tax Professional Examiners

Chapter 623. Registration and Certification

★22 TAC §623.8

The Board of Tax Professional Examiners adopts amendments to §623.8, without changes to the proposed text published in the January 17, 1986, issue of the *Texas Register* (11 TexReg 251).

The board adopts this amendment to insure that all apraisers have a thorough knowledge of property tax law.

The amendment improves performance by property tax appraisers and insures greater knowledge of, and compliance with, the law by persons who appraise property for tax purposes. Thus, better service is provided to all persons who pay property taxes.

There were no comments received regarding adoption of this amendment.

The amendment is adopted under Texas Civil Statutes, Article 7244(b), which provide the Board of Tax Professional Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of professional practice, conduct, and education.

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-8602253 Sam H. Smith
Executive Director
Board of Tax
Professional
Examiners

Effective date: September 1, 1986
Proposal publication date: January 17, 1986
For further information, please call
(512) 834-4982.

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter E. Miscellaneous Taxes Based On Gross Receipts

★34 TAC §3.58

The Comptroller of Public Accounts adopts new §3.58, without changes to the proposed text published in the October 11, 1985, issue of the *Texas Register* (10 TexReg 3947). The scope of this tax was substantially changed during the recent legislative session, and this section defines significant terms in the context of those changes. It identifies the types of businesses which are classified as telephone companies for purposes of this tax, and defines the limits of basic local exchanges service.

One comment was submitted by Melanie Fannin, attorney for Southwestern Bell Telephone Company. The comment involved the issue of whether private line

service, being a dedicated circuit without dial tone, would be considered basic local service and therefore subject to the gross receipts tax under this rule or the sales tax. The comptroller declines to change the rule, since basic local service is clearly defined in terms of "an access line and dial tone." Thus, the type of private line service of concern to Ms. Fannin falls outside the definition of basic local service as covered in this section.

This new section is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the miscellaneous taxes based on gross receipts.

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 10, 1986.

TRD-8602307 Bob Bullock
Comptroller of Public Accounts

Effective date: March 28, 1986
Proposal publication date: December 11, 1985
For further information, please call (512) 463-4606.

★ ★ ★

★34 TAC §3.59

The Comptroller of Public Accounts adopts new §3.59, without changes to the proposed text published in the October 11, 1985, issue of the *Texas Register* (10 TexReg 3948). The scope of this tax was significantly changed during the recent legislative session. This section establishes guidelines for determining the tax status of various receipts.

Comments were submitted in a public hearing on December 18, 1985. The hearing was requested by Vaughn Aldredge, on behalf of the Texas Telephone Association. The principal presentations were made by Mr. Aldredge on behalf of the members of that association, and by Mr. Randall B. Wood, attorney for Southwestern Bell Telephone Company. The comments all focused on the question of whether "amounts collected from customers as reimbursements for municipal or other assessments" should be considered to be taxable receipts.

In response to the comment that this provision would amount to a tax on tax, the comptroller' response is twofold. First, there is no prohibition on tax on tax, and it, in fact, is a common occurrence. Consumers pay sales tax on a number of items whose sales price includes, for example federal excise taxes. Further, cities are specifically prohibited from levying an occupation tax for the privilege of doing business in the city (Texas Tax Code, §182.063). Thus, the municipal franchise charge or fee should not be considered an illegal tax. In response to the comment that this charge is a receipt unrelated to the cost of service, the comptroller's response is that this item is indeed a receipt charged to customers in various cities in connection with providing service to those customers. The comptroller sees no reasonable distinction between this item and other items of cost or expense which petitioner recoups from its customers.

In response to the comment that the inclusion of this item as a taxable receipt is not within the scope of the statute as written or interpreted, the comptroller disagrees. This comment is closely related to the previous one. The comptroller believes that this item is but one component of the charge exacted from consumers for telephone service within the various cities. The fact that the rate or amount attributed to this charge may vary from city to city does not change its nature. The attorney general's opinions and other authorities cited by petitioner dealt with charges for something other than telephone service, the use of telephones, or telephone lines or poles. This charge is fundamentally in the nature of a charge for telephone service.

The comptroller does not believe that the comments presented warrant any change in this section.

This new section is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the miscellaneous taxes based on gross receipts.

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 10, 1986.

TRD-8602308 Bob Bullock
Comptroller of Public Accounts

Effective date: March 28, 1986
Proposal publication date: October 11, 1985
For further information, please call (512) 463-4606.

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VII. Commission on Fire Protection Personnel Standards and Education

Chapter 233. Minimum Standards Manual

Minimum Standards for Fire Fighter/Fire Inspector (Limited)

★37 TAC §233.33

The Commission on Fire Protection Personnel Standards and Education adopts new §233.33 without changes to the proposed text published in the November 5, 1985, issue of the *Texas Register* (10 TexReg 4267).

This new section provides the local fire departments with options to utilize fire suppression personnel for performing limited fire inspections within their city. Additional fire inspection should reduce fires and save lives.

The new section states requirements for fire suppression personnel to receive fire inspector training in order to receive fire fighter/fire inspector limited (LTD) certification. This will provide cities with an option to utilize additional fire prevention personnel for fire prevention activities.

No comments were received regarding adoption of the new section.

This new section is adopted under Texas Civil Statutes, Article 4413(35), which provide the commission with authority to promulgate rules and regulations to certify persons as being qualified under the provisions of this Act to be fire protection personnel.

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 6, 1986.

TRD-8602262 Ray L. Goad
Executive Director
Commission on Fire Protection Personnel Standards and Education

Effective date: March 27, 1986
Proposal publication date: November 5, 1985
For further information, please call (512) 474-8066.

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★37 TAC §233.35

The Commission of Fire Protection Personnel Standards and Education adopts new §233.35 without changes to the proposed text published in the November 5, 1985, issue of the *Texas Register* (10 TexReg 4268).

Local fire departments will have fire fighter(s) with additional training in arson detection and should provide better utilization of man power to prevent and detect arson fires. This should result in a reduction in arson fires and possibly reduce fire insurance rates.

The new section states requirements and eligibility of applicant for fire fighter/arson investigator limited certification. These training and certification requirements are offered as an alternative to full-time arson investigator personnel for local fire departments.

No comments were received regarding adoption of the new section.

This new section is adopted under Texas Civil Statutes, Article 4413(35), which authorize the commission to promulgate rules and regulations and to certify persons as being qualified under the provisions of this Act to be fire protection personnel.

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 6, 1986.

TRD-8602263 Ray L. Goad
Executive Director
Commission on Fire Protection Personnel Standards and Education

Effective date: March 27, 1986
Proposal publication date: November 5, 1985
For further information, please call (512) 474-8066.

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Fees Charged for Manuals and Certificates

★37 TAC §233.141

The Commission on Fire Protection Personnel Standards and Education adopts the repeal of §233.141 without changes to the proposed text published in the November 5, 1985, issue of the *Texas Register* (10 TexReg 4268).

The repeal is needed because new language in House Bill 1593, 69th Legislature, 1985, repealed the legislation which the rule was designed to address.

The repeal eliminates obsolete language that has been repealed by new §§233.151-233.156.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4413(35), which provide the Commission on Fire Protection Personnel Standards and Education with the authority to promulgate rules and regulations for the administration of this Act and to certify persons as being qualified, under the provisions of this Act, to be fire protection personnel.

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 6, 1986.

TRD-8602264 Ray L. Goad
Executive Director
Commission on Fire Protection Personnel Standards and Education

Effective date: March 27, 1986
Proposal publication date: November 5, 1985
For further information, please call (512) 474-8066.

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Certification and Renewal Fees

★37 TAC §§233.151-233.156

The Commission on Fire Protection Personnel Standards and Education adopts new §§233.151-233.156. Section 233.155 and §233.156 are adopted with changes to the proposed text published in the November 5, 1985, issue of the *Texas Register* (10 TexReg 4268). The other sections are adopted without changes and will not be republished.

These new sections are adopted to meet requirements in House Bill 1593, 69th Legislature, 1985, which requires the commission to collect a $20 fee for all certificates issued by the commission and an annual renewal fee for all certificates issued by the commission. Changes are made to §233.155(a)-(f) to clarify language and provide a more appropriate rule order, to §233.155(h)(2) and (3) to clarify language and eliminate excess language and §233.156 (a) to clarify language and add more explanation to subsections (c) and (d). The basic proposed content of these sections were not changed.

The new sections cover certification and annual renewal fee for all certificates issued by the commission. The new sections include renewal fee procedures, individuals affected by fees, late fees, certificate fees, inactive status for nonrenewals, responsibility for fees, reinstatement procedures for nonrenewal, and purpose and scope.

No comments were received regarding adoption of the new sections.

The new sections are adopted under House Bill 1593, 69th Legislature, 1985, §8, which provides that the commission shall collect a fee of $20 for each certificate issued or renewed by the commission; all certificates must be renewed annually; and the fees charged shall be paid to the commission by the employing entity in the manner the commission may by rule require.

§233.155. Certification renewal.

(a) For the first fiscal year the certification and renewal fees are in effect (beginning September 1, 1985, and ending August 31, 1986), the fees must be paid by January 31, 1986. In each fiscal year thereafter (beginning on September 1 of each calendar year and ending on August 31, of each calendar year), the fees must be paid by October 31.

(b) A certification renewal notice will be mailed to all fire departments by August 15 in every calendar year beginning in 1986.

(c) Renewal fees may be paid upon receipt of renewal notice, through October 31. Renewal fees received by this agency after October 31 are late and a late fee will be charged. A late fee is a regular fee of $20 plus $10. Renewal fees received by this agency after November 30 will be charged a late fee of $20 x 2 ($40 total).

(d) The certification renewal fee must be returned with the renewal notice to this agency with a cashier's check, money order, or check from the employing government entity.

(e) The renewal for an unexpired certificate is issued upon receipt of a renewal application form prescribed by the commission and payment of the renewal fee before the expiration date of October 31.

(f) Certification renewal notices will be mailed to all employing government entities at least 60 days prior to the renewal date.

(g) An administrative conference or hearing may be held to determine if additional action, other than the assessment of late fees, should be taken on certificates that have expired for more than 31 days.

(h) All certified fire protection personnel who leave active fire service employment will be placed on the commission's inactive status list. No refund will be made for any certification or renewal fee paid prior to placement on the inactive status list.

(1) A person on the inactive status list is not required to pay an annual fee.

(2) If a person on the inactive status list for less than two years re-enters the fire service, then the commission will remove the person from the inactive status list upon payment by the employing government entity of the fee provided in §233.154 of this title (relating to Fees).

(3) Any certification or renewal fee which is not paid by the employing entity or by the person holding the certification pursuant to §233.154 of this title (relating to Fees) will cause the certification(s) to be placed on the commission's inactive status list.

§233.156. Testing for Renewal or Certification Status.

(a) An individual who has left the fire service for more than two calendar years must pass a written proficiency test promulgated and administered by the commission at agency headquarters, with a passing grade

of 70%, or complete a recruit basic training program.

(b) Fire protection personnel that have served one year or more in a full-time, full-paid capacity with a government entity in another state other than Texas, or with any branch of the military, may also take a written proficiency test promulgated and administered by the commission at ageny headquarters.

(1) Passing the proficiency test only indicates that individuals have satisfied the training requirements for certification in Texas.

(2) Employing government entities must apply for state certification if they desire to accept the proficiency test in lieu of their own fire department training program. If a fire department requires individuals to complete a recruit basic training program, then a proficiency test is not required.

(3) Successfully passing a commission proficiency test does not prohibit the employing government entity from requiring individuals to enroll in and complete the employing entity's own 334-hour minimum standards training school.

(c) A cost recovery fee will be charged for all proficiency tests administered by commission staff members. The test fee does not replace the certification or renewal fee. The cost recovery fee is $50.

(d) An individual that fails a proficiency test may retest within seven days; however, an individual may not take the proficiency test more than three times in one calendar year.

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-8602265 Ray L. Goad
Executive Director
Commission on Fire Protection Personnel Standards and Education

Effective date: March 27, 1986
Proposal publication date: November 5, 1985
For further information, please call (512) 474-8066.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter I. Income

★40 TAC §3.902

The Texas Department of Human Services (DHS) adopts an amendment to §3.902, without changes to the proposed text published in the January 14, 1986, issue of the *Texas Register* (11 TexReg 219).

The amendment allows the DHS to use the budgetary needs figure in computing the income of an alien's sponsor. Section 3.902(a)(10) is amended to cite the Code of Federal Regulations policy about educational benefits. The citation involves no policy or procedural changes.

The amendment provides increased payments to some recipients of refugee cash assistance program benefits and qualifies for benefits some refugees previously determined ineligible.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 31 and Chapter 33, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on March 7, 1986.

TRD-8602311 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Effective date: May 1, 1986
Proposal publication date: January 14, 1986
For further information, please call (512) 450-3766.

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Chapter 48. CCAD Eligibility

★40 TAC §48.2904

The Texas Department of Human Services adopts an amendment to §48.2904, without changes to the proposed text published in the January 14, 1986, issue of the *Texas Register* (11 TexReg 222).

The department is adopting this amendment because an earned income exclusion provides disabled individuals with an incentive to continue employment or begin employment that could lead to independence.

The rule is amended to exclude the first $65 of the client's earnings, plus one-half of the remaining earnings, from countable income. This exclusion only applies to the client's earnings. If both members of an eligible couple are employed, only one exclusion is allowed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

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

Issued in Austin, Texas, on March 7, 1986.

TRD-8602312 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Effective date: March 28, 1986
Proposal publication date: January 14, 1986
For further information, please call (512) 450-3766.

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Part III. Texas Commission on Alcohol and Drug Abuse

Chapter 151. Licensure Standards for First Year Permit

★40 TAC §151.313

The Commission on Alcohol and Drug Abuse adopts an amendment to §151.313, without changes to the proposed text published in the January 3, 1986, issue of the *Texas Register* (11 TexReg 41).

Texas Civil Statutes, Article 5561cc, require all alcohol treatment programs to be licensed. This section, as amended, sets forth the requirements for licensure.

The amendment states that all alcohol treatment programs in the state will meet certain life, health, and safety standards, to ensure quality care and to safeguard the health and welfare of the clients.

No comments were received regarding the adoption of amendments to this section.

The amendment is adopted under Texas Civil Statutes, Article 5561cc, which require that all alcohol treatment facilities be licensed by the commission as of January 1, 1986.

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 10, 1986.

TRD-8602359 Ross Newby
Executive Director
Texas Commission on Alcohol and Drug Abuse

Effective date: March 31, 1986
Proposal publication date: January 3, 1986
For further information, please call (512) 463-5510.

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Part IX. Texas Department on Aging

Chapter 269. Health Standards Statutes and Regulations

★40 TAC §§269.1, 269.3, 269.5, 269.7

The Texas Department on Aging adopts new §§269.1, 269.3, 269.5, and 269.7, with changes to the proposed text published in the October 15, 1985, issue of the *Texas Register* (10 TexReg 4005).

The new sections are adopted to establish standards for area agencies on aging, grantees, service providers, or applicants to follow when providing health services to authorized participants in the Older Americans Act, Title III programs.

The new sections permit all activities providing health services funded under Title III of the Older Americans Act to follow standard procedures in the delivery of services, and to upgrade services to provide uniformity throughout the state. The sections apply only to Title IIIB funded services. Health services provided from other funding sources are not subject to these rules. It is the intent of the Texas Department on Aging that these standards be fully implemented by service providers no later than May 31, 1989.

During the public comment period, questions were asked concerning whether the services were mandatory, and comments were made about the fiscal implications of the new standards.

Those commenting in favor of the new sections were: Holly Anderson, Planner, Deep East Texas; Russonna Kaye Jones-Briscoe, Concerned Citizens of Jack County, Inc.; G. Norman Weaver, Hardin-Simmons University; B. J. Foldenauer, Divisional Director, Senior Services, City of San Angelo; Antoinette Samuel, City of Houston; and Jerry D. Casstevens, South Plains Association of Governments. Those commenting against the new sections were: Dr. John E. Brooks, Wharton County Jr. College; Beverly Cherney Pearson, Ark-Tek; Victoria Klinzing, Tarranty County; Dorothy Duncan, Director, San Angelo Supportive Services; Brad Helbert, West Central; Marshal Bennett, Fisher County Judge; Don Newbury, Western Texas College; and Gloria Shaw, Scurry County Senior Center.

The Texas Department on Aging intends to establish standards to be met by health services providers. No major cost implications for services should result which cannot be met by budgeting of Title III funding to meet these requirements. The Texas Department on Aging is developing standards in accordance with recommendations of the Sunset Commission.

The new sections are adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to adopt rules governing the function of the department.

§269.1. Title III Health Services Standards.

(a) Purpose. This publication gives the policies, procedures, and standards that govern the provision of health services by service providers authorized under the Older Americans Act. This chapter, 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 chapter applies only to Title III-funded services. Health services not provided with Title III funds are not subject to this chapter.

(2) Deadline. It is the intent of the Texas Department on Aging that these standards will be fully implemented by May 31, 1989.

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

(1) Health screening—Investigation or analysis by a medical or health professional to determine need for a health service (diagnosis). Includes routine tests such as blood pressure, diabetes, hearing, and vision. Health screening is also the application of fairly simple and routine procedures for detection of unrecognized disease in apparently well persons. These screening procedures are not in themselves diagnostic.

(2) Physical fitness—Activities which sustain and/or improve physical or mental health.

(3) Adult day care—An array of services provided in a congregate, nonresidential setting to dependent older persons who need supervision but do not need institutionalization. These services may include any combination of social/recreational activities, health maintenance, transportation, meals, and other supportive services.

§269.3. Health Screening.

(a) Health screening goal. The goal of health screening is to identify people at risk and refer them to appropriate follow-up services.

(b) Target group. The target group for this service is anyone 60 years of age or older.

(c) Coordination. Service providers will refer and/or coordinate with local public and/or private health centers, which could include, but not be limited to, community health centers, regional and/or local health departments, hospitals, voluntary health associations, and primary physicians.

(d) Availability of service. Providers will publicize availability of health screening and provide or facilitate transportation to health screening locations.

(e) Assessment. Providers will make available an annual health assessment procedure using a standardized health risk profile that shall contain, at a minimum, questions about the following:

(1) use of medications, prescribed and nonprescribed;
(2) diet;
(3) alcohol;
(4) smoking;
(5) depression;
(6) confusion;
(7) sleeping patterns;
(8) last PAP or prostate test;
(9) last tetanus shot; and
(10) medical history related to heart disease and diabetes.

(f) Screening. Screening procedures and tests to be made available by the provider are as follows.

(1) The following screening procedures will be available when resources permit:
(A) blood pressure check;
(B) information and materials as needed to conduct colorectal cancer test and breast and prostate self-examinations;
(C) hearing;
(D) vision/glaucoma;
(E) dental;
(F) blood tests;
(G) urinalysis;
(H) podiatry;
(I) nutritional status; and
(J) diabetes.

(g) Staffing. The service provider will utilize persons who are trained or are in training and/or supervised appropriately for the test(s) they administer. The results will, however, be interpreted by an appropriate health professional. Staffing may be paid or volunteer.

(h) Follow-up. The provider will provide follow-up health counseling and referral as a component of all screening activities. To do this effectively, the provider should:

(1) provide information about the resources that are available for clients to obtain recommended follow-up services; and

(2) make a record of health screening and follow-up education available to the client.

(i) Health education. Health education will be provided to participants in the following manner.

(1) Provider will assure that an annual schedule of health education services will address specific health concerns and needs of older individuals.

(2) Provider will ensure that individual participants are made aware of health services available to them in their communities.

(3) Provider will consult persons specifically trained and competent in appropriate health-related fields in the planning and implementation of health education services.

§269.5. Physical Fitness.

(a) Goals of physical fitness services. The goal of physical fitness services is for participants to experience the benefits of reg-

ular exercise. Benefits may include, but are not limited to:

(1) increased flexibility;
(2) increased coordination;
(3) improved balance;
(4) improved muscle tone;
(5) heightened endurance;
(6) improved breathing;
(7) improved mental alertness;
(8) improved emotional attitudes;
(9) enhanced sexual life; and
(10) pleasure.

(b) Target group. The target group for this service is individuals over 60 years of age who are participating in other activities in a congregate setting.

(c) Staffing. The following guidelines will be followed in providing staff for this activity.

(1) Staff may be paid or volunteer.

(2) Staff training will be obtained through one or more of the following:

(A) training from Texas Department on Aging;
(B) physical fitness instructor;
(C) films and/or books; and
(D) seminars from colleges or qualified agency.

(3) Each instructor will have current CPR training.

(d) Fitness education. Each participant must be educated to the purpose and results of proper exercise, including group exercise and exercises that can be done at home.

(e) Space. Large areas that insure ample room to extend arms and provides for the maximum safety of the participants will be used for conducting physical fitness programs.

(f) Release form. Each participant must sign a release form excusing both the instructor and the facility from any personal liability.

§169.7. Adult Day Care.

(a) Target group. The program shall be provided for all older persons 60 years or over with priority given to meeting the needs of persons with the greatest economic or social needs; and

(1) who may not need continuing nursing care; who require complete, full/part-time supervision in order to live in their own home or in the home of a relative; and/or

(2) who need help with activities of daily living in order to maintain themselves in their homes; and/or

(3) who need intervention in the form of enrichment and opportunities for social interaction in order to prevent deterioration that would lead to placement in group care.

(b) Service location. Services may be provided at an approved public or private facility with the following characteristics:

(1) facility and grounds will be clean and safe for participants as approved by local health and fire officials and/or licensing state departments;

(2) will comply with all zoning laws;

(3) will be free of architectural barriers;

(4) will have flexible and adaptable spaces available for appropriate activities for participants. Spaces will provide opportunities for large and small group activities;

(5) provision for a quiet room/rest area indoors separate from other project activity;

(6) provision for a nonsmoking area will be made to ensure the comfort of non-smoking participants;

(7) adequate and appropriate furniture to comfortably seat each participant will be available;

(8) if located in a multipurpose facility, the day-care program will be self-contained with its own staff and separate area. Depending on the nature of the other activities in the building, it may not be appropriate for participants to share in activities on a planned basis. Such involvement will be a part of the day-care program plan and must be supervised by a day-care staff member. It is not appropriate for persons from other activity groups in the building to move through the day-care area at will or to attend day care activities on an informal basis.

(c) Referrals. Participants in this program must be referred by the following agencies, activities, or individuals:

(1) department of social service;
(2) health or human service agency;
(3) self;
(4) family;
(5) friends; or
(6) medical profession.

(d) Services. Services will consist of the basic program services. An adult day-care services program will provide or make arrangements for the provision of all the basic services outlined:

(1) personal care services, including assistance, where needed, with activities of daily living (walking, eating, toileting, and grooming), and supervision of personal hygiene;

(2) activities services, consisting of planned social activities suited to the needs of the clients and designed to encourage physical exercise and reality orientation, to prevent deterioration, and to stimulate social interaction;

(3) nutrition services, including a minimum of one meal per day meeting ⅓ of the adult recommended dietary allowance, as established by the Food and Nutrition Board of the National Research Council, and provision of special diets, if feasible, and supplemental feedings, if indicated. Participants in attendance 10 or more hours will have an additional meal to meet ⅓ of the recommended daily allowance.

(4) social work services, for clients and their families, providing supplemental social work service to carry out the purposes for which day care is being used; and

(5) transportation services, which assist clients with transportation arrangements.

(e) Care plan. There will be a written policy governing the development, implementation, and management of patient care plans. The client care plan will be discussed with the client, guardian, or designated representative in order that they may contribute to the plan's development and implementation. The written plan will be available to all individuals involved in the care of the client and will document all of the following:

(1) the client's problems and needs;
(2) goals and objectives of care;
(3) methods of approach to care;
(4) modalities of care; and
(5) treatment and orders.

(f) Participant file. Files will be kept on all participants in the program. Any participant will have access to his/her records upon request. The following information for each participant will be maintained in a confidential file:

(1) completed assessment, updated semiannually care plan and monthly progress notes;

(2) record of attendance;

(3) reason for discharge and follow-up plan;

(4) description of accidents or illnesses occurring while participant is in the center's care, including date, time, and condition under which it occurred, and the action taken;

(5) agreements specifying family or guardian responsibilities for the client at the adult day-care center;

(6) release of information, when necessary; and

(7) admission information.

(g) Admission information. Each program will develop and follow a written participant procedure. This procedure will include a personal interview with the participant, and regular caregiver contact to discuss policies and procedures and to secure information or the required signed agreement. Admission information will contain:

(1) signed agreement between participant or guardian and center, including name, address, and telephone number of person(s) to be called in an emergency; permission for the center to secure medical help in case of an emergency;

(2) signed agreement for field trips and other activities away from the center;

(3) procedure for handling participant complaints; and

(4) information given regarding service costs and other services and plans for contributions.

(h) Staffing. The program will employ personnel sufficient to provide care and services to meet the needs of each client. Minimum requirements are as follows.

(1) The staff of an adult day-care center will consist of a program director and one direct service staff per eight participants at all times.

(2) Paraprofessional and volunteer staff will be supervised by qualified supervisory personnel, and will be provided with periodic in-service training conducted by the professional staff.

(3) Other staff providing services will be qualified by training or experience to competently provide services in the areas assigned.

(i) Menus. Each program will have menus which are certified by a registered dietitian or nutritionist on which to base provision of nutrition services.

(1) Menus will meet the ⅓ of the adult recommended daily allowance for clients.

(2) A written diet order will be on record for each individual on a modified diet.

(j) Volunteers. Each program will have a written procedure that is implemented regarding the recruiting, training, and supervising of volunteers, including:

(1) job descriptions;
(2) yearly evaluations;
(3) orientation programs; and
(4) liability insurance for each volunteer;

(k) Accessibility. Each program will have certification that it is an accessible facility. Accessibility to a facility means that a handicapped participant is able to enter the facility, use the rest room, and receive service that is at least equal in quality to that received by a nonhandicapped participant.

(l) Discharge policy. Each program will have a discharge policy that, at the minimum, shall include particulars regarding the following. This information must be placed in the participant's file within 10 days of admission and be reviewed semiannually by the program director and/or other appropriate staff:

(1) the participant's wishes to discontinue attendance;
(2) change in caregiver status; and
(3) death.

(m) Referrals to other agencies. Each program will implement a system for cross-referrals between other service agencies to identify clients in need of adult day-care services, to be able to refer clients to other community resources capable of meeting those needs, and to involve clients within the community.

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 6, 1986.

TRD-8602235 O. P. (Bob) Bobbitt
Executive Director
Texas Department on Aging

Effective date: March 27, 1986
Proposal publication date: October 15, 1985
For further information, please call (512) 444-2727.

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TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation

Chapter 17. Motor Vehicle Division

Dealer License Plate Cancellation

★43 TAC §§17.61-17.64

The State Department of Highways and Public Transportation adopts the repeal of §§17.61-17.64, without changes to the proposed text published in the December 10, 1985, issue of the *Texas Register* (10 TexReg 4733).

The repeal of these sections and the simultaneous adoption of new §§17.61-17.73 is necessary to comply with the Dealer License Law, Texas Civil Statutes, Article 6686, as amended by House Bill 1953, 69th Legislature, 1985.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 6686, which provide the State Highway and Public Transportation Commission with the authority to establish section for the administration of statutory provisions relating to dealer's and manufacturer's licenses.

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 6, 1986.

TRD-8602269 Diane L. Northam
Administrative Technician
State Department of Highways and Public Transportation

Effective date: March 28, 1986
Proposal publication date: December 10, 1985
For further information, please call (512) 463-8620.

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★ 43 TAC §§17.61-17.73

The State Highway and Public Transportation Commission adopts new §§17.61-17.73, without changes to the proposed text published in the December 10, 1985, issue of the *Texas Register* (10 TexReg 4734).

The commission repeals §§17.61-17.64, concerning dealer license plate cancellation and simultaneously adopts new §§17.61-17.73, concerning dealer's and manufacturer's licenses. This action is necessitated by amendments to Texas Civil Statutes, House Bill 1953, Article 6686, 69th Legislature, 1985.

The new §§17.61-17.73 provide guidelines for the qualification of dealers, for use of dealer license plates and cardboard tags, for the cancellation of dealer licenses, and for the issuance of manufacturer's licenses.

In public hearing, Gene Fondren, representing the Texas Automobile Dealers Association, and Walter Warner, representing the Texas Independent Automobile Dealers Association, spoke in favor of the proposed sections as published in the *Texas Register*.

Representatives of the major car rental and leasing companies, credit unions, and auctioneers offered comments concerning the adverse effect the new §§17.61, 17.63, and 17.64 could have on their industry. Those commenting on behalf of the car rental and leasing industry were Johnnie B. Rogers, Texas Car and Truck Rental and Leasing Association; Jack Anderson, Avis Rent-A-Car, Houston; Robert A. Jarrett, Budget Rent-A-Car; John Martin, attorney for three rental car companies; Gary Smith, National Car Rental System, Inc., Houston; Sidney H. Womack, Hertz Corporation; and Orville Story, Avis Rent-A-Car; and automobile dealerships. Commenting on behalf of the credit unions were John Christoff, Union Square Federal Credit Union and Texas Credit Union League; and John B. Lederer, Texas Credit Union League, who submitted written comments. Commenting on behalf of the auctioneers were Rufus Garrett, Miller and Miller Auctioneers; E. Robert Emley, Texas Auctioneers Association; and Von Reece, representing Von Reece Auctioneers.

Representatives of the rental and leasing companies expressed the opinion that §17.61 (dealer) should be amended to exclude rental and leasing companies that sell their own vehicles. Also, since many of the rental car companies are licensed dealers, it was suggested that these companies should have the option as to whether or not they want to buy a dealer license and abide by the dealer licensing law.

With reference to §17.63 (more than one location) and §17.64 (off-site sales), representatives of several rental car companies expressed the desire that a dealer should be permitted to operate from more than one location as long as one of the locations is a qualified permanent location for which a general distinguishing number has been issued. It also was suggested that the department could, by regulation, require prior aproval by a dealer to hold off-site sales. Most commentors recommended that §17.63 and §17.64 be amended or interpreted to allow private

off-site sales, such as credit union sales which are not open to the general public.

Representatives of the credit unions also expressed the desire that rental car companies and other new and used car providers be allowed to participate in private off-site sales which are held for credit union members.

On behalf of the auctioneers, it was explained that in the normal course of their business, they may conduct sales at various locations throughout the state; and they could not comply with the dealer law if the proposed rules required all sales to be made from a permanent location. They expressed the desire that licensed auctioneers be excluded from the proposed rules.

After a review of the comments and evidence received the commission elected to adopt the new §§17.61-17.73 as published, the following comments being pertinent.

Regarding §17.61, the question of who is and who is not regularly and actively engaged in the business as a dealer is not addressed anywhere in the sections. Therefore, it is not necessary to list any exceptions. The section merely tracks the law and applies, generally, to any peson who is regularly and actively engaged in the business of buying, selling, or exchanging vehicles, except persons who sell four or less vehicles per year. If the legislature had intended that there should be specific exemptions, it could have very easily listed such exemptions at the time it exempted persons who sell four or less vehicles per year. The commission does not believe the department has the authority to provide by section for additional exemptions behond the only exemption stated in law.

Regarding §17.63, for many years, the department has operated under policy that a dealer may operate from two or more locations within the same city using the same dealer number as long as all locations are qualified; and in any event, a separate dealer number is required for a location outside the city. It is difficult to understand why the legislature would be so specific in defining the term "established and permanent place of business" if a dealer could otherwise offer vehicles for sale from any place he might choose, such as public parking lots, street corner, etc., that were not otherwise qualified locations as defined in the act and approved by the department.

Regarding §17.64, this section not only supports §17.63, which prohibits dealers from offering vehicles for sale from unqualified locations, but also provides some degree of flexibility to licensed dealers who offer vehicles for sale at other dealers' established and permanent places of business as approved by the department, such as auto auctions that are also licensed under the provisions of Texas Civil Statutes, Article 6686.

While the department recognizes and appreciates the concerns expressed by representatives of the rental and leasing companies, the credit unions, and the auctioneers, it should be understood that the only change in law insofar as §§17.61, 17.63, and 17.64 are concerned is the question concerning the definition of dealer. There is no change in departmental policy in connection with §§17.63 and 17.64. The commission takes the position that the legislature, when enacting House Bill 1953, was attempting to provide equity for licensed vehicle dealers and protection for the buying public. Remedy for any hardship brought about by the passage of this act among persons that offer vehicles for sale must rest either in the courts or with future sessions of the Texas Legislature.

The new sections are adopted under Texas Civil Statutes, Article 6686, which provide the State Highway Commission with the authority to establish sections for the administration of statutory provisions relating to dealer's and manufacturer's licenses.

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 6, 1986.

TRD-8602270

Diane L. Northam
Administrative Technician
State Department of Highways and Public Transportation

Effective date: March 28, 1986
Proposal publication date: December 10, 1985
For further information, please call (512) 463-8620.

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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 Department of Agriculture

Thursday, March 20, 1986, 9 a.m. The Texas Corn Producers Board of the Texas Department of Agriculture will meet in the Corn Board Office, 218, East Bedford, Dimmitt. According to the agenda, the board will review the financial statement; the budget for the fiscal year; Kellogg's potential contract; the farm program; the Korean trade team; the nuclear waste update; the hospital insurance plan; and election of three directors.

Contact: Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: March 10, 1986, 9:28 a.m.
TRD-8602347

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Texas Alcoholic Beverage Commission

Monday, March 24, 1986, 1:30 p.m. The Texas Alcoholic Beverage Commission will meet in the third floor hearing room, 1600 West 38th Street, Austin. According to the agenda, the commission will approve the minutes of the January, 1986 meeting; consider the administrator's report of agency activity; and approve affidavits of destruction of tested alcoholic beverages.

Contact: W. S. McBeath, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: March 11, 1986, 9:26 p.m.
TRD-8602381

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Texas County and District Retirement System

Friday, March 21, 1986, 9 a.m. The Board of Trustees of the Texas County and District Retirement System will meet at the Hyatt Regency Hotel, 208 Barton Springs Road, Austin. According to the agenda summary, the board will review minutes of the December 6, 1985, regular board meeting; consider and pass on applications for service retirement benefits and disability retirement benefits; review and act on the reports from the director, actuary, legal counsel, and investment counsel; and set the date for the June meeting.

Contact: J. Robert Brown, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: March 10, 1986, 9:25 a.m.
TRD-8602349

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Credit Union Department

Thursday, March 20, 1986, 10 a.m. The Credit Union Commission of the Credit Union Department will meet at the Credit Union Department, 914 East Anderson Lane, Austin. According to the agenda, the commission will consider the adoption of proposed amendments to Rules 95.4, 95.5, 95.101-95.103, 95.201, 95.203, 95.205, and 95.208 (operation of Texas Share Guaranty Credit Union); 91.506 (bond requirements); and 97.112 (supervision fees for Texas Share Guaranty Credit Union); the adoption of the proposed repeal of Rules 95.202, 95.303, 95.204, 95.206, and 95.207 (operation of Texas Share Guaranty Credit Union); report of the Standard Project Committee; and the changes to the operating budget. The commission also will meet in executive session to consider personnel matters and report on examinations and supervision.

Contact: Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752, (512) 837-9236.

Filed: March 10, 1986, 3:02 p.m.
TRD-8602363

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Interagency Council on Early Childhood Intervention

Tuesday, March 18, 1986, 8:30 a.m. The Interagency Council on Early Childhood Intervention will meet in the second floor conference room, 1101 East Anderson Lane, Austin. According to the agenda summary, the council will approve minutes; review fiscal year 1988-1989 budget request; discuss fiscal year 1986-1987 budget reductions; and programmatic issues and standards.

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2671.

Filed: March 6, 1986, 2:09 p.m.
TRD-8602249

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Texas Education Agency

Saturday, March 15, 1986, 8:30 a.m. The Governor's Chapter 2 Advisory Committee will meet in emergency session in the Brazos Room, Executel Motor Inn, 925 East Anderson Lane, Austin. According to the agenda, the committee will discuss federal funds for school year 1986-1987 from Chapter 2 of the Education Consolidation Improvement Act. The emergency status is necessary because this is the only time when members of the committee could be convened due to scheduling conflicts.

Contact: Dick Jarrell, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9269.

Filed: March 10, 1986, 4:09 p.m.
TRD-8602373

Thursday, March 20, 1986. Committees of the Commission on Standards for the Teaching Profession of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. Times, committees, and agendas follow.

10:30 a.m. The Interim Reports Committee will review interim reports from Southern Methodist University and West Texas State University.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: March 7, 1986, 2:36 p.m.
TRD-8602318

1:30 p.m. The Committee on Certification Programs and Requirements will consider the status report on development of certification tests; discuss the teaching experience requirements for teacher educators; discuss the status of the certificate program in computer information systems; the individual programs; initial 1984 standards of Stephen F. Austin State University, vocational education, agriculture, ornamental horticulture; Tarleton State University, vocational education, agriculture, ornamental horticulture; the University of Texas at Dallas, secondary, Option II, geography, secondary, Option IV, and social studies.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: March 7, 1986, 2:36 p.m.
TRD-8602317

3 p.m. The Committee on Standards and Procedures for Institutional Approval will consider the request from Dallas Baptist University for review of professional certificate programs; request from Wayland Baptist University for the review of professional certificate programs; discussion of oral language proficiency testing for prospective foreign language teachers; and a discussion of issues related to the application of standards raised by visiting evaluation team to Schreiner College.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: March 7, 1986, 2:36 p.m.
TRD-8602316

4:30 p.m. The Teacher Education Conference Planning Committee will make a recommendation for the site of the 1987 teacher education conference.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337
TRD-8602315

Friday, March 21, 1986, 8:15 a.m. The Executive Committee of the Commission on Standards for the Teaching Profession of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will discuss agenda items with the committee chairmen.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: March 7, 1986, 2:37 p.m.
TRD-8602314

Friday, March 21, 1986, 9 a.m. The Commission on Standards for the Teaching Profession of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will consider information items including the report on the meeting of the Select Committee on Higher Education; the report on the State Board of Education actions; the report on the commissioners' conference on teacher education; reports from the Interim Reports Committee, the Certification Programs and Requirements Committee, the Standards and Procedures for the Institutional Approval Committee, the Conference Planning Committee, and the Executive Committee.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: March 7, 1986, 2:37 p.m.
TRD-8602313

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Texas Employment Commission

Tuesday, March 18, 1986, 8:30 a.m. The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will review prior meeting notes; the internal procedures of commission appeals; consider and act on higher level appeals in unemployment compensation cases on commission Docket 11; and set the date of the next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: March 7, 1986, 2:02 p.m.
TRD-8602309

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Good Neighbor Commission

Friday, March 14, 1986, 10:30 a.m. The Good Neighbor Commission (GNC) will meet in the Valero Room, Marriott Hotel, Market Street, San Antonio. According to the agenda, the commission will approve minutes 122; consider committee reports; commissioners' reports; staff reports; GNC projects; GNC goals and objectives; and select next meeting date.

Contact: Lauro Cruz, P.O. Box 12007, Austin, Texas 78711, (512) 475-3581.

Filed: March 6, 1986, 4:19 p.m.
TRD-8602266

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Office of the Governor

Tuesday, March 18, 1986, 10 a.m. The State Job Training Coordinating Council of the Governor's Task Force on Literacy of the Governor's Office will meet at the Psychological Corporation, 555 Academic Court, San Antonio. According to the agenda, the council will discuss the definition of literacy in Texas; the assignment of task force interest areas; goals for interest areas; the statewide literacy network; and review other states' action on literacy.

Contact: Joe Jennings, 107 West 27th Street, Austin, Texas 78712, (512) 471-6010.

Filed: March 7, 1986, 9:52 a.m.
TRD-8602273

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Texas Department of Health

Saturday, March 15, 1986. Committees of the Department of Health will meet at the AMFAC Hotel and Resort, East Tower, Dallas/Fort Worth Airport, Dallas/Fort Worth. Times, committees, rooms, and agendas follow.

8 a.m. The Environmental Health Committee of the Texas Board of Health will meet in the Galaxy Room to discuss proposed amendments to the rules concerning Texas Shellfish; the final adoption of rules for solid waste permit application fees and solid waste facility annual fees; and the amendments to the Texas Regulations for Control of Radiation, Part 12.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484.

Filed: March 7, 1986, 4:26 p.m.
TRD-8602342

8:30 a.m. The Legislative Committee of the Texas Board of Health will meet in the Futura Room to discuss the update on legislative proposals for the Texas Department of Health.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484.

Filed: March 7, 1986, 4:27 p.m.
TRD-8602341

8:45 a.m. The Crippled Children's Services Committee of the Texas Board of Health will meet in the Horizon Room to discuss the final adoption of Crippled Children's Services program rules; proposed amendments to Crippled Children's Services program rules; and special senses and communications disorders rules.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484.

Filed: March 7, 1986, 4:27 p.m.
TRD-8602340

9 a.m. The Hospitals Committee of the Texas Board of Health will meet in the Constellation Room to reconsider the application of Southwest Texas Methodist Hospital to serve as a Crippled Children's Services Pediatric Cardiology Diagnostic and Treatment Center.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484.

Filed: March 7, 1986, 4:27 p.m.
TRD-8602239

9:15 a.m. The Personnel Committee of the Texas Board of Health will meet in the Enterprise Ballroom-Sector I to discuss extension of terms of office of members of the Crippled Children's Services Cardiovascular Advisory Committee.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7484.

Filed: March 7, 1986, 4:28 p.m.
TRD-8602338

9:30 a.m. The Texas Board of Health of the Texas Department of Health will meet in the Enterprise Ballroom-Sector I to approve minutes; discuss the commissioner's report; the 1985 Texas community health promotion awards; an update on the Crippled Children's program; final rules on Crippled Children; communicable diseases in deceased persons; the hospital licensing standards; respiratory care practitioners; the solid waste permit and facility fees; radiation fees; proposed rules on crippled children; the special senses and communication disorder; dietitians; shellfish; extension of emergency abortion rules; committee reports including legislative, hospital, and personnel; election of the board secretary; and announcements and comments. The board will also meet in executive session.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 7, 1986, 4:28 p.m.
TRD-8602337

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State Board of Insurance

Friday, March 7, 1986, 10 a.m. The State Board of Insurance met in emergency session in Room 414, 1110 San Jacinto, Austin. According to the agenda, the board discussed fidelity bonds required by Article 20A.30 to cover officers and employees of health maintenance organizations. The emergency status was necessary because of the lack of availability of such bonds.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701, (512) 463-6328.

Filed: March 6, 1986, 3:13 p.m.
TRD-8602257

Monday, March 17, 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 9225—application for amendment to the articles of incorporation of American-Amicable Life Insurance Company of Texas, Waco.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6524.

Filed: March 6, 1986, 3:48 p.m.
TRD-8602260

Tuesday, March 18, 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 9215—application for approval of amendments to articles of incorporation of Renaissance Insurance Company, Farmers Branch.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701, (512) 463-6498.

Filed: March 10, 1986, 3:32 p.m.
TRD-8602354

Tuesday, March 18, 1986, 10 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will consider the proposed Preferred Provider Plan Rules (28 TAC 3.3701-3.3705) as revised by the Advisory Committee appointed by the board; board orders on several different matters as itemized on the complete agenda; the motion for dismissal in the appeal of Allstate Insurance Company from action of the Texas Catastrophe Property Insurance Association; the fire marshal's report on personnel matters; the commissioner's report on personnel matters; pending and contemplated litigation; and the fee for National Association of Insurance Commissioners Securities Evaluation Office.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: March 10, 1986, 3:59 p.m.
TRD-8602370

Tuesday, March 18, 1986, 2 p.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider the decision on the petition by Motors Insurance Corporation for the transfer of vendors single interest coverage on automobiles from motor vehicle insurance to inland marine insurance, hearing held August 26, 1985; the amended petition by Texas Automobile Insurance Service Office for amendment of the automobile manual by adoption of a pollution exclusion endorsement; the filing by Insurance Services Office of a revision of bodily injury increased limit factors for products/completed operations classifications of division six of the Commercial Lines Manual and Texas Guide (a) rate pamphlet; the filing by Insurance Services Office of a revision of boiler and machinery rules, rates and guide (a) rates.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: March 10, 1986, 4:02 p.m.
TRD-8602369

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Texas Commission on Jail Standards

Wednesday, March 26, 1986, 9 a.m. The Texas Commission on Jail Standards will meet at the Board of Pardons and Paroles, 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will read and approve the minutes of the last meeting, January 22, 1986; consider the directors report on old business, Cook, Ochiltree, Palo Pinto, Rockwall, Smith, and Val Verde Counties, AIDS, the criminal justice workshop, the bureau of standards or detention equipment, the change to standards on supervision of inmates, the electronic monitored confinement, new business, Johnson, Reagan, Terrell, Coryell, and Hill Counties, the staffing of Wood and Navarro Counties, applications for variance for Collin, Lubbock, Mitchell, and Nolan Counties. The commission also will meet in executive session.

Contact: Robert O. Viterna, 411 West 13th Street, Suite 900, Austin, Texas 78701, (512) 463-5505.

Filed: March 10, 1986, 3:50 p.m.
TRD-8602372

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Lamar University System

Monday, March 10, 1986, 1:45 p.m. The Development/Public Relations Committee jointly with the Executive Committee of the Board of Regents of the Lamar University System (LU) made an emergency addition to the agenda for the meeting held in the Lamar Room, Gray Library, Beaumont. The addition concerned an executive session to discuss personnel matters. The meeting was rescheduled from March 10, 1986, 2 p.m.

Contact: Dr. George McLaughlin, P.O. Box 11915, Beaumont, Texas 77710, (409) 880-2304.

Filed: March 7, 1986, 10:55 a.m.
TRD-8602289

Thursday, March 13, 1986, 10:30 a.m. The Academic Affairs Committee of the Board of Regents of the Lamar University System met in the Lamar Room, Gray Library, Beaumont. According to the agenda, the committee considered approval of the mission statement for LU-Port Arthur. The meeting was rescheduled from March 10, 1986, 1:15 p.m.

Contact: Dr. George McLaughlin, P.O. Box 11915, Beaumont, Texas 77710, (409) 880-2304.

Filed: March 7, 1986, 10:54 a.m.
TRD-8602292

Thursday, March 13, 1986, 10:40 a.m. The Personnel Committee of the Board of Regents of the Lamar University System met in the Lamar Room, Gray Library, Beaumont. The committee considered approval of summer development leaves for LU-Beaumont. The committee also met in executive session. The meeting was rescheduled from March 10, 1986, 2 p.m.

Contact: Dr. George McLaughlin, P.O. Box 11915, Beaumont, Texas 77710, (409) 880-2304.

Filed: March 7, 1986, 10:55 a.m.
TRD-8602291

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Board of Law Examiners

Friday, March 14, 1986, 2 p.m. The Board of Law Examiners will meet via telephone conference call in Suite 505, 1414 Colorado Street, Austin. According to the agenda, the board will consider problems arising from the administration of the February 1986 bar examination.

Contact: Wayne Denton, Suite 505, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1621.

Filed: March 6, 1986, 1:26 p.m.
TRD-8602246

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Texas State Library and Archives Commission

Thursday, March 20, 1986, 2 p.m. The Records Management and Preservation Advisory Committee of the Texas State Library and Archives Commission will meet in Room 314, Lorenzo de Zavala Archives and Library Building, 1201 Brazos Street, Austin. According to the agenda, the committee will review a subcommittee report on the revision of recommended retention schedule; a status report of subcommittee on standards and retention of microfilm; a status report of the investigation of the process to destroy records; a report sent to the legislature in March 1986; a report and/or testimony to the Texas Commission on Economy and Efficiency; and other business.

Contact: Susan Tennison, P.O. Box 2960, Austin, Texas 78769, (512) 441-3355.

Filed: March 10, 1986, 9:27 a.m.
TRD-8602348

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Board of Pardons and Paroles

Tuesday, March 11, 1986, 9:30 a.m. The Board of Pardons and Paroles made an emergency revision to the agenda for a meeting held at 8610 Shoal Creek Boulevard, Austin. The revision concerned the agenda item regarding budget reduction for fiscal year 1988-1989; it should read budget projections for fiscal year 1988-1989. The emergency status was necessary because board members could not adjust their schedules to meet at any other time.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2704.

Filed: March 10, 1986, 11:45 a.m.
TRD-8602355

Tuesday, March 11, 1986, 9:30 a.m. The Board of Pardons and Paroles met in emergency session at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board discussed matters concerning the Goree Project and budget reductions for fiscal year 1988-1989. The emergency status was necessary because board members could not adjust their schedules to meet at any other time.

Contact: Juanita Llamas, P.O. Box 13401, Austin, Texas 78711, (512) 459-2704.

Filed: March 6, 1986, 3:15 p.m.
TRD-8602258

Wednesday, March 12, 1986, 10 a.m. The Board of Pardons and Paroles met in emergency session at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board conducted a full board interview; and met with interested parties in connection with subject to the board's jurisdiction of Clyde Durbin, 10 a.m., TDC 206,231. The emergency status was necessary because board members could not adjust their schedule to meet at any other time.

Contact: Daniel R. Guerra, P.O. Box 13401, Austin, Texas 78711, (512) 459-2700.

Filed: March 6, 1986, 3:16 p.m.
TRD-8602259

Monday-Friday, March 17-21, 1986, 1:30 p.m. daily, except 11 a.m. on Friday. A board panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoner/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, P.O. Box 13401, Austin, Texas 78711, (512) 459-2713.

Filed: March 7, 1986, 11:10 a.m.
TRD-8602286

Tuesday, March 18, 1986, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendations and related action (other than out of country conditional pardons), including full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; and other reprieves, remission and executive clemency action.

Contact: Juanita Llamas, P.O. Box 13401, Austin, Texas 78711, (512) 459-2704.

Filed: March 7, 1986, 11:09 a.m.
TRD-8602287

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Texas State Board of Public Accountancy

Thursday, March 20, 1986, 11:45 a.m. The Nominating Committee of the Texas State Board of Public Accountancy will meet in the 2001 Club, 2001 Bryan Tower, Dallas. According to the agenda, the committee will nominate officers of the Texas State Board of Public Accountancy.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752, (512) 451-0241.

Filed: March 10, 1986, 9:23 a.m.
TRD-8602350

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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 made an emergency addition to the agenda for a meeting held in Hearing Room D, Suite 450N, 7800 Shoal Creek Boulevard, Austin. The addition concerned publication of staff proposed rule changes in Substantive Rule §23.68—embedded customer premises equipment. The emergency status was necessary in order to expedite to comply with FCC request.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 6, 1986, 2:58
TRD-8602255

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

Monday, March 17, 1986, 10 a.m. A prehearing conference in Docket 6678—petition of Houston Lighting and Power Company for a refund of fuel saving and adjustment for fixed fuel factors.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 7, 1986, 2:58 p.m.
TRD-8602326

Tuesday, April 29, 1986, 10 a.m. A prehearing conference in Dockets 5994 and 6431—petition of inquiry into rates paid by Houston Lighting and Power Company to qualifying facilities for the purchase of nonfirm energy; and petition of Texasgulf Chemicals

Company against Houston Lighting and Power Company regarding avoided cost calculation.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 10, 1986, 3:55 p.m.
TRD-8602371

Wednesday, May 28, 1986, 10 a.m. A hearing in Docket 6750—application of General Telephone Company of the Southwest for authority to implement local measured service in the Sherman Exchange.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 7, 1986, 2:56 p.m.
TRD-8602327

Monday, July 28, 1986, 10 a.m. A hearing in Docket 6415—petition of Contel Cellular of El Paso, Inc., for an order barring Southwestern Bell Telephone Company from imposing charges for reservation and use of NXX Code.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 6, 1986, 2:57 p.m.
TRD-8602256

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Railroad Commission of Texas

Monday, March 17, 1986, 9 a.m. The Railroad Commission of Texas will meet in the first floor auditorium east, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: March 7, 1986, 11:04 a.m.
TRD-8602305

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1204.

Filed: March 7, 1986, 11:05 a.m.
TRD-8602300

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-7149.

Filed: March 7, 1986, 11:07 a.m.
TRD-8602297

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: March 7, 1986, 11:04 a.m.
TRD-8602303

The Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: March 7, 1986, 11:06 a.m.
TRD-8602299

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters, and the difficulty Grayco Electrical, Inc., has had in obtaining insurance.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: March 7, 1986, 11:02 a.m.
TRD-8602306

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: March 7, 1986, 11:07 a.m.
TRD-8602296

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: March 7, 1986, 11:09 a.m.
TRD-8602293

Consideration of All American Pipeline Company's application for a pipeline permit across various counties in Texas.

Contact: Susan Cory, P.O. Box 12967, Austin, Texas 78711, (512) 463-6923.

Filed: March 7, 1986, 11:07 a.m.
TRD-8602295

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: March 7, 1986, 11:05 a.m.
TRD-8602302

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: March 7, 1986, 11:05 a.m.
TRD-8602301

The Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lilie, 1124 IH 35 South, Austin, Texas 78704, (512) 463-7149.

Filed: March 7, 1986, 11:06 a.m.
TRD-8602298

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: March 7, 1986, 11:04 a.m.
TRD-8602304

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: Michael A. James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: March 7, 1986, 11:08 a.m.
TRD-8602294

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State Rural Medical Education Board

Sunday, March 16, 1986, 8 a.m. The State Rural Medical Education Board will meet in the seventh floor conference room, Southwest Tower Building, 211 East Seventh Street, Austin. According to the agenda summary, the board will discuss general business; renewal loan applications; supplemental loan applications; and other business.

Contact: Duane Keeran, Room 408, 211 East Seventh Street, Austin, Texas 78701, (512) 463-5501.

Filed: March 6, 1986, 2:08 p.m.
TRD-8602248

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School Land Board

Tuesday, March 18, 1986, 10 a.m. The School Land Board will meet in the General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board will approve the minutes of the previous board meeting; consider the pooling applications; the pooling agreement amendments; the suspension report; nominations, terms, conditions, and procedures for special oil, gas, and other minerals lease sale; consideration of

royalty and/or mineral reservations for sale of vacancies; consider land trades; preliminary consideration of sale of tracts under the General Sales Act; the coastal public lands lease applications; easement applications; the commercial lease applications; consideration of dredging fees for coastal easements; applications to lease highway right-of-way for oil and gas; the direct sale of small tract under the Natural Resources Code, §51 052; and the preliminary consideration of land trade in Jim Hogg County.

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

Filed: March 10, 1986, 2:05 p.m.
TRD-8602358

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Texas Surplus Property Agency

Wednesday, March 26, 1986, 9:30 a.m. The Governing Board of the Texas Surplus Property Agency will meet in Suite 100, Max Scheid and Associates Office, 1500 Eastgate Plaza, Garland. According to the agenda, the board will approve minutes of the last board meeting; discuss agency finances; the executive director's report; and the relocation of the Fort Worth District Distribution Center.

Contact: Marvin J. Titzman, Box 8120, San Antonio, Texas 78208, (512) 661-2381.

Filed: March 6, 1986, 2:13 p.m.
TRD-8602247

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Texas A&M University System

Thursday, March 13, 1986, 10 a.m. The Committee for the Search for a Chancellor of the Board of Regents of the Texas A&M University System met in the MSC Annex, Texas A&M University, College Station. According to the agenda, the committee considered any and all things leading to the selection of a chancellor of the Texas A&M University System. The meeting will reconvene on Friday, March 14, 1986, at 8 a.m.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: March 7, 1986, 9:18 a.m.
TRD-8602271

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Texas State Technical Institute

Saturday, March 15, 1986, 3:30 p.m. The Executive Committee of the Board of Regents of Texas State Technical Institute (TSTI) will meet in the Central Administration Building, TSTI campus, Waco. According to the agenda, the committee will discuss the real property acquisitions.

Contact: Theodore A. Talbot, Waco, Texas 76705, (817) 799-3611, ext. 3900.

Filed: March 11, 1986, 8:56 a.m.
TRD-8602384

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Texas Tech University

Thursday, March 13, 1986. Committees of the Board of Regents of Texas Tech University and Texas Tech University Health Sciences Center met jointly in the board suite, Administration Building, Texas Tech University campus, Lubbock. Times, committees, and agendas follow.

9:30 a.m. The Academic and Student Affairs Committees considered the granting of academic tenure; the change in academic rank; and reports. The committees also met in executive session.

The Academic and Student Affairs Committee of the Texas Tech Health Sciences Center considered the granting of academic tenure with appointment.

The Academic and Student Affairs Committee of Texas Tech University considered the designation of Horn Professor(s); the granting of emeritus status; ratified the leaves of absence, the conferral of degrees for May, 1986, commencement, and the faculty development leaves; the finding of facts regarding the appointment of employee to another position of honor, trust, or profit.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409 (806) 742-2161.

Filed: March 7, 1986, 9:20 a.m.
TRD-8602276

10:30 a.m. The Athletic Affairs Committee of Texas Tech University considered reports. The committee also met in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409 (806) 742-2161.

Filed: March 7, 1986, 9:21 a.m.
TRD-8602277

1:30 p.m. The Campus and Buildings Committees considered reports. The committees also met in executive session.

The Campus and Building Committee of Texas Tech University considered the award construction contract for the Civil-Agricultural Engineering Building renovation, Chemistry Building renovation, the serving counters renovation in residence hall complexes, the bathroom renovation in four residence halls, the exterior doors and windows renovation in residence halls, the installation of air conditioning for the Housing Office in Doak Hall, and the replacing doors in Chitwood/Weymouth Halls; received bids for the Engineering Research Center renovation, the Natatorium renovation, phase I of the installation and renovation of fire alarms in general education buildings, and to upgrade the water distribution system at the Agricultural Field labs; reestablished the project budget for residence hall apartment renovations; revised the board policy on building program; and ratified the completion date for the campus north utility tunnel.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409 (806) 742-2161.

Filed: March 7, 1986, 9:21 a.m.
TRD-8602278

2:30 p.m. The Public Affairs and University Relations Committees considered reports. The committees also met in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409 (806) 742-2161.

Filed: March 7, 1986, 9:22 a.m.
TRD-8602280

3 p.m. The Finance and Administration Committees considered the adoption of standardized oil and gas lease form, standardized oil and gas division order form, standardized oil and gas and other minerals lease form; approved the addendum to board policy on mineral leases; approved the formation of the Research Foundation; authorized the president to contract with additional investment depository banks on bid-as-required basis; approved board policy on leasing of space for activities; the plan for allocation of higher education assistance fund; adopted the emergency spending reduction plan; reports; and telecommunications planning.

The Finance and Administration Committee of Texas Tech University Health Sciences Center ratified the memorandum of understanding with Lubbock General Hospital, and awarded the housekeeping services contract for the Health Sciences Center building.

The Finance and Administration Committee of Texas Tech University awarded the contract for printing the University Daily for 1986-1988.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409 (806) 742-2161.

Filed: March 7, 1986, 9:24 a.m.
TRD-8602283

Friday, March 14, 1986, 9 a.m. The Board of Regents of Texas Tech University Health Science Center will meet in the board suite, Administration Building, Texas Tech University campus, Lubbock. According to the agenda summary, the board will consider reports and action on the minutes; the Academic and Student Affairs Committee; the Finance and Administration Committee, and the Development Committee. The board also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409 (806) 742-2161.

Filed: March 7, 1986, 9:20 a.m.
TRD-8602274

Friday, March 14, 1986, 10:15 a.m. The Board of Regents of Texas Tech University will meet in the board suite, Administration Building, Texas Tech campus, Lubbock. According to the agenda summary, the board will consider reports and action on the minutes; the Academic and Student Affairs Committee; the Finance and Administration Committee; the Campus and Building Committee; and the Development Committee. The board also will meet in executive session.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409 (806) 742-2161.

Filed: March 7, 1986, 9:19 a.m.
TRD-8602272

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Texas Turnpike Authority

Monday, March 10, 1986, 2 p.m. The Right-of-Way Acquisition Committee of the Texas Turnpike Authority met in emergency session at the Texas Turpike Authority Administration Building, 3015 Raleigh Street, Dallas. According to the agenda summary, the committee considered the sale of the Dallas North Tollway excess land parcel. The committee also met in executive session to discuss the value of real property. The emergency status was necessary because a delay in approving deed subjects the authority to damage claims under the provision of the sales contract.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: March 7, 1986, 11 a.m.
TRD-8602290

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Texas Water Commission

Tuesday, March 18, 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, the commission will discuss water district bond issues; the release from escrow, and use of surplus funds; proposed water quality permits; amendments and renewals; amendments to certificate of adjudication; final decisions on water use applications; adoption of rules; and contracts.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 7, 1986, 2:47 p.m.
TRD-8602336

Tuesday, March 18, 1986, 12:30 p.m. The Texas Water Well Drillers Board of the Texas Water Commission will meet at the Bayfront Plaza Convention Center, Corpus Christi. According to the agenda summary, the board will consider approval of the minutes of the January 7, 1986, meeting; certification of applicants for registration; applications for driller-trainee registration; whether to set the following complaints for formal public hearing before the board or for other appropriate legal action: Eddie Lynn Calicutt, Dean Davenport, Lester Duffer, Doyle Ely, Doyle Garrett, Conrad Hamlin, David Hines, Ray E. Newborn, Norman Moorhead, Michael O'Day, Gary L. Nolan, and Albert J. Posey; proposed rule changes; and fiscal year 1986 budget as requested by the governor's executive order.

Contact: Roger Schultz, P.O. Box 13087, Austin, Texas 78711, (512) 463-8095.

Filed: March 6, 1986, 10:42 a.m.
TRD-8602240

Wednesday, March 26, 1986, 9:30 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Agendas follow.

The commission will consider application TA-5400 of Heldenfels Brothers, Inc., for a permit to divert and use 13 acre-feet of water for a two year period from roadside ditches and the Aransas River, tributary Copano Bay, tributary Aransas Bay, San Antonio-Nueces Coastal Basin, for highway construction purposes in San Patricio County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 7, 1986, 3:11 p.m.
TRD-8602319

The commission will consider application TA-5402 of Strickland & Knight, Inc., for a permit to diver and use one acre-foot of water for a two year period from Concho River, Colorado River, Colorado River Basin for industrial purposes in Tom Green County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 7, 1986, 3:11 p.m.
TRD-8602321

The commission will consider application TA-5406 of H. H. Howard and Sons, Inc., for a permit to divert and use four acre-feet of water for a three year period from Little Cypress Creek, tributary Big Cypress Creek, Cypress Basin for industrial purposes in Marion County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 7, 1986, 3 p.m.
TRD-8602322

The commission will consider application TA-5399 of Guadalupe Ski-Plex Homeowners Association, Inc., for a permit to divert and use a total of 60 acre-feet of water for a three year period from York Creek, tributary San Marcos River, tributary Guadalupe River Basin for recreational purposes in Guadalupe County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 7, 1986, 3 p.m.
TRD-8602323

The commission will consider application TA-5405 of William J. Gavranovic and David Doguet for a permit to divert and use 150 acre-feet of water for a six month period from Ten Mile Creek, tributary Trinity River, Trinity River Basin for irrigation purposes in Dallas County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 7, 1986, 2:59 p.m.
TRD-8602324

The commission will consider application TA-5398 of SPG Exploration Corporation for a permit to divert and use two acre-feet of water for a one year period from Rio Grande (Falcon Reservoir), Rio Grande Basin for mining purposes in Zapata County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 7, 1986, 2:59 p.m.
TRD-8602325

Wednesday, March 26, 1986, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider an application by Intercontinental Energy Corporation for proposed Permit 02788, Bee County; and an application by Standard Realty Investors, Ltd., for proposed Permit 13149-01, Webb County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 7, 1986, 2:47 p.m.
TRD-8602335

Monday, March 31, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the examiners will consider Docket 6699—Channel Oaks Water Supply System rate increase.

Contact: Kay Trostle, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 7, 1986, 2:53 p.m.
TRD-8602331

Tuesday, April 8, 1986, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 512, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the office will consider Docket 6686—the rate increase of Waterco, Inc.

Contact: Charmaine J. Rhodes, P.O. Box 13087, Austin, Texas 78701, (512) 463-7898.

Filed: March 10, 1986, 2:44 p.m.
TRD-8602368

Tuesday, April 15, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water

Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will consider an application by Homecraft Enterprises Corporation, 1800 West Loop South, Suite 1801, Houston, Texas 77027 for Permit 13225-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 3,200,000 gallons per day from the proposed Gilleland Creek Wastewater Treatment Plant. The applicant proposes to provide sewer service to a proposed development which is to consist of single- and multi-family residential, commercial, light industrial (warehouse-type) tracts.

Contact: Charmaine Rhodes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 7, 1986, 2:54 p.m.
TRD-8602330

Tuesday, April 15, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet on the second floor, 6500 West Singleton Boulevard, Grand Prairie. According to the agenda summary, the examiners will consider an application by L.M.L. Properties, 430 South Beltline Road, Irving, Texas 75060 for Permit 13204-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 18,000 gallons per day from the proposed L.M.L. Properties Mobile Home Park Wastewater Treatment Plant. The meeting was rescheduled from January 29, 1986 (10 TexReg 4918).

Contact: Douglas Roberts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 7, 1986, 2:53 p.m.
TRD-8602332

Thursday, April 17, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 512, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will consider Docket 6546—application of Water Services, Inc., and Water Services Two, Inc., for a rate/tariff change, in accordance with the granting of a motion for continuance by Mary Ross McDonald, administrative law judge for the public utility commission.

Contact: Cynthia G. Hayes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 7, 1986, 2:51 p.m.
TRD-8602333

Wednesday, April 23, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the meeting room, 263 Main Plaza, New Braunfels. According to the agenda summary, the examiners will consider an application by Guadalupe-Blanco River Authority, P.O. Box 271, Seguin, Texas 78155 for Permit 11751-02 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 700,000 gallons per day from the proposed Guadco Municipal Utility District 1 and 2 Wastewater Treatment Plant. The applicant proposes to increase services in a partially developed subdivision.

Contact: Marcella Sellers, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 7, 1986, 2:55 p.m.
TRD-8602329

Wednesday, April 30, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 512, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the office will consider Docket 6738—application of River Road Enterprise Water System for a §13.187(g) rate tariff change, which proposes an increase in rates for the water utility service it provides to approximately 50 customers in Sabine County. The rate increase, effective March 1, 1986, affects all customers and would be an increase from the present rate of $72 per year ($6 per month) to $159 per year ($13 per month) with $15 discount granted if paid by the year in advance. The utility does not propose to install meters and charge for gallonage at this time.

Contact: Cynthia G. Hayes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: March 10, 1986, 2:45 p.m.
TRD-8602367

Tuesday, May 13, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Agendas follow.

Application 12-2203A of Larry R. Jones who seeks to amend Certificate of Adjudication 12-2203 to delete the expiration date of December 31, 1985, all being more fully set out in the application, Brazos River Basin, Erath County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 10, 1986, 2:48 p.m.
TRD-8602361

Application 5044 of Tom Dan Hubbard who seeks a permit to divert 150 acre feet of water per annum from the San Antonio River, San Antonio River Basin, to irrigate, Karnes County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 10, 1986, 2:47 p.m.
TRD-8602362

Application 08-3376A of General Portland, Inc., which seeks to amend Certificate of Adjudication 08-3376 to authorize the construction of 93.16 acre foot on channel dam and reservoir on Cement Creek, Trinity River Basin, Tarrant County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 10, 1986, 2:47 p.m.
TRD-8602364

Application 12-3573A of G. H. Bingham who seeks to amend Certificate of Adjudication 12-3573 to delete the expiration date by extending the term of the certificate by a period of ten years, all being more fully set out in the application, Brazos River Basin, Comanche County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 10, 1986, 2:46 p.m.
TRD-8602365

Application 5020 of Ralph Shuman who seeks a permit to divert 50.7 acre feet of water from Bastrop Bayou, tributary of Intracoastal Water, San Jacinto, Brazos Coastal Basin, for recreational use, Brazoria County. The meeting is rescheduled from March 18, 1986.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: March 10, 1986, 2:46 p.m.
TRD-8602366

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Texas Youth Commission

Thursday, March 13, 1986, 10 a.m. The Board of the Texas Youth Commission (TYC) made an emergency addition to the agenda for a meeting held at the Gainesville State School, Gainesville. The addition concerns water rights negotiations in South Texas. The emergency status was necessary because a proceeding to cancel the state's certification of adjudication regarding water rights held by TYC, by virtue of its ownership of land for the South Texas Regional Facility, is currently pending before the Water Commission. Action now to present this cancellation constitutes an urgent public necessity.

Contact: Ron Jackson, 8900 Shoal Creek Boulevard, Austin, Texas 78766, (512) 452-8111.

Filed: March 6, 1986, 2:24 p.m.
TRD-8602250

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Regional Agencies
Meetings Filed March 6

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main Street, San Antonio, on March 14, 1986, at 9 a.m. Information may be obtained from Bill Burnette, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511.

The Carson County Appraisal District, Board of Directors, met for an emergency revised agenda at 102 Main Street, Panhandle, on March 12, 1986, at 9 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068.

The Ellis County Tax Appraisal District, met at 406 Sycamore Street, Waxahachie, on March 13, 1986, at 7 p.m. Information may be obtained from Gray Chamberlain, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Gonzales County Appraisal District, Board of Directors, met at 928 St. Paul Street, Gonzales, on March 13, 1986, at 5 p.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Lampasas County Appraisal District, met at 403 East Second Street, Lampasas, on March 12, 1986, at 3 p.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058.

The Texas Municipal Power Agency, Board of Directors, will meet in the Administration Building, Gibbons Creek Steam Electric Station, 2-2½ miles north of Carlos, on FM Road 244, on March 13, 1986, at 10 a.m. Information may be obtained from Jim Bailey, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013.

The West Central Texas Council of Governments, Private Industry Council, will meet at Briarstone Manor, 101 Eplen Court, Abilene, on March 18, 1986, at 10 a.m. Information may be obtained from Tom K. Smith, (915) 672-8544.

TRD-8602239

Meetings Filed March 7

The Denton County Appraisal District, Board of Directors, will meet at 3911 Morse, Denton, on March 20, 1986, at 3:30 p.m. The Appraisal Review Board will meet at the same location, on March 21, 1986, at 9 a.m. Information may be obtained from John Brown, 3911 Morse, Denton, Texas 76205, (817) 566-0904.

The Hays County Central Appraisal District, Board of Directors, met on the third floor, Courthouse Annex, 102 LBJ Drive, San Marcos, on March 13, 1986, at 5:30 p.m. Information may be obtained from Lynnell Sedlar, 102 LBJ Drive, Courthouse Annex, San Marcos, Texas 78666, (512) 396-4777.

The Houston-Galveston Area Council, Project Review Committee, met on the fourth floor, conference room, 3555 Timmons, Houston, on March 12, 1986, at 9:30 a.m. Information may be obtained from Aquina Janice, 3555 Timmons, Houston, Texas 77027, (713) 993-4555.

The Lamb County Appraisal District, Board of Directors, will meet at 330 Phelps Avenue, Littlefield, on March 20, 1986, at 7:30 p.m. Information may be obtained from Murlene J. Bilbrey, 330 Phelps Avenue, Littlefield, Texas 79339, (806) 385-6474.

The Middle Rio Grande Development Council, Private Industry Council, will meet in the reading room, Uvalde Civic Center, Uvalde, on March 19, 1986, at 10 a.m. Information may be obtained from Juan Pablo Velez, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

The South Plains Association of Governments, Executive Committee and Board of Directors, met at 3424 Avenue H, Lubbock, on March 11, 1986, at 9 a.m. and 10 a.m., respectively. Information may be obtained from Jerry D. Casstevens, P.O. Box 2787, Lubbock, Texas 79408, (806) 762-8721.

TRD-8602284

Meetings Filed March 10

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on March 24, 1986, at 8:30 a.m. The Board of Directors will meet at the same location, on March 25, 1986, at 10 a.m. Information may be obtained from Bill Burnett, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Cass County Appraisal District, Board of Directors, will meet at 208 West Houston Street, Linden, on March 14, 1986, at 8 a.m. Information may be obtained from Janelle W. Clements, P.O. Box 1150, Linden, Texas 75563, (214) 756-7545.

The Dallas Area Rapid Transit, South Africa Task Force and Board, met in emergency session at 601 Pacific Avenue, Dallas, on March 11, 1986, at 5:30 p.m. and 6:30 p.m., respectively. The Budget and Finance Committee met at the same location, on March 12, 1986, at 1:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202.

The East Texas Council of Governments, JTPA Board of Directors, met at K-Bob's Restaurant, Kilgore, on March 13, 1986, at 11:30 a.m. The Executive Committee will meet at 3800 Stone Road, Kilgore, on March 13, 1986, at 2 p.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The Education Service Center Region XVII, Board of Directors, will meet at 4000 22nd Place, Lubbock, on April 8, 1986, at 10 a.m. Information may be obtained from Ray Lanier, 4000 22nd Place, Lubbock, Texas 79410, (806) 792-4000.

The Golden Crescent Service Delivery Area, Private Industry Council, Inc., met in emergency session in the Sam Houston Room, Victoria Bank and Trust, 120 Main Place, Victoria, on March 12, 1986, at 6:30 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Gray County Appraisal District, Board of Directors, met in Suite 196-A, Hughes Building, 400 West Kingsmill, Pampa, on March 13, 1986, at 5 p.m. Information may be obtained from Charles Buzzard.

The Henderson County Appraisal District, Board of Directors, will meet at 101 East Corsicana, Athens, on March 14, 1986, at 9 a.m. Information may be obtained from Ron Groom, 101 East Corsicana, Athens, Texas 75751, (214) 675-9296.

The Appraisal District of Jones County, Board of Directors, will meet at 1137 East Court Plaza, Anson, on March 20, 1986, at 9 a.m. Information may be obtained from John Steele, (915) 823-2422.

The Lampasas County Appraisal District, Appraisal Review Board, will meet at 403 East Second Street, Lampasas, on March 18, 1986, at 9 a.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550.

The Middle Rio Grande Development Council, Texas Review and Comment Systems, met in emergency session at City Hall, City Council Chambers, 109 West Broadway, Del Rio, on March 12, 1986, at 10 a.m. Information may be obtained from Oralia Saldua, 612 D. Bedell, Del Rio, Texas 78840, (512) 775-4160.

The Northeast Texas Municipal Water District, Board of Directors, will meet at Highway 250 South, Hughes Springs, on March 17, 1986, at 2 p.m. Information may be obtained from Homer Tanner, P.O. Box 955, Hughes Springs, Texas 75656, (214) 645-7538.

The Nueces-Jim Wells-Kleberg Soil and Water Conservation District, Board of Directors, will meet at 2287 North Texas Boulevard, Alice, on March 18, 1986, at 2 p.m. Information may be obtained from Carol Freeman, P.O. Box 142, Alice, Texas 78333, (512) 668-9390.

The Palo Pinto Appraisal District, Board of Directors, will meet at the Courthouse, Palo Pinto, on March 19, 1986, at 3 p.m. Information may be obtained from Jack Samford, (817) 659-3651, ext. 223.

The San Antonio River Authority, Board of Directors, will meet at 100 East Guenther Street, San Antonio, on March 19, 1986, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box

9284, San Antonio, Texas 78204, (512) 227-1373.

The San Patricio County Appraisal District, Appraisal Review Board, will meet in Room 226, Courthouse Annex, Sinton, on March 20, 1986, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

The South East Texas Regional Planning Commission, Executive Committee, will meet in City Council Chambers, Beaumont, on March 19, 1986, at 7:30 p.m. Information may be obtained from Jackie Vice, P.O. Drawer 1387, Nederland, Texas 77627, (409) 727-2384, ext. 13.

TRD-8602344

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Regional Agencies
Meetings Filed March 11

The Bexar Appraisal District, Board of Directors, will meet at 535 South Main Street, San Antonio, on March 17, 1986, at 5 p.m. Information may be obtained from Bill Burnette, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511.

The Bosque County Appraisal District, Board of Directors, will meet in the Judges Chambers, Bosque County Courthouse, Meridian, on March 20, 1986, at 7 p.m. Information may be obtained from David G. Cooper, P.O. Box 393, Meridian, Texas 76634, (817) 435-2304.

The Capital Area Planning Council, Executive Committee, will meet at CAPCO Conference Room, 2520 IH 35 South, Suite 100, Austin, on March 18, 1986, at 2 p.m. Information may be obtained from Richard G. Bean, (512) 443-7653.

The Dewitt County Appraisal District, Board of Directors, will meet at 103 Bailey Street, Cuero, on March 18, 1986, at 7:30 p.m. Information may be obtained from Wayne K. Woolsey, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Mills County Appraisal District, will meet at the Courthouse, Goldthwaite, on March 20, 1986, at 6:30 p.m. Information may be obtained from Doran E. Lemke, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253.

The Nortex Regional Planning Commission, General Membership Committee, and the Nortex Planning Region Consortium, will meet in the Bounty Room, Trade Winds Motor Hotel, 1212 Broad Street, Wichita Falls, on March 20, 1986, at noon and 1 p.m., respectively. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas 76309, (817) 322-5281.

TRD-8602380

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
Notice of Contested Case Hearing

Pursuant to the authority provided in the Texas Clean Air Act (the Act), §§3.15, 3.16, 3.17, 3.27, and 3.271, Texas Civil Statutes, Article 4477-5, and §§103.11(3), 103.31, and 103.41 of the procedural rules of the Texas Air Control Board (TACB), an examiner for the TACB will conduct a contested case hearing to consider whether a permit should be issued to Natural Gas Pipeline Company of America (hereinafter referred to as the company) for the construction of an amine gas treatment facility at its natural gas Booster Station 30, located approximately 12 miles north-northwest of the intersection of State Highway 302 and County Road 101, near Kermit in Winkler County.

Said company is directed to appear at the time and place shown following and demonstrate by a preponderance of evidence why the TACB should issue a permit to construct the proposed facility as authorized by the Act §3.27, and Regulation VI of the rules and regulations of the TACB.

The record of this hearing will be used by the TACB in determining whether to issue a permit to construct the proposed facility pursuant to the Act §3.27, and Regulations VI of the TACB.

Information regarding this application and copies of the TACB's rules and regulations are available at the regional office of this agency located at 1901 East 37th Street, Suite 101, Odessa, Texas 79762, the central office of this agency located at 6330 Highway 290 East, Austin, Texas 78723, and the Commissioner's Courtroom, County Courthouse, Kermit, Texas 79745.

The examiner has set the hearing to begin at 6 p.m., April 21, 1986, at the Commissioner's Courtroom, County Courthouse, Kermit, Texas 78745. Prospective parties to the hearing will be the TACB staff and the company. Any other persons desiring to be made a part to the hearing must specifically apply in writing for party status to Examiner Paul M. Shinkawa, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. No other persons will be admitted as parties unless the request is actually received at the previously mentioned address by 5 p.m., March 14, 1986. Previous correspondence with the TACB is not effective for this purpose. At the hearing on the merits, only those persons admitted as parties will be permitted to present evidence and argument and to cross-examine witnesses. Any person who desires to give testimony at the hearing but who does not desire to be a party may call the Legal Division of the TACB at (512) 451-5711, extension 350, to determine the names and addresses of all admitted parties. These parties may then be contacted about the possibility of presenting testimony.

Pursuant to §103.46 of the procedural rules of the TACB, the examiner has scheduled a prehearing conference on April 9 at 7 p.m., at the Commissioner's Courtroom, County Courthouse, Kermit, Texas. All persons wishing to be admitted as parties must attend this conference. Proposed written disputed issues for consideration at the hearing on the merits and written request for official notice should be made at the prehearing conference. Motions for continuance will only be granted upon proof of good cause. At this conference, a specific date prior to the hearing on the merits will be established for the exchange of written direct testimony and copies of written and documentary evidence pursuant to §103.46(2). Prehearing orders setting out discovery periods and other prehearing requirements may also be issued following this prehearing conference.

Members of the general public who plan to attend the hearing are encouraged to telephone the centeral office of the TACB in Austin, at (512) 451-5711, extension 350, a day or two prior to the hearing date in order to confirm the setting since continuances are granted from time to time.

Issued in Austin, Texas, on March 4, 1986.

TRD-8602203 Bill Stewart
Executive Director
Texas Air Control Board

Filed: March 5, 1986
For further information, please call (512) 451-5711.

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Texas Commission on the Arts
Request for Proposals

Notice of Invitation. The Texas Commission on the Arts (TCA), is soliciting proposals to conduct a study of the Hispanic arts and cultural organizations. Funds expended under a resulting contract, if any, will not exceed $15,000. The contract will become effective on or about May 1, 1986, and will terminate on or about September 30, 1986.

Scope of Proposal. It is the intent of the Texas Commission on the Arts and the State of Texas to solicit proposals for a statewide assessment of the technical and financial assistance needs of Hispanic arts and cultural organizations in the State of Texas. The object of this assessment is to determine how the commission may more effectively provide the assistance needed to build and support effective and stable organizations throughout the many culturally and ethnically diverse communities.

Scope of Services to be Provided.

(A) identify, survey, and assess the needs of hispanic arts and cultural organizations related to the following: organizational structure and purpose, financial management needs, budget, facilities, marketing, and grantsmanship/fundraising needs;

conduct assessment of available Hispanic Arts and
l organizations and develop a written description
assistance needed;

(C) assist participating organizations in identifying and articulating critical needs;

(D) meet with Arts Commission staff to appraise work plans and progress;

(E) submmit to the commission a written synopsis of all meetings or work sessions conducted with participants;

(F) submit to the commission a written formal report in a format that is to be generally agreed upon at the time of contracting;

(G) any failure to comply with terms as contracted may result in a request to return either a portion or all funds, and may cause the contractor to be subject to criminal or civil action as advised by the office of the attorney general.

Proposal Requirements.

(A) submit resumes of key personnel assigned to the project;

(B) submit a detailed outline of specific methods to be used to accomplish the most positive results for the services requested;

(C) submit a detailed budget;

(D) submit references from similar projects.

Person to Contact. Proposal preparation instructions and further information regarding this notice may be obtained from Patrice Walker, Assistant Director for Administration, at TCA offices, P.O. Box 13406, Austin, Texas 78711, or call (512) 463-5535 or (800) 252-9415.

Deadline for Submission of Proposals. Proposals must be received at the TCA offices no later than March 31, 1986. Any proposals received after the scheduled opening date and time will be immediately disqualified.

Application and Award Procedures. To be eligible, offerors must evidence the capability to accomplish the requested services. Proposals must include specific documentation of the offeror's capability to provide the requested services. Selection of consultant will be based on the following criteria: demonstrated experience with and capability to complete needs assessment survey, particularly in the arts industry; demonstrated ability of individuals working on the study, supported by documentation of education and experience; proposed methodology; ability to perform within established time frame; and reasonableness of the fee for services. Other considerations being equal, preference will be given to an offeror whose principal place of business is within the state or who will manage the consulting study wholly from one of its offices within the state. Proposals received by the deadline will be reviewed by the Minority Involvement Committee of the Texas Commission on the Arts at its meeting in April 1986 at which time selection of consultant may be made. Each offeror shall include in its proposal a list of all persons employed by the offeror who have been employed by TCA or by another state agency at any time during the two years preceding the date of this request for proposal.

Preparation of Proposal. Each copy of the proposal should be bound in a single volume where practical. All documentation submitted with the proposal should be bound in that single volume. If the proposal includes any comment over and above the specific information requested in our request for proposal, include this information as a separate appendix to the proposal.

Oral Presentation. Any offeror or offerors may be requested to make an oral presentation of their proposal to the Minority Involvement Committee or Texas Commission on the Arts after the proposal opening. Such presentations provide an opportunity for the vendors to clarify their proposals and to insure thorough mutual understanding. The commission will schedule the time and location for these presentations. Technical questions will be addressed at this time.

Basis for Award. The proposal evaluation profiles will be conducted by a review panel and the award will be based upon the proposal deemed to be the most advantageous considering the following criteria which are listed in order of importance:

(A) proven ability to relate to the cultural and ethnic plurality of Texas;

(B) general comprehension of cultural arts disciplines and standards of operation for non-profit organizations;

(C) the offeror's approach and understanding of the scope of services to be provided as demonostrated by outlining special efforts and addressing the means of completing this project;

(D) previous related experience of the offeror in planning and implementation of similar projects;

(E) qualifications of key personnel which demonstrate suitability to work on this project;

(F) cost as projected.

Offeror Responsibility. Each offeror shall fully acquaint himself with conditions, as referenced previously in this document, relating to the scope and restrictions attending the execution of the work under the conditions of this proposal. It is expected that this will in some cases require "on-site" observation.

Issued in Austin, Texas, on March 7, 1986.

TRD-8602334 A. Patrice Walker
Assistant Director for Administration
Texas Commission on the Arts

Filed: March 7, 1986
For further information, please call (512) 463-5535.

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Texas Department of Banking
Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the Banking Commissioner for the Commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the Commissioner.

On March 4, 1986, the Banking Commissioner received an application to acquire control of Merchants State Bank, Dallas, by Edwin V. Bonneau, Dallas; Ernest A. Mahard, Prosper; James P. Christon, Dallas; and Umed Thobani, Mesquite.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar, Austin, Texas 78705 (512) 475-4451.

Issued in Austin, Texas, on March 4, 1986.

TRD-8602201 William F. Aldridge
Director of Corporate Activities
Department of Banking

Filed: March 5, 1986
For further information, please call (512) 479-1200.

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Texas Department of Health
Correction of Error

An adopted section submitted by the Texas Department of Health contained an error as published in the January 31, 1986, issue of the *Texas Register* (11 TexReg 606).

The effective date for the document should be April 1, 1986.

Request for Proposals

The December 27, 1985, issue of the *Texas Register* (10 TexReg 5022) contained a notice concerning requests for proposals regarding the Maternal and Infant Health Improvement Program (MIHIA). The notice said that health care persons/agencies who wish to apply for funds to serve as contractors for the MIHIA program may obtain information and application materials (request for proposals) from the offices of the councils of government or from any regional office of the Texas Department of Health. The notice also listed the addresses of the councils of government and the regional offices of the department.

The department now clarifies the notice published at 10 TexReg 5022 by adding the following information.

(1) All proposals for MIHIA funds must be submitted to the department by Monday, March 17, 1986. The postmark date is the date of mailing. The previous due date was March 3, 1986.

(2) Copies of the completed proposals shall be sent to three different agencies. Three copies shall be sent to Walter P. Peter, Jr., M.D., Chief, Bureau of Maternal and Child Health, 1100 West 49th Street, Austin, Texas 78756; one copy shall be sent to the appropriate council of government; and one copy shall be sent to the appropriate regional director of public health.

Issued in Austin, Texas, on March 6, 1986.

TRD-8602285 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: March 7, 1986
For further information, please call (512) 458-7700.

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Texas Department of Mental Health and Mental Retardation
Consultant Contract Award

This award of consulting services is being filed pursuant to Texas Civil Statutes, Article 6252-11c. The consultant proposal request appeared in the *Texas Register* (11 TexReg 309).

The consultant's duties shall include, but will not be limited to, the following: consultant will continue to study and analyze the operation of case management programs in the Texas Department of Mental Health and Mental Retardation facilities and community centers and continue the development of a case management automated information and monitoring system and requisite case management training. All information will be compiled and submitted to the Kerrville State Hospital and central office of the Texas Department of Mental Health and Mental Retardation. Specific activities include developing an automated case management client/services information system; assisting selected centers and facilities in the implementation of the case management information system; and monitoring the implementation and continuation of case management services through the automated system.

Penelope Caragonne, Ph.D., was awarded the contract. Ms. Caragonne's business is Case Management Research, P.O. Box 26272, Austin, Texas 78755.

Expenditures under the contract shall not exceed $44,254 for both services rendered and travel expenses. The contract begins on February 20, 1986, and ends on March 26, 1987.

Reports prepared under this contract shall be provided to the department every 30 days. A final report shall be submitted 30 days from completion of the contract.

Issued in Austin, Texas, on March 6, 1986.

TRD-8602268 Gary E. Miller
Commissioner
Texas Department of Mental Health and Mental Retardation

Filed: March 6, 1986
For further information, please call (512) 465-4591.

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Texas Parks and Wildlife Department
Consultant Contract Award

This consultant service selection is filed under Texas Civil Statutes, Article 6252-11c. The consultant proposal request was published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4958).

The services of the consultant will be continued by an amendment to the existing agreement. His services to the agency consist of: advising on real estate and land acquisition matters, assisting in developing and implementing a long-range plan in matters pertaining to land acquisition, reviewing existing legislation and recommending changes on land acquisition matters, advising on how to secure private donations of land and other related assets, and assisting in developing a real estate and land acquisition program for the agency.

The name and address of the consultant is Elton Bomer, 711 West Corsicana Street, Athens, Texas 78751. The total value of this award is $25,100. The amendment is effective February 14, 1986, and will terminate on August 31, 1986.

Issued in Austin, Texas, on March 5, 1986.

TRD-8602200 Charles D. Travis
Executive Director
Texas Parks and Wildlife Department

Filed: March 5, 1986
For further information, please call (512) 479-4805.

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Red River Compact Commission
Agenda for March 28, 1986, Meeting

The interstate (Texas, Oklahoma, Arkansas, and Louisiana) Red River Compact Commission will hold its 6th Annual Meeting at the Sheraton Hot Springs Lakeside Resort, Hot Springs, Arkansas on March 28, 1986, at 8:30 a.m.

The 6th Annual Meeting will be called to order and a welcome address will be presented; the meeting agenda will be approved; the minutes of the April 30, 1985, meeting will be approved; the reports of the chairman and the secretary/treasurer will be presented; the reports of the Engineering, Legal, and Budget Committees will be presented, including reports on Caddo Lake, on the status of development of water right and use data for Reach II, Subbasin 5, on the status of development of commission rules and regulations for Reaches I, III, and IV, and on the United State Geological Survey proposal to model the Red River between Denison Dam and the Arkansas/Louisiana State boundary; unfinished business will be considered, including further discussion regarding appointment of a federal chairman for the commission; new business will be introduced, including preparation and publication of the 1985-1986 annual commission report, assignments to the Legal, Engineering, and Budget Committees, election of officers, appointments to committees, and the place and date for the 7th Annual Meeting; comments of the public will be invited; and the meeting will be adjourned.

Issued in Austin, Texas, on March 4, 1986.

TRD-8602251 Larry R. Soward
Certifying Official
Red River Compact Commissioner for Texas

Filed: March 6, 1986
For further information, please call (512) 463-7928.

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Texas Savings and Loan Department
Notice of Application of Change of Control

Texas Civil Statutes, Article 852a, §11.20, requires any person who intends to acquire control of a state-chartered savings and loan association to file an application with the Savings and Loan Commissioner for approval of the transaction. A hearing may be held if the application is denied by the Commissioner

On February 28, 1986, the Savings and Loan Commissioner received an application for approval of the acquisition of control of Western Gulf Savings and Loan Association, Bay City, Texas, by T.E. Rowan, Victoria; John S. Scheumack, Victoria; Edward J. Mosher, Houston; Albert B. Hornaday, Bay City; Tom G. Robins, Victoria.

Any inquiries may be directed to the Texas Savings and Loan Department, 1004 Lavaca, Austin, Texas 78701, (512) 475-7991.

Issued in Austin, Texas, on March 7, 1986.

TRD-8602310 Russel R. Oliver
General Counsel
Texas Savings and Loan Department

Filed: March 7, 1986
For further information, please call (512) 479-1250.

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