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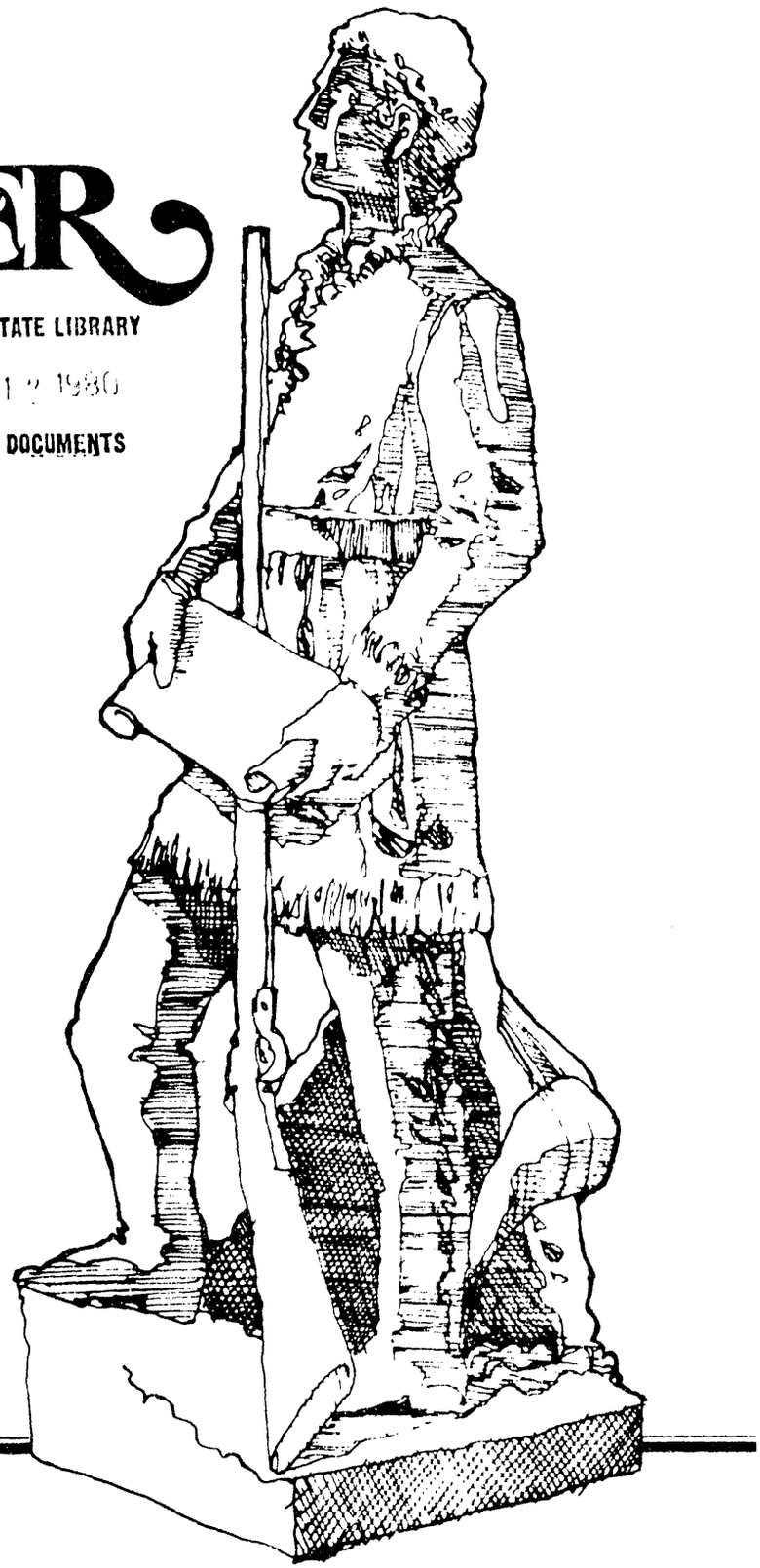
TEXAS REGISTER



In This Issue...

Office of the Secretary of State

The *Texas Register* is currently in the process of converting to the numbering system found in the *Texas Administrative Code* (TAC). To aid the reader in this conversion, both the 10-digit *Register* number and the new TAC number will be listed for agencies whose rules have been published in the TAC. Emergency, proposed, and adopted rules sections of the *Register* are divided into two classifications codified and noncodified. Codified rules appear in title number order. Noncodified rules appear in alphabetical order as they have in the past. An "Index of TAC Titles Affected" appears at the end of this issue.

Titles 1, 4, 7, 10, 13, 16, 22, 31, 34, 37, and 43 only of the TAC have now been published. Documents classified in the *Texas Register* to titles not yet published and certain documents affecting titles of the code have been accepted in the non-TAC format and may be renumbered or revised, or both, when initially codified in the TAC.

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

1 is the title (agencies grouped together by subject title which are arranged alphabetically)
TAC is the *Texas Administrative Code*
§27.15 is the section number (27 represents the chapter number and 15 represents the individual rule within the chapter)

Latest Texas Code Reporter
(Master Transmittal Sheet) No. 3, Aug. 80

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 2404 of Volume 4 is cited as follows: 4 TexReg 2404.

Cover illustration represents Elisabet Ney's statue of Stephen F. Austin, which stands in the foyer of the State Capitol.

TEXAS REGISTER

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Article 4399, Vernon's Texas Civil Statutes, requires the attorney general to give written opinions to certain public officials. The Texas Open Records Act, Article 6252-17a, Section 7, Vernon's Texas Civil Statutes, requires that a governmental body which receives a request for release of records seek a decision of the attorney general if the governmental body determines that the information may be withheld from public disclosure. Opinions and open records decisions issued under the authority of these two statutes, as well as the request for opinions and decisions, are required to be summarized in the *Texas Register*.

Copies of requests, opinions, and open records decisions may be obtained from the Opinion Committee, Attorney General's Office, Supreme Court Building, Austin, Texas 78701, telephone (512) 475-5445.

Opinions

Summary of Opinion MW-260 (RQ-369)

Request from Colonel James B. Adams, director, Department of Public Safety, Austin, concerning whether conviction of involuntary manslaughter results in automatic suspension of a driver's license.

Summary of Opinion: Conviction of the offense of involuntary manslaughter does not result in automatic suspension of a driver's license, but may result in discretionary suspension of said license.

Doc. No. 808464

Summary of Opinion MW-261 (RQ-393)

Request from John P. Parsons, commissioner, Credit Union Department, Austin, concerning whether a state chartered credit union may be licensed to make loans under the Texas Credit Code, and what rate of interest may be charged by the credit union on such loans.

Summary of Opinion: A state chartered credit union may be licensed under the provisions of Article 5069-3.04, Vernon's Texas Civil Statutes (Texas Credit Code). A state chartered credit union licensed under the Texas Credit Code may not charge interest rates in excess of those authorized by Article 2461-7.01, Vernon's Texas Civil Statutes (Credit Union Act).

Doc. No. 808465

Summary of Opinion MW-262 (RQ-398)

Request from Dan M. Boulware, county attorney, Johnson County, concerning the appointment of a city marshal.

Summary of Opinion:

(1) The mayor of Briaroaks was not authorized to draft a nonresident individual as a special police officer in charge of enforcing the city's laws after that individual had been removed as a city marshal, an office for which he had not been certified as qualified by the Commission on Law Enforcement Officer Standards and Education, and which is now vacant.

(2) Following the resignation of the second appointee, a vacancy existed in the office of city marshal. That vacancy has never been properly filled. Article 989, Vernon's Texas Civil Statutes, sets forth the proper method for filling the vacancy.

(3) An individual who is not a resident of the city may not serve as city marshal or as a special police officer.

(4) An individual must have peace officer certification to serve as city marshal but need not be so certified to serve as a special police officer under Article 995, Vernon's Texas Civil Statutes.

Doc. No. 808466

Summary of Opinion MW-263 (RQ-289)

Request from Joe Resweber, county attorney, Harris County, concerning filing assumed name certificates.

Summary of Opinion: Section 36.10 of the Texas Business and Commerce Code requires an assumed name certificate to state the name and address of each participant in a partnership or joint venture. Although the county clerk is not required to verify the accuracy of a certificate, he may refuse to file one which is defective on its face.

Doc. No. 808467

Summary of Opinion MW-264 (RQ-441)

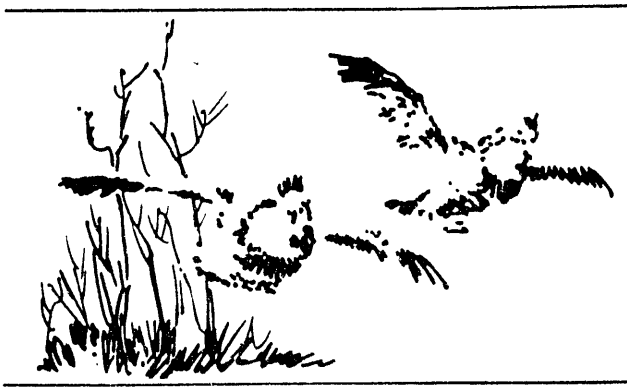
Request from Warren G. Harding, state treasurer, Austin, concerning whether the Texas Housing Agency can appoint a custodian of its funds other than the state treasurer.

Summary of Opinion: The Texas Housing Agency is not required to create a reserve fund in the state treasury to secure its bonds, but may create a reserve fund to be kept elsewhere. The agency may deposit its nonappropriated funds in a depository other than the state treasury.

Issued in Austin, Texas, on November 5, 1980.

Doc. No. 808468 Susan Garrison, Acting Chairwoman
Opinion Committee
Attorney General's Office

For further information, please call (512) 475-5445.



An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register*, except where a federal statute or regulation requires implementation of a rule on shorter notice.

Upon request, an agency shall provide a statement of the reasons for and against adoption of a rule. Any interested person may request this statement from the agency before adoption or within 30 days afterward. The statement shall include the principal reasons for overruling objections to the agency's decision.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Noncodified."

Symbology—Changes to existing material are indicated in ***bold italics***. [Brackets] indicate deletion of existing material.

CODIFIED

TITLE 13. CULTURAL RESOURCES

Part IV. Texas Antiquities Committee

Chapter 45. State Archeological Landmarks

Protection of State Archeological Landmarks

The Texas Antiquities Committee proposes new sections intended to ensure protection of sunken or abandoned pre-20th Century ships and wrecks of the sea. These proposed sections are scheduled for consideration at a meeting of the Texas Antiquities Committee at 9:30 a.m. on December 17, 1980, in Room 119, Stephen F. Austin Building, Austin.

According to committee staff, these sections will have no fiscal implications for units of state or local government. There will be no need for increased personnel or funding for the Texas Antiquities Committee as a result of these sections.

Public comment on the proposed adoption of these sections is invited and encouraged. Comments may be submitted orally at the above-cited meeting of the committee, and written comments may be submitted by delivering them to the Texas Antiquities Committee, 1511 North Colorado Street, Austin, or by mailing them to the Texas Antiquities Committee, P.O. Box 12276, Austin, Texas 78711. Written comments must be received on or before December 10, 1980.

These sections are proposed under the authority of Chapter 191, Texas Natural Resources Code (1978).

§45.1 (355.20.10.001). Purpose and Scope.

(a) Purpose. The purpose of these sections is to describe avoidance or protection procedures applicable to persons who conduct or cause to be conducted any activity which would cause damage to sunken or abandoned pre-20th Century ships and wrecks of the sea.

(b) Scope. These sections apply only to activities which would cause damage to sunken or abandoned pre-20th Century ships and wrecks of the sea, and apply only to activities proposed to be conducted in certain designated state land tracts in Texas' submerged lands.

(c) Cumulation. These sections are cumulative of any other requirements applicable to the activities designated herein.

(d) Claim of title. These sections do not purport to alter any ownership or claim of title by the state to any sunken or abandoned pre-20th Century ships and wrecks of the sea.

§45.2 (355.20.10.002). Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Committee. The Texas Antiquities Committee.

Person. Any individual, firm, partnership, association, corporation that is public or private, and profit or non-profit trust, political subdivision, agency of the state, or agency of the federal government who conducts or causes to be conducted any activity which would cause damage to a state archeological landmark.

State archeological landmark. Sunken or abandoned pre-20th Century ships and wrecks of the sea, and any part of the contents of them.

Submerged lands. Land belonging to the State of Texas, including its tidelands, submerged land, and the beds of its rivers and the sea within jurisdiction of the State of Texas.

§45.3 (355.20.10.003). Findings and Policy Determinations. After consultation with affected persons and after due reflection on the committee's obligations under the Antiquities Code of Texas, Chapter 191, Texas Natural Resources Code (1978), the committee makes the following determinations of fact and policy.

(1) It is the public policy and in the public interest of the State of Texas to locate, protect, and preserve all state archeological landmarks in Texas' submerged lands.

(2) The committee shall determine and designate the site of state archeological landmarks in Texas' submerged lands and remove from the designation certain sites.

(3) The committee shall evaluate lease sales proposed to be conducted in Texas' submerged lands by the School Land Board and may recommend developmental restrictions to be applied to each designated tract which, if accepted by the General Land Office, will be published in the Notice for Bids booklet which is distributed by the General Land Office 30 days before each lease sale, and which will forewarn potential lessees of developmental restrictions that apply to the tract.

(4) The committee shall evaluate activities proposed to be conducted in Texas' submerged lands, and may comment favorably, conditionally, or adversely on applications for permits submitted to the U. S. Army Corps of Engineers, Galveston District, in accordance with applicable rules and orders.

(5) The committee may require persons working in the area of a known state archeological landmark in Texas'

submerged lands to take action to avoid damaging it. The committee may require similar action of persons working in an area where there is a likelihood that a state archeological landmark exists in Texas submerged lands. Any such requirements must be reasonable in light of the costs they impose on persons and the protection they extend to historical resources.

(6) All persons shall conduct or cause to be conducted their activities in certain designated state land tracts in Texas submerged lands in a manner which will avoid damage to a state archeological landmark in Texas submerged lands, and which will protect and preserve the archeological resources of Texas.

§45.4.355.20.10.004. State Land Tracts Designated by the Committee as Containing State Archeological Landmarks in Texas Submerged Lands.

(a) The committee has determined there is substantial evidence of the presence of state archeological landmarks in Texas submerged lands in the state land tracts designated in subsections (b)-(d) of this section.

(b) Maps, charts, and other historic sources reflect x,y coordinates of pre-20th Century shipwrecks in the following designated state land tracts in Texas submerged lands, and a state archeological landmark is known to exist in these areas.

(1) Offshore Gulf of Mexico.

62S	1154S
64S	1220S
101S	1211S
635S	1223S
1111S	1224S
1119S	

(2) Galveston Bay: 54.

(3) Laguna Madre: 751.

(c) Maps, charts, and other historic sources refer to pre-20th Century shipwrecks in the following designated state land tracts in Texas submerged lands, and a state archeological landmark is likely to exist in these areas.

(1) Offshore Gulf of Mexico.

1S	221S	321S	599S	855S
2S	229S	344S	629S	899S
3S	231S	356S	636S	1085S
32S	241S	366S	637S	1112S
65S	279S	367S	638S	1124S
102L	299S	376S	643S	1127S
115S	300S	378S	645S	1139S
147L	301S	406S	646S	1219S
192S	310S	411S	662L	1230S
207S	311S	555S	674S	1241S
210S	312S	559S	679S	
215S	313S	577S	847S	

(2) Galveston Bay.

47	117A
61	122
87A	122B
98A	127A
113A	132A
114A	133A
115A	134A
116A	135A

(3) Matagorda Bay.

46
67

(4) Aransas Bay: 306.

(5) Palacios Bay.

31
32
37
38
39

(6) Laguna Madre.

748
750
752

(d) The following designated state land tracts in Texas' submerged lands are areas in which pre-20th Century shipwrecks have been recorded by reference to geographic features, but without precise location. The committee designates these land tracts as areas in which there is a substantial probability of finding state archeological landmarks in Texas submerged lands because of these records and the location of the tracts at passes and bay entrances which historically have been very active.

(1) Offshore Gulf of Mexico.

27S	190S	201S	214S	225S	640S	856S
28S	191S	202S	214S	226S	641S	857S
29S	193S	203S	216S	627S	642S	858S
30S	194S	204S	217S	628S	644S	1058S
184S	195S	205S	218S	630S	647S	1225S
185S	196S	206S	219S	631S	648S	1226S
186S	197S	208S	220S	632S	649S	1231S
187S	198S	209S	222S	634S	849S	1239S
188S	19.	211S	223S	634S	849S	1240S
189S	200S	212S	224S	639S	854S	1242S

(2) Galveston Bay.

136A
137A
138A
139A

(3) Matagorda Bay.

2	53	139
3	68	207
4	69	219
6	111	220
33	111A	221
47	112	222
48	137	232
51	138	233
52	138A	

(4) East Matagorda Bay.

8
9
10
10A
109
110
125
125A

(e) The committee possesses certain information related to state archeological landmarks in Texas' submerged lands. Any person may make a written request for the committee's shipwreck site information in any of the state land tracts in Texas' submerged lands designated in subsections (b)-(d) of this section. Provided the person agrees to maintain proper security on that data and agrees to not pass such data on to other persons, the committee will provide any and all information on file from that designated state land tract in Texas' submerged lands, including information on what kind of shipwreck is thought to exist in that area. The committee's shipwreck reference file will be available for review, on a tract by tract basis, at the committee's offices at 105 West 16th Street, Austin, Texas, during regular business hours.

(f) The state land tracts in Texas' submerged lands designated in subsections (b)-(d) of this section shall be updated by the committee at least annually as new data is acquired, and the committee shall take action to determine the site of and designate state archeological landmarks in Texas' submerged lands within a designated state land tract and remove from the designations certain state land tracts in which there has been a determination there is not a substantial probability of finding a state archeological landmark in Texas' submerged lands. Any such designations shall be given appropriate public notice and public comment thereon shall be invited and encouraged prior to any such designation becoming effective.

(g) No person shall be required to take any action to determine the possible existence of a state archeological landmark in any of Texas' submerged state land tracts other than those designated in subsections (b)-(d) of this section unless the committee has determined the site of and designated a state archeological landmark in such other state land tracts. However, if during the conduct of activities in such other state land tracts a person discovers the existence of a state archeological landmark, the person shall promptly notify the committee of the existence of the state archeological landmark and shall conduct the activities in a manner which will avoid damage to the state archeological landmark.

§45.5 (.355.20.10.005) Conduct of Activities.

(a) All persons shall conduct or cause to conduct their activities in certain designated state land tracts in Texas' submerged lands in a manner which will avoid damage to a state archeological landmark in Texas' submerged lands, and which will protect and preserve the archeological resources of Texas.

(b) When a person submits an application for a permit from the U. S. Army Corps of Engineers, Galveston District, the proposed activity shall be described in sufficient detail to enable the committee to review the U. S. Army Corps of Engineers, Galveston District, public notice publication and determine if the proposed activity is located in one of the state land tracts which is designated in §45.4(b)(d)-(.0040(b)(d)) of this title (relating to state land tracts designated by the committee as containing state archeological landmarks in Texas' submerged lands).

(1) If the proposed activity is in one of the state land tracts designated in §45.4(b)(d)-(.0040(b)(d)) of this title (relating to state land tracts designated by the committee as containing state archeological landmarks in Texas' submerged lands), and if the activity will likely disturb the site of a known state archeological landmark in Texas' submerged lands or an area where there is a likelihood that a state archeological landmark exists in Texas' submerged lands, the committee may require a survey, the purpose of which is to locate state archeological landmarks in Texas' submerged lands.

(2) Conduct of such a survey may be recommended by the committee to the U. S. Army Corps of Engineers, Galveston District, and may be required as a condition of issuance of the permit from the U. S. Army Corps of Engineers, Galveston District.

(c) In light of equipment and surveying techniques currently available, the committee has determined that a person who conducts a survey to determine the possible existence of hazards which would be dangerous to the safety of human life and equipment in the area where the proposed activity will be performed has also conducted a survey to determine the possible existence of a state archeological landmark in Texas' submerged lands, provided such survey meets the following minimum standards.

(1) Horizontal positioning.

(A) Designated state land tracts in bays in Texas' submerged lands.

(i) Site or area specific activities (drilling site, platform site, dredging, etc.). Horizontal positioning will consist of marking the center or corners of the site with a buoy and searching outward from the buoy(s) until an adequate area is searched and no significant anomalies are detected. If there is detection of significant anomalies, the object causing the significant anomaly will be searched out and its specific x,y coordinate position recorded. The area of the survey should be adequate to ensure safety of human life and equipment that will occupy the site. When optical instruments are used to delineate a site for a hazard survey, the drilling location will be clearly flagged. When electronic distance measuring (EDM) systems are used, a print out or hand recorded reading will be made clearly showing that the area has been covered.

(ii) Pipelines. In bay waters where a pipeline corridor will be surveyed, the center line will be marked with stakes and flagging so that three stakes will be visible at all times to the boat operator, and these stakes will be used for stationing. If EDM is used, the boat will traverse the center line under control of the EDM and stationing will be recorded by hand or printer at fixed intervals along the line.

(B) Designated state land tracts offshore in Texas' submerged lands.

(i) Site or area specific activities (drilling site, platform site, dredging, etc.). The horizontal positioning method will normally consist of marking the center or corners of the site with a buoy and searching outward from the buoy(s) until an adequate area is searched and no significant anomalies are detected. If there is detection of significant anomalies, the object causing the significant anomaly will be searched out and its specific x,y coordinate position recorded. The area of the survey should be adequate to ensure safety of human life and equipment that will occupy the site. When optical instruments are used to delineate a site for a hazard survey, the drilling location will be clearly flagged. When EDM systems are used, a print out or hand recorded reading will be made clearly showing that the area has been covered.

(ii) Pipelines. Three lines will be surveyed, a center line and two offset lines, to encompass the anchor pattern. EDM systems will normally be used to ensure that the

survey will be conducted in the most expedient manner. However, buoy lines will be acceptable.

(2) Instrumentation. Instrumentation will be classified as remote sensing equipment which detects the presence of an object by its own physical properties or by signals reflected from the object.

(A) Designated state land tracts in bays in Texas' submerged lands.

(i) Drilling site, platform site. A magnetometer will be used to ensure that no ferrous metal object exists in the area which might cause damage to the proposed equipment or structure to occupy the site.

(ii) Pipelines. A magnetometer will be used to ensure that all ferrous metal objects are detected and avoided.

(B) Designated state land tracts offshore in Texas' submerged lands.

(i) Drilling site, platform site. A magnetometer and a side scan sonar will be used to ensure that all ferrous metal objects are detected and can be identified or avoided.

(ii) Pipelines. Instrumentation used for a pipeline prelay survey will consist of a magnetometer and a side scan sonar to ensure that all ferrous metal objects along the right of way are detected and can be identified or avoided.

(d) If a person detects a significant anomaly as a result of conducting the survey described in subsection (c) of this section, the person shall either:

(1) conduct a thorough and good faith effort to search out the object causing the anomaly and identify whether the object might possibly be a state archeological landmark in Texas' submerged lands; or

(2) relocate the activity to an area at least 150 feet away from the significant anomaly in bays or at least 500 feet away from the significant anomaly offshore in order to avoid disturbance of the object causing the anomaly and thereby avoid damage to a state archeological landmark in Texas' submerged lands.

(e) If the person identifies that the object causing the anomaly is definitely not a state archeological landmark in Texas' submerged lands, the person may perform the activity in a normal, routine manner. Excavation in order to make an identification at this stage of investigation is prohibited without a permit from the committee.

(f) If the person identifies that the object causing the anomaly might possibly be a state archeological landmark in Texas' submerged lands, the person shall either:

(1) relocate the activity to an area at least 150 feet away from the significant anomaly in bays or at least 500 feet away from the significant anomaly offshore in order to avoid disturbance of the object causing the anomaly and thereby avoid damage to a state archeological landmark in Texas' submerged lands; or

(2) notify the committee of the possible existence of a state archeological landmark in Texas' submerged lands; whereupon the committee can perform its activities described in Subchapter C, Powers and Duties, and Subchapter E, Prohibitions, of the Antiquities Code of Texas, Chapter 191, Texas Natural Resources Code (1978). If the committee authorizes the state archeological landmark in Texas' submerged lands to be excavated and the committee is assured that no damage will occur to a state archeological landmark in Texas' submerged lands, the person may then proceed with performing the activity in a normal, routine manner.

(g) If the person detects a significant anomaly as a result of conducting the survey described in subsection (c) of this section and if the person relocates the activity to an area which will avoid disturbance of the object causing the anomaly and thereby avoids damage to a state archeological landmark in Texas' submerged lands, the person shall record the specific x,y coordinate positions of the object causing the anomaly and shall give the committee a written report of the specific x,y coordinate positions of the object causing the anomaly. Provided arrangements can be made to maintain proper security on proprietary data, the committee and the person may exchange additional data to enable the committee to add to its shipwreck reference file.

Issued in Austin, Texas, on November 7, 1980.

Doc. No. 808540 — Truett Latimer, Texas Antiquities Committee

Proposed Date of Adoption: December 17, 1980
For further information, please call (512) 475-6328

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

The Texas Air Control Board proposes to revise its regulations concerning control of air pollution, Regulations III, V, and VI.

There are no anticipated increased costs to state or local agencies resulting from these revisions (source: Texas Air Control Board staff).

Public hearings on the proposals are scheduled for December 11, 1980, at the following times and places:

7 p.m.
Chamber of Commerce
Board of Directors Meeting Room
400 West 4th
Odessa, Texas 76761

7 p.m.
Texas Air Control Board Auditorium
6330 Highway 290 East
Austin, Texas 78723

6:30 p.m.
Houston Public Library
Concourse Level Meeting Room
500 McKinney
Houston, Texas 77002

Copies of the proposals are available at the Central Office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. Public comment, both oral and written, on the proposals is invited at the hearings. Written testimony submitted by December 22, 1980, will be included in the hearing record. The Texas Air Control Board would appreciate receiving 20 copies of testimony prior to the hearings, where possible. Written comments should be sent to the hearing examiner, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

Chapter 113. Fluoride Compounds

The Texas Air Control Board proposes to amend Regulation III, Chapter 113 (131.05) to delete measurement methods which are obsolete or redundant. The revised regulation does not specify any measurement methods because the board believes that the methods can be kept current better if published in the agency's Compliance Sampling Manual. This revision affects §113.3 (131.05.00.003) and §113.9 (009) of this title. Sections 113.4-113.6 (004-006) of this title are proposed for repeal elsewhere in this *Register*.

These amendments are proposed under the authority of Article 4477-5, Vernon's Texas Civil Statutes.

§113.3 (131.05.00.003) Specific Toxic Materials

(a) (No change.)

(b) Beryllium.

(1) The board declares that the concentration of beryllium in the atmosphere higher than 0.01 microgram average per cubic meter of air based on a 24-hour sample constitutes an undesirable level and that a state of air pollution exists when the concentration of beryllium exceeds that level. [Sampling and analyses to determine the concentration of beryllium in the ambient atmosphere shall be performed in accordance with the procedures outlined in §113.4 (004) of this title (relating to measurement of hydrogen fluoride in the ambient atmosphere).]

(2) (No change.)

§113.9 (131.05.00.009) Measuring and Monitoring

(a) (No change.)

(b) Monitoring for inorganic fluoride compounds.

(1) The owner or operator of a source from which the emissions of gaseous inorganic fluoride compounds, calculated as high frequency, exceed 3.5 parts per billion average during a period of three consecutive hours more frequently than three times during any 12 month period shall conduct sampling of the emissions from the source [in any manner authorized in the applicable subsection of §113.4 (004) of this title (relating to measurement of hydrogen fluoride in the ambient atmosphere), §113.5 (005) of this title (relating to measurement of fluoride in plant tissue), §113.6 (006) of this title (relating to measurement of fluorides in stacks), and §113.7 (007) of this title (relating to calculation of fluoride concentration from stack samples and measurements)] on a periodic representative basis which will reflect with reasonable accuracy the pattern of the emissions being made.

(2)-(3) (No change.)

Doc No 808488

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Air Control Board, 6330 Highway 290 East, Austin, or in the Texas Register Division offices, 503E Sam Houston Building, Austin.)

The Texas Air Control Board proposes to repeal §§113.4-113.6 (131.05.00.004-006) of this title, concerning Regulation III, Chapter 113 (131.05), to delete measurement methods which are obsolete or redundant. The revised regulation does not specify any measurement methods because the board believes that the methods can be kept current better if published in the agency's Compliance Sampling Manual.

This repeal is proposed under the authority of Article 4477-5, Vernon's Texas Civil Statutes.

§113.4 (131.05.00.004) Measurement of Hydrogen Fluoride in the Ambient Atmosphere

§113.5 (131.05.00.005) Measurement of Fluoride in Plant Tissue

§113.6 (131.05.00.006) Measurement of Fluorides in Stacks

Doc No 808489

Chapter 115. Volatile Organic Compounds

Specified Solvent-Using Processes in Bexar, Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties

The Texas Air Control Board proposes to amend the subchapter concerning specified solvent using processes in Bexar, Brazoria, Dallas, Ector, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties, §§115.173, 115.175, and 115.176 (131.07.59.103, 106, and 105) of this title to delete reference to Ector County and make other minor editorial changes.

The deletion of controls in Ector County is proposed because the ozone standard is now being attained in Ector County and thus the controls specified in the regulation are not needed to demonstrate attainment of the ozone standard. The TACB has recommended and EPA has proposed that the classification of Ector County be changed to "attainment."

These amendments are proposed under the authority of Article 4477-5, Vernon's Texas Civil Statutes.

§115.173 (131.07.59.103) Open Top Vapor Degreasing

(a) No person shall operate or maintain a system utilizing a volatile organic compound for the open top vapor cleaning of objects without the following controls:

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

(3) A spray safety switch which will shut off the spray ***pump to prevent spraying above the vapor level*** [sump heat if the vapor level drops more than four inches (10 centimeters)].

(4)-(5) (No change.)

(b) (No change.)

§115.175 (131.07.59.106) Exemptions

(a) Degreasing operations located on any property ***in any affected county except Harris*** which can emit when uncontrolled a combined weight of volatile organic compounds less than 550 pounds (250 kilograms) in any consecutive 24

hour period are exempt from the provisions of §§115.172-115.174 (.102-.104) of this title (relating to cold solvent cleaning, open top vapor degreasing, and conveyorized degreasing).

(b)-(d) (No change.)

[(e) All affected persons in Ector County are exempt from the requirements of §115.172(a) (.102(a)) of this title (relating to cold solvent cleaning), §115.173(a) (.103(a)) of this title (relating to open top vapor degreasing), and §115.174(a) (.104(a)) of this title (relating to conveyorized degreasing).]

(e)[(f)] An owner or operator who operates a remote reservoir cold solvent cleaner which uses solvent with a volatility equal to or less than 0.6 psia (4.1 kPa) measured at 100 F (38 C) and which has a drain area less than 16 inches square (100 centimeters square) is exempt from §115.172 (.102) of this title (relating to cold solvent cleaning).

§115.176 (.131.07.59.105) Counties and Compliance Schedule

(a) (No change.)

(b) The provisions of §§115.172-115.174 (.102-.104) of this title (relating to cold solvent cleaning, open top vapor degreasing, and conveyorized degreasing) shall apply only within Bexar, Brazoria, Dallas, [Ector,] El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties. All affected persons shall submit a final control plan for compliance to the Texas Air Control Board no later than December 31, 1980, and shall be in compliance with these sections as soon as practicable but no later than December 31, 1982.

Doc No. 808490

Chapter 116. Permits

Several minor changes are proposed in Regulation VI primarily for the purpose of expediting the permitting process. Specific changes are:

(1) The conditions for granting of permits in paragraphs (11) and (13) of §116.3 (.131.08.00.003) of this title would be revised to require net decreases in emissions when offsets are applied rather than no increase to comply with EPA requirements.

(2) The deletion of §116.3(a)(2) (.003(a)(2)) of this title concerning significant deterioration is proposed. This provision was adopted in 1972 before the present prevention of significant deterioration (PSD) requirements became statutory under the Federal Clean Air Act Amendments of 1977. The similarity of terms makes it appear that the TACB is involved with permit review under the EPA PSD Program which is not true at present. The present section cannot be construed to incorporate the comprehensive federal program which was adopted at a much later date; therefore, any interpretation could be inconsistent with and redundant to the federal program which is currently in effect under 40 Code of Federal Regulations, Section 52.2303. Deletion of this paragraph will remove this ambiguity.

(3) Wherever "State Implementation Plan" appears in §116.3 (.003) of this title, additional wording has been added to clarify the meaning to be the plan as promulgated by EPA.

(4) The public notification procedures in §116.10 (.010) of this title would be revised to require that a preliminary analysis of the effect of the new or modified facility be available for public review at the time that notification of the proposed issuance of the construction permit is published; to require publication only in the public notice section of a newspaper of general circulation in the area where the construction will occur; to provide flexibility in the published public notice; so that the permit applicant can include information that otherwise would have to be published separately to satisfy public notification requirements of EPA; and to allow the executive director to delegate to appropriate persons authority to exempt relocations of previously permitted facilities from the public notification requirements.

These amendments are proposed under the authority of Article 4477-5, Vernon's Texas Civil Statutes.

§116.3 (.131.08.00.003) Consideration for Granting ***Permits*** *[a Permit] To Construct and Operate*

(a) Permit to construct. In order to be granted a permit to construct, the owner or operator of the proposed facility shall submit information to the Texas Air Control Board which will demonstrate that all of the following are met:

(1) (No change.)

[(2) The emissions from the proposed facility will not cause significant deterioration of existing ambient air quality in the area.]

(2)[(3)] The proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the executive director.

(3)[(4)] The proposed facility will utilize the best available control technology with consideration given to the technical practicability and economic reasonableness of reducing or eliminating the emissions from the facility.

(4)[(5)] The emissions from the proposed facility will meet at least the requirements of any applicable new source performance standards promulgated by the Environmental Protection Agency pursuant to authority granted under Section 111 of the Federal Clean Air Act as amended.

(5)[(6)] The emissions from the proposed facility will meet at least the requirements of any applicable emission standard for hazardous air pollutants promulgated by the Environmental Protection Agency pursuant to authority granted under Section 112 of the Federal Clean Air Act as amended.

(6)[(7)] The proposed facility will achieve the performance specified in the application for a permit to construct. The applicant may be required to submit additional engineering data after a permit to construct has been issued in order to demonstrate further that the proposed facility will achieve the performance specified in the application for a permit to construct.

(7)[(8)] All requirements of Section 129(a)-(c) of the Clean Air Act Amendments of 1977 (Public Law 95-95). This provision shall not apply to new or modified facilities for which construction permits are issued after June 30, 1979.

(8)[(9)] After June 30, 1979, the owner or operator of a proposed new facility which is a major stationary source of volatile organic compound emissions or which is a facility that will undergo a major modification with respect to VOC emissions and which is to be located in any area designated as nonattainment for ozone in accordance with Section 107 of the Federal Clean Air Act shall demonstrate that the following additional requirements are met:

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

(9)[(10)] After June 30, 1979, the owner or operator of a proposed new facility which is a major stationary source

of volatile organic compounds (VOC) or which is a facility that will undergo a major modification with respect to VOC emissions, and which is to be located in Bexar, Dallas, El Paso, Harris, Nueces, or Tarrant County will provide information concerning its expected emissions to enable the executive director to determine that by the time the facility is to commence operation, total allowable emissions from existing facilities, from the proposed facility, and from new or modified facilities which are not major sources in the area will be sufficiently less than the total emissions from existing sources allowed in the area under the ***applicable*** State Implementation Plan (SIP) ***as promulgated by the administrator of the U.S. Environmental Protection Agency in Subpart SS, Part 52, Title 40, Code of Federal Regulations*** prior to the application for the construction permit so as to represent reasonable further progress as defined in Chapter 101 (§31.01) of this title (relating to general rules).

(10)[(11)] The owner or operator of a proposed facility which will be a major stationary source of VOC emissions or will undergo a major modification and is to be located in any area designated as nonattainment for ozone in accordance with Section 107 of the Federal Clean Air Act for which regulations and a control strategy providing for attainment of the standard have not been approved by the U.S. Environmental Protection Agency shall demonstrate that ***at the time that the facility is to commence operation, a net decrease in total allowable VOC emissions in the area has been provided since December 21, 1976, taking into account any increases in emissions resulting from operation of the proposed new facility or modification*** [total allowable VOC emissions from sources in the area will not increase as a result of the operation of the proposed facility].

(11)[(12)] After June 30, 1979, the owner or operator of a proposed new facility to be located anywhere within the state that is a major stationary source of emissions of any air contaminant (other than volatile organic compounds (VOC)) for which a national ambient air quality standard has been issued, or is a facility that will undergo a major modification with respect to emissions of any air contaminant (other than VOC) must meet the following additional requirements if the ambient air quality impact of the source's emissions would exceed a de minimis impact level as defined in §101.1 (§31.01.00.001 and .002) of this title of the general rules (relating to definitions) in any area where the standard is exceeded or predicted to be exceeded.

(A)-(C) (No change.)

(12)[(13)] The owner or operator of a proposed new facility in a designated nonattainment area which will be a major stationary source or a major modification of an existing facility for any air contaminant other than volatile organic compounds for which a national ambient standard has been issued must meet the following additional requirements regardless of the degree of impact of its emissions on ambient air quality if the facility is located in a designated nonattainment area and is located on or is contiguous to (except for intervening roadways) any property on which an ambient air quality standard is actually exceeded.

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

(C) At the time the facility commences operation, ***a net decrease in total allowable emissions in the area has been provided since December 21, 1976, notwithstanding any increases in emissions resulting from operation of the proposed new facility or modification*** [total allowable emissions of the nonattaining pollutant in the nonattainment area will not increase as a result of the operation of the proposed facility].

(b) (No change.)

(c) Emission reductions (offset). At the time of application for a construction permit in accordance with this chapter, any applicant who has effected air contaminant emission reductions may also apply to the executive director to use such emission reductions to offset emissions expected from the ***facility*** [source(s)] for which the permit is sought provided that the following conditions are met.

(1) The emission reductions are not required by any provision of the Texas State Implementation Plan ***as promulgated by the administrator of the U.S. Environmental Protection Agency in Subpart SS, Part 52, Title 40, Code of Federal Regulations***.

(2) (No change.)

(d)-(f) (No change.)

§116.10 (§31.08.00.010) Public Notification and Comment Procedure.

(a) Public notification procedures.

(1) General requirement. Within ***30*** [10] days of receipt of a completed construction permit application, as determined by the executive director of the Texas Air Control Board, the executive director shall mail a written notification to the permit applicant acknowledging receipt of the application, ***stating his preliminary determination to issue or not issue the permit, and*** requiring the applicant to provide public ***notice*** [notification] of the proposed construction ***which shall include the information specified in §116.10(a)(3) (.010(a)(3))***. [, specifying those air contaminants listed in the application and specifying certain agencies to be notified. The applicant shall provide such notification using each of the methods specified below.] ***The executive director may specify that additional information needed to satisfy public notice requirements of 40 Code of Federal Regulations 52.21 also be included.***

(2) Availability of application for review. The executive director shall make the completed application (except sections relating to confidential information) and the preliminary analyses of the application completed prior to publication of the public notice available for public inspection during normal business hours at the TACB's Austin offices and at the appropriate TACB regional office in the region where construction is proposed throughout the comment period established in the notice published pursuant to §116.10(a)(3) (.010(a)(3)).

(3)[(2)] Publication ***requirement*** [in public notices section of newspaper]. ***At the applicants expense,*** notice of intent to construct shall be published in ***each*** [the public notice section] of two successive issues of a newspaper of general circulation in the ***area*** [county] where the proposed facility is to be located. [The notice shall contain the information and be of the form specified in Exhibit A which is attached hereto and made a part of this section.] ***The notice shall be placed in the public notice section of the newspaper, and shall contain the following information:***

(A) permit application number;

(B) company name;

(C) type of facility;

(D) location of facility;

(E) contaminants to be emitted;

(F) preliminary determination of the executive director to issue or not issue the permit;

(G) location and availability of copies of the completed permit application and the TACB's preliminary analyses thereof;

(H) public comment period;

(I) procedure for submission of public comments concerning the proposed construction.

[(3) Publication elsewhere in the newspaper. Another notice with a size of at least 7.5 by 12.5 centimeters (three by five inches) shall be published in a prominent location elsewhere in the same issues of the newspaper and have the same content as the notice required by paragraph (2) of this subsection.]

(4) Notification of Texas Air Control Board and others. When ***a*** newspaper ***notice is*** [notices are] published in accordance with ***paragraph*** [paragraphs (2) and] (3) of this subsection, the permit applicant shall furnish a copy of such ***notice*** [notices] and date of publication to the Texas Air Control Board in Austin, Texas, the Environmental Protection Agency regional administrator in Dallas, Texas, all local air pollution control agencies with jurisdiction in the county in which the construction is to occur, and the air pollution control agency of any nearby state ***in which*** [whose] air quality may be adversely affected by the emissions from the new or modified facility. [The Texas Air Control Board will notify the applicant of the specific agencies to be furnished a copy of the newspaper notice.]

(5) Exemption of previously permitted facilities.

(A) Upon written request by the owner or operator of a facility which previously has received a permit from the Texas Air Control Board, the executive director ***or his designated representative*** may exempt the relocation of such ***facility*** [facilities] from the requirements of this section if he finds:

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

(B) (No change.)

(b) Comment procedures.

(1) Comment period. Interested persons may submit written comments on the construction permit application ***and on the executive director's preliminary decision to issue or not to issue the permit*** to the executive director. All such comments must be received in writing within 30 days of the last publication date of the ***notice*** [notices] specified in subsection [(a)(2) and] (a)(3) of this section.

(2) Consideration of comments. All written comments received by the executive director during the period specified in paragraph (1) of this subsection shall be considered in ***determining whether to issue or not to issue the permit*** [formulating proposed agency action]. ***The executive director shall make*** [A] record of all comments received [shall be maintained] together with the agency analysis of such comments ***available for public inspection during normal business hours at the Austin office of the Texas Air Control Board and appropriate regional office.***

[(3) Availability of data. The complete construction permit application shall be available at the appropriate Texas Air Control Board regional office and at the Texas Air Control Board office in Austin, Texas, during normal business hours. All portions of the permit application will be available for public inspection except those sections relating to confidential information. A summary of the agency evaluation of the permit application shall also be available for public review at the appropriate Texas Air Control Board regional office and at the Austin office after the proposed agency action on the permit application has been decided. Written comments submitted to the executive director and the agency analysis thereof shall be available for review during normal business hours at the Texas Air Control Board Austin office.

(4) Notification of proposed actions. Interested persons may submit a request to be notified of the proposed agency action. Such request must be in writing and must be received by the executive director within the comment period specified in paragraph (1) of this subsection. Those persons requesting notification shall be notified in writing of the proposed agency action.

(5) Comments on proposed action. Comments on the proposed agency action on a construction permit application will be accepted by the executive director within the 30 calendar day period following the mailing of the notice of the proposed action to those requesting such notice in accordance with paragraph (4) of this subsection and shall be considered by him in making his final decision to issue or deny the permit to construct.

(6) Waiver of comment period. If no request to be notified of the proposed agency action is received in the period specified in paragraph (4) of this subsection, the executive director may proceed without additional delay to issue or deny the permit based upon his evaluation of the application and of any written comments received during the comment period specified in paragraph (1) of this subsection.]

(c) Notification of final action.

(1) (No change.)

(2) Notification of commentors. Persons submitting written comments in accordance with subsection (b)(1) [or (b)(5)] of this section will be notified of the executive director's final decision at the same time that the applicant is notified.

(d) (No change.)

(e) Effective date. This section ***and amendments thereto*** shall be effective 120 days after the filing of certified copies in the Office of the Secretary of State and shall apply only to applications for permits to construct received on or after the effective date.

Issued in Austin, Texas, on November 3, 1980.

Doc. No. 808491

Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed Date of Adoption: After December public hearings
For further information, please call (512) 451-5711, ext. 354

Part IX. Texas Water Commission

Chapter 275. Special Provisions

Water Rate Hearings

The Texas Water Commission proposes to adopt new sections concerning water rate hearings. The proposed sections establish the procedures to be followed in water rate hearings before the commission initiated pursuant to proposed Texas Water Development Board §§353.1-353.7 (156.08.00.001-.007) of this title and Chapters 11 and 12 of the Texas Water Code.

Section 275.31 (155.08.03.001) of this title sets out the applicability of the proposed sections. Section 275.32 (.002) of this title provides for the setting of a preliminary hearing upon referral by the executive director of the department of a petition for rate review. Section 275.33 (.003) of this title provides for an additional deposit or bond from the petitioner. Section 275.34 (.004) of this title describes the notice required for a preliminary hearing. Section 275.35 (.005) of this title outlines the matters to be considered at a preliminary hearing and the contents of the interlocutory order entered after the hearing. Section 275.36 (.006) of this title describes the order to be entered after a hearing on the merits of the petition.

The chief clerk of the commission has determined that the proposed sections will have no fiscal implications to the state or units of local government.

Public comment on the proposed sections is invited. Persons should submit their comments in writing to Paul Elliott, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, by December 12, 1980.

These sections are proposed under the authority of Section 5.262, Texas Water Code.

§275.31 (155.08.03.001) General. This subchapter applies to water rate hearings before the commission initiated pursuant to board §§353.1-353.7 (156.08.00.001-.007) of this title and applicable statutes.

§275.32 (155.08.03.002) Setting of Hearing. Upon referral by the executive director of a petition for rate review, the commission will enter an order setting a time and place for a preliminary hearing.

§275.33 (155.08.03.003) Additional Deposit. The commission may require the petitioner to make an additional deposit or to execute a bond satisfactory to the commission in an amount fixed by the commission conditioned on the payment of all costs of the proceeding.

§275.34 (155.08.03.004) Notice of Preliminary Hearing. At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the hearing order to the water supplier and water customer.

§275.35 (155.08.03.005) Preliminary Hearing and Order. At the preliminary hearing, the commission will consider jurisdiction, designation of parties, interim rates, service during pendency of hearings, requests for discovery, and any other matter deemed appropriate by the commission. After the preliminary hearing, the commission shall enter an interlocutory order determining jurisdiction, interim rates, and other such matters considered by the commission. This order shall include a setting of a time and place for the hearing on the merits of the petition. The commission will send a certified copy of the order to all parties of record in the proceeding.

§275.36 (155.08.03.006) Hearing and Order. After the hearing on the merits of the petition, the commission shall enter an order determining permanent rates and other such matters considered by the commission.

Issued in Austin, Texas, on November 6, 1980.

Doc. No. 808494

Mary Ann Hefner
Chief Clerk
Texas Water Commission

Proposed Date of Adoption: December 22, 1980
For further information, please call (512) 475-4514.

Part X. Texas Water Development Board

(Editor's note: New sections and amendments and repeals of existing sections proposed by the Texas Water Development Board concerning water districts, financial programs, and water rates are being published serially beginning in this issue. The proposed date of adoption for all the serialized proposals is December 16, 1980. The chapter titles and sections affected within each chapter are listed below. Chapter 311, Water Districts, and Chapter 353, Water Rates, appear in this issue.)

Chapter 311. Water Districts
- Issuance of Bonds
  - §311.46 (156.06.30.006)

Chapter 313. Financial Programs
- Introductory Provisions
  - §§313.1, 313.2 (156.09.01.001, .002)
  - §313.3 (156.09.01.003)
- General Procedures
  - §§313.11-313.16 (156.09.05.001-.006)
- Policy Declarations
  - §§313.31-313.33 (156.09.10.001-.003)
  - §§313.191-313.196 (156.09.11.001-.006)
- Initiating Action under the Loan Assistance Water Facilities Acquisition and Water Quality Enhancement Programs
  - §§313.41-313.43 (156.09.15.001-.003)
- Application to the Board
  - §313.51 (156.09.20.001)
  - §313.52 (156.09.20.002)
  - §313.54 (156.09.20.004)
  - §313.55 (156.09.20.005)
  - §313.56 (156.09.20.006)
  - §313.57 (156.09.20.007)
- Formal Action by the Board
  - §313.71 (156.09.25.001)
  - §313.72 (156.09.25.002)
- Expiration of Commitments for Financial Assistance
  - §§313.191-313.194 (156.09.27.001-.004)

Prerequisites to Release of State Funds
§313.83 (156.09.30.003)
§313.84 (156.09.30.004)

Loan Assistance and Water Quality Enhancement Program Final Procedures and Requirements
§313.91 (156.09.35.001)

Construction Phase for Loan Assistance Project and Water Quality Enhancement Project
§313.101 (156.09.40.001)
§313.104 (156.09.40.004)
§313.105 (156.09.40.005)
§313.106 (156.09.40.006)

Water Facilities Acquisition Program Negotiation of Contracts
§313.113 (156.09.45.003)

Water Facilities Acquisition Program Construction Phase
§313.121 (156.09.50.001)
§313.122 (156.09.50.002)
§313.124 (156.09.50.004)
§313.125 (156.09.50.005)

Transfer of State-Acquired Facilities and Sale of Water
§§313.151, 313.152 (156.09.60.001, .002)

Application To Acquire State Interests or To Purchase Water
§313.161 (156.09.65.001)
§313.164 (156.09.65.004)
§313.166 (156.09.65.006)

Postconstruction Responsibilities Compliance Procedure
§313.182 (156.09.70.002)

Chapter 353. Water Rates
§§353.1-353.7 (156.08.00.001-.007)

Chapter 311. Water Districts

Issuance of Bonds

The executive director of the Texas Department of Water Resources is proposing to amend §311.46 (156.06.30.006) of this title (relating to issuance of bonds). The proposal amends the sections by changing the numbering system to comply with the system currently being used by the Texas Register Division, Office of the Secretary of State. The proposal also amends subsection (f) of the section by providing for an agreement between the developer and the district with regard to street and road construction, and secures that agreement with a letter of credit, irrevocable development loan commitment, or other guarantee. And finally, the proposal adds two exhibits as Appendix C at the end of the chapter to provide examples of an acceptable street and road construction agreement and letter of credit.

The rationale for the amendments is that the development community needs reasonable, settled guidelines covering street and road construction in water districts with developer projects. The effect would be to provide solid assurance to water districts that streets and roads would be completed so that the districts could obtain the assessed valuation necessary to support each additional bond issue.

The executive director of the department has determined that the proposed amendments of the section will have no fiscal impact to the state or units of local government. No local units of government have been consulted in this estimate. However, the amended section is essentially the same as the previous section covering this area, with alterations primarily for purposes of obtaining a secured agreement between the district and the developers for the street and road construction.

Public comment on the proposed amendments is invited. Persons should submit their comments in writing to Bob Matthews, general counsel, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711, by December 8, 1980.

These amendments are proposed under the authority of Sections 5.131 and 5.132, Texas Water Code.

§311.46 (156.06.30.006) Thirty Percent of District Construction Costs To Be Paid by Developer. As used in this section, a "developer" is as defined in Section 50.024(d).

(1)[(a)] It has been determined by experience that some portion of the cost of district water, sewer, and drainage facilities should be paid by a developer to insure the feasibility of construction projects by districts which have a ratio of debt (including proposed debt) to certified assessed valuation of more than 10%. This determination has resulted in the requirement that a developer contribute 30% of the cost of certain facilities unless the commission otherwise determines that the feasibility of the construction project is not dependent upon developer contributions. Therefore, the developer shall contribute to the district's construction program an amount equal to 30% of the construction costs for all water, sewer, and drainage facilities including attendant engineering expenses and fees with the following exemptions:

(A)[(1)] Waste water treatment plant facilities.

(B)[(2)] Water supply, treatment, and storage facilities.

(C)[(3)] That portion of water and waste water main and trunk lines from the district's boundary to the interconnect source of supply or treatment facility as necessary to connect the district's system to a regional, city, or another district's system. Any oversizing to serve present or future development outside the district along these exempt lines shall be at no expense to the district under consideration.

(D)[(4)] In the case of a district providing water supply and waste water treatment service to other districts on a regional basis, wherein the participating districts share common water mains and waste water trunk lines, these common lines both inside and outside the participating districts' boundaries shall be exempt. Participating districts shall share the costs of these conveyance lines on a pro rata basis.

(E)[(5)] Water and sanitary sewer main and trunk lines serving or programmed to serve more than 1,000 acres within the district.

(F)[(6)] Alternate water supply interconnect between two or more districts.

(G)[(7)] Districts which have a

(i)[(A)] "baa" rating or higher from Moody's or,

(ii)[(B)] a "bbb" rating from Standard and Poor's.

(2)[(b)] The developer cost percentages specified under ***paragraph (1)*** [subsection (a)] above shall be reduced by:

(A)[(1)] the ratio of lots sold or optioned to be sold prior to September 16, 1974, in the area scheduled for development under the bond application to the total number of lots programmed for utility service under the same bond issue application; or

(B)[(2)] in the case of high density or commercial reserves sold as acreage, the ratio between the acres sold or optioned to be sold prior to September 16, 1974, in the area scheduled for development under the bond application to the high density and commercial acreage programmed for utilities under the same bond issue application.

(3)[(c)] A developer will not be required to contribute toward construction cost in districts which are within the limits of a city where the city and district are contracting in such a manner that the district becomes in effect the arm or alter ego of the city.

(4)[(d)] The ***developer's*** [developers] contribution toward construction cost shall be reduced by the amount the developer is required by a city, state, or federal regulatory agency to pay toward costs that are otherwise eligible for district financing under commission policies.

(5)[(e)] An independently prepared market study of the proposed district and surrounding area shall be filed with the commission at the time a petition for creation is filed. The market study should be updated for each bond issue proposed by the district. The market study shall include industry and other attractions supporting district growth projections; past growth history of the market area; housing and commercial absorption rates; magnitude of market competition; projected building schedule; and complete justification of district growth potential. An outline for market study reports may be obtained from the department on request. This market study requirement is waived if the district has a:

(A)[(1)] "baa" rating or higher from Moody's or,

(B)[(2)] a "bbb" rating from Standard and Poor's,

(C)[(3)] a ratio of debt (including the proposed debt) to certified assessed valuation of 10% or less.

(6)[(f)] The developer must provide a letter of credit, irrevocable development loan commitment, or other guarantee for ***street and*** road construction costs and applicable percent of construction and engineering costs for each bond application prior to advertisement for sale of the district's bonds unless the developer is totally exempt from cost participation, and ***road and*** street construction in the area to be developed is completed [or under contract]. This guarantee must provide assurance to the satisfaction of the commission that the developer has the financial capability to provide the required amount of funds for street ***and road*** construction and his share of utility construction. Actual payment of funds for utility construction by the developer to the district shall be within 10 days following the district's receipt of billing; the developer's pro rata share will be adjusted by the overruns or underruns on developer participation items and will be shared by the developer at the same percentage utilized in determining his initial contribution.

(A) With regard to street and road construction, the developer must enter into an agreement with the district, secured by a letter of credit, irrevocable development loan commitment, or other guarantee, specifying that if street and road construction is not completed within a reasonable and specified period of time after the district sells its bonds, the district may award a contract for completion of the streets and roads with financing to be accomplished by utilizing the developer's financial commitment; provided, however, the district shall not proceed in such a manner until the commission, after having given at least 10 days written notice to both the district and the developer, has reviewed the matter, either on the petition of the district or on the motion of the executive director of the Texas Department of Water Resources, and has approved the district awarding the contract and utilizing the developer's financial commitment; and provided further, the commission may extend the time for the developer to complete the streets and roads if the developer renews the guarantee and adequately compensates the district for lost revenues and taxes resulting from failure to complete the streets and roads within the specified time. (See the example of one acceptable agreement and letter of credit in Appendix C of this chapter.)

(B) The developer shall include in the street and road construction contract a provision that places the responsibility on the contractor for repair and clean-up of broken manholes, buried valve boxes, broken sewer pipe, and all other damage to district facilities caused by construction of streets and roads.

(C) The district shall charge a district employee or consultant with the responsibility to frequently inspect and conduct operational tests of unused facilities and promptly report:

(i) undue facility and equipment deterioration, leaks, silting, infiltration, and other problems with utility systems resulting from nonuse;

(ii) damage caused by vandalism, or road, street, commercial, industrial, and/or housing construction in order to establish responsibility promptly.

(D) In instances where a contractor for underground facilities has otherwise satisfactorily completed his contract except for drainage inlets, manholes, and other adjustments in accordance with plans and specifications as approved by the commission, the district has assumed ownership of the contract and the contractor cannot proceed because of street or road construction delay, the district board of directors may delete the remaining incomplete bid items by change order, accept the construction, and close the contract provided the developer agrees in writing:

(i) to include the deleted items and adjustments in the street or road construction contract when accomplished or in a separate contract and shall pay all construction costs of these items in excess of the original contract price, or the agreed deleted price; and

(ii) to pay the cost of reasonable measures necessary to initially prepare the district's underground facilities for the anticipated period of nonuse and to pay clean-up costs after nonuse.

Commission approval of change orders initiated under this provision which exceeds $4,999 must be obtained by the district prior to implementation of the change order.

(7)[(g)] The district (or district engineer) shall forward to the department's executive director copies of the board approved monthly construction contract pay estimates, engineering fee statements, and/or other adequate documentation reflecting payment of the developer's share.

(8)[(h)] If a district anticipates receipt of an acceptable bond rating prior to the bond sale identified in the bond application being considered, the district may at its discretion, request a conditional waiver to the developer cost participation requirements as follows:

(A)[(1)] At the time the district makes application for approval of project and bonds, the district may include a written request for a conditional waiver of the 30% developer cost participation and market study requirements to be considered by the commission at the time of the bond application hearing. The waiver request shall be accompanied by a written statement from the district's financial advisor indicating that, in his opinion, the district can reasonably be expected to qualify for an acceptable credit rating.

(B)[(2)] The cost summary in support of this bond application must show the district bond issue requirement for both situations, i.e., the bond requirement if an acceptable bond rating is obtained, and the bond requirement if a bond rating is not obtained thereby requiring developer participation.

(C)[(3)] If a conditional waiver is granted by the commission, no bonds shall be sold by the district unless such a credit rating is obtained.

(D)[(4)] If an acceptable rating is not obtained and the district and the developer wish to proceed under the 30% cost participation rule, a written request shall be submitted for commission consideration; a statement of intent to provide letters of credit or other guarantee and a market study must accompany this request and bonds shall not be sold except on written order of the commission.

(9)[(i)] A district may submit other information and data to demonstrate that all or any part of this section should not apply and request that it be waived.

APPENDIX C

EXAMPLE

STREET AND ROAD CONSTRUCTION AGREEMENT

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT is made and entered into as of this 1st day of December, 1980, by and between GREEN ACRES MUNICIPAL UTILITY DISTRICT of Travis County, Texas (the "District") and ALL AMERICAN HOMES, INC. (the "Developer").

Recital

The Developer is developing 300 lots in the Knot Holes West Subdivision which is located within the District. The District is preparing to sell its $[$]3,500,000 Waterworks and Sewer Systems Combination Tax and Revenue Bonds, Series 1980 (the "Bonds") for the purpose of acquiring and/or constructing water, sewage, and drainage facilities to serve the Knot Holes West Subdivision. In order for the District's taxable valuations to increase to a level to support the debt service requirements on the Bonds, the Developer must complete the streets and roads to serve its 300 lots in the Knot Holes West Subdivision in the District. The purpose of this Agreement is to assure the District that the Developer will construct all streets and roads to serve its 300 lots in the Knot Holes West Subdivision.

WITNESSETH

Green Acres Municipal Utility District and All American Homes, Inc. do hereby agree as follows:

1. The District agrees to proceed with the sale of the Bonds in accordance with the Order of the Texas Water Commission approving the Bonds and all applicable laws in an expeditious manner.

2. The District agrees that it will use the proceeds from the sale of such Bonds in accordance with the Order of the Commission approving the Bonds, including reimbursement to the Developer of funds advanced to or on behalf of the District.

3. The Developer agrees that it will cause the completion of all streets and roads to serve Developer's 300 lots within the Knot Holes West Subdivision in accordance with the plans and specifications prepared by ABC Engineers, Inc. and approved by the City of Megalopolis and Travis County not later than May 31, 1982.

4. The costs to construct the streets and roads to serve Developer's 300 lots in the Knot Holes West Subdivision are estimated to be $250,000.00. To assure the District and the Texas Department of Water Resources that adequate funds will be available to the District in the event that All American Homes, Inc. fails to construct the streets and roads in accordance with the Agreement, the Developer will secure a letter of credit from ROCK OF GIBRALTAR BANK, Megalopolis, Texas in the amount shown above in favor of the District which shall provide that in the event that the Developer fails to construct the streets and roads in accordance with the terms and conditions of this Agreement that the District shall have the right to award and/or to assume existing construction contracts for the completion of the streets and roads and to draw on the letters of credit for the purpose of making all payments due on the construction contracts for the streets and roads; provided, however, the District shall not proceed in such a manner until the Commission has reviewed the matter and approved the District awarding the contract(s) or assuming existing contract(s) and utilizing the letter of credit. Any draw on a letter of credit shall be accompanied by an approved pay estimate by the District's Engineer certifying that the amount is in order for payment. In the event that a letter of credit is not sufficient to pay the entire cost of constructing the streets and roads, the Developer shall be liable to the District for any costs in excess of the amount of the letter of credit.

5. Upon completion of the streets and roads to serve Developer's 300 lots in the Knot Holes West Subdivision in accordance with this Agreement, the District, upon written request by Developer and certification of completion by the District's engineer, shall authorize cancellation of the letter of credit for that section.

6. Developer and District agree that this Agreement is being entered into for the purpose of complying with the condition provided in the Commission's Order to permit the District to advertise for the sale of Bonds in compliance with the Commission's Order and in accordance with §311.46(6) (.006(6)) of the Texas Water Development Board and as an inducement to the District to issue the Bonds.

Executed in multiple copies on the date shown above.

Green Acres Municipal Utility
District of Travis County,
Texas

*By:*_____
President, Board of Directors

Attest:

Secretary, Board of Directors

All American Homes, Inc.

*By:*_____
*Title:*_____

(Editor's note: See Appendix C, Example—Letter of Credit, page 4539.

Doc. No. 808495

APPENDIX C

EXAMPLE

DECEMBER 1, 1980

ROCK OF GIBRALTAR BANK

LETTER OF CREDIT

GREEN ACRES MUNICIPAL UTILITY DISTRICT
ONE HOLLOW LOG LANE
MEGALOPOLIS, TEXAS 77000

IRREVOCABLE CREDIT No. 1
AMOUNT $250,000

GENTLEMEN:

YOU ARE HEREBY AUTHORIZED TO VALUE ON ROCK OF GIBRALTAR BANK FOR ACCOUNT OF ALL AMERICAN HOMES, INC. UP TO AN AGGREGATE AMOUNT OF -------- TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS -------- AVAILABLE BY YOUR DRAFTS AT ------ SITE ------ TO BE ACCOMPANIED BY THE ORIGINAL OF THIS LETTER OF CREDIT AND THE FOLLOWING DOCUMENTS:

1. Written statement signed by the President or Vice President of the Board of Directors of Green Acres Municipal Utility District that All American Homes, Inc. has failed to construct streets in Knot Holes West Subdivision in accordance with the terms of the Street And Road Construction Agreement dated December 1, 1980. (Required only for draft No. 1).

2. Written certification(s) by the engineer for Green Acres Municipal Utility District that payment is due to the contractor for construction of streets in Knot Holes West Subdivision in the amount shown on the draft(s).

Multiple drafts may be presented.

DRAFTS MUST BE PRESENTED TO DRAWEE BANK NOT LATER THAN May 31, 1983, ALL DRAFTS MUST STATE ON THEIR FACE "DRAWN UNDER ROCK OF GIBRALTAR BANK IRREVOCABLE CREDIT NO. 1".

WE HEREBY ENGAGE WITH YOU, THAT ALL DRAFTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS CREDIT WILL BE DULY HONORED, IF DRAWN AND PRESENTED FOR PAYMENT AT OUR OFFICE IN MEGALOPOLIS, TEXAS, ON OR BEFORE THE EXPIRATION DATE OF THIS CREDIT.

VERY TRULY YOURS,

AUTHORIZED SIGNATURE

Chapter 353. Water Rates.

The executive director of the Texas Department of Water Resources is proposing to adopt §§353.1-353.7 (156.08.00.001-.007) of this title (relating to water rates). The proposed sections provide for the filing of water rate complaints with the department under Chapters 11 and 12 of the Texas Water Code and the procedures for review of such complaints by the executive director for dismissal or referral to the Texas Water Commission.

Section 353.1 (.001) of this title describes the statutory purpose of the proposed sections. Section 353.2 (.002) of this title defines certain terms used in the proposed sections. Section 353.3 (.003) of this title sets forth required elements to be pleaded in water rate petitions. Section 353.4 (.004) of this title establishes a $25 deposit used to cover costs of filing. Section 353.5 (.005) of this title describes the notice requirements that the petitioner must comply with at the time of filing of the petition. Section 353.6 (.006) outlines certain information which will be required to be furnished to the executive director by the water supplier involved in the rate complaint in order that the executive director may determine if probable grounds exist for the complaint so that it may be referred to the commission. Section 353.7 (.007) of this title authorizes the executive director after his investigation to either dismiss the petition or refer it to the Texas Water Commission for hearing.

The rationale for the sections is that they will govern the procedure for handling water rate complaints filed with the department. The effect would be to expedite the handling of such complaints by the executive director.

The executive director of the department has determined that the proposed adoption of the sections will have no fiscal impact to the state or units of local government. No local units of government have been consulted in this estimate.

Public comment is invited. Persons should submit their comments in writing to M. Reginald Arnold II, general counsel, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711, by December 12, 1980.

These sections are proposed under the authority of Sections 5.131 and 5.132, Texas Water Code.

§353.1 (156.08.00.001). Purpose. The sections in this subchapter are intended to outline the manner of pleadings and procedures to be followed in regard to the rate-fixing authority of the department under Chapters 11 and 12 of the Texas Water Code.

§353.2 (156.08.00.002). Definitions. The following words and terms shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

Rate—Any price or charge made for water, for the providing of water service, or for making water service available, including any contract provision relating to or affecting the price or charge.

Water customer—A person receiving or using water or asserting a right to receive or use water from a water supplier.

Water supplier—A person who owns, controls, or supplies water in a manner subject to the rate-fixing jurisdiction of the department.

§353.3 (156.08.00.003). Petition for Rate Review. Any water customer or water supplier may present to the department, by filing with the executive director, a written petition.

(1) If the petitioner is a water customer, the petition shall show the following:

(A) that the petitioner is entitled to receive or use the water;

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

(C) that the water supplier owning or controlling the water supply has a contract or other legal duty to supply water to the water customer or has water not contracted to others and available for the water customer's use; and

(D) that the water supplier owning or controlling the water supply fails or refuses to supply the available water to the petitioner or that the rate demanded for the available water is unreasonable or unjustly discriminatory.

(2) If the petitioner is a water supplier, the petition shall show the following:

(A) that the petitioner supplies or has supplied the water;

(B) that the petitioner is willing to be paid a reasonable and just price for the water; and

(C) that the rate tendered, if any, for the water is unreasonable or unjustly discriminatory.

§353.4 (156.08.00.004). Deposit. The petition shall be accompanied by a deposit of $25.

§353.5 (156.08.00.005). Notice of Petition. Immediately upon the filing of a petition and deposit in accordance with §§353.3 and 353.4 (.003 and .004) of this title, the petitioner shall transmit by certified mail, return receipt requested, a copy of the petition to the water supplier or water customer complained of therein. Proof of service shall be filed with the executive director as soon as is practicable.

§353.6 (156.08.00.006). Required Filings.

(a) Unless extended by the executive director, within 30 days from receipt of a copy of a petition filed by a water customer, the water supplier shall submit to the executive director with service of copies by certified mail, return receipt requested, to the water customer, the following information and data:

(1) copy of contract, if any, between the water supplier and water customer;

(2) copy of contract, if any, through which the water supplier purchases water for resale from another person;

(3) copies of the three most recent annual financial statements of the water supplier including balance sheets and income and expense statements;

(4) information relating to utility reserves, bond coverage requirements, other debt service requirements, sinking fund reserves, and depreciation reserves;

(5) complete rate schedule or other information relating to categories of prices of the water supplier broken down by customer or class of customer;

(6) consumption figures both volume and demand for the system as a whole, for the water customer, and for the class of customer, if any, to which the water customer belongs;

(7) if available, summary of overall cost of service to the water customer or class of customer to which the water customer belongs;

(8) if available, breakdown of assets or portions of assets used or useful in providing service to the water customer or class of customer to which the water customer belongs;

(9) if available, breakdown of operation and maintenance expenses or portions thereof incurred in providing service to the water customer or class of customer to which the water customer belongs; and

(10) at the supplier's option, a summary of noncost of service considerations, if any, constituting a reasonable basis for the rate charged together with information documenting such considerations.

(b) Where the petition is filed by the water supplier, the information set out in subsection (a) above shall accompany the petition.

(c) The executive director may require the water supplier or the water customer to file such other information as necessary to complete his investigation.

(d) The party against whom the complaint is filed may file an answer to the petition within 30 days from receipt of a copy of the petition and serve a copy of the answer on the petitioner.

§353.7 (156.08.00.007). Findings of Probable Grounds.

(a) Upon receipt of the information required in §353.6 (.006) of this title, the executive director shall have a preliminary investigation of the petition made and determined whether or not probable grounds exist for the petition.

(b) If after preliminary investigation, the executive director determines that no probable grounds exist for the petition, he shall issue an order so finding and dismiss the petition for lack of probable grounds. Where the petition is filed by the water supplier, the executive director may dismiss the petition for failure to submit the required filings under §353.6 (.006) of this title above.

(c) If after preliminary investigation, the executive director determines that probable grounds exist for the petition or the water supplier has failed to comply with §353.6(a) (.006(a)) of this title, the executive director shall refer the petition to the commission by forwarding to the chief clerk all pleadings and required filings.

Issued in Austin, Texas, on November 7, 1980.

Doc. No. 808496

M. Reginald Arnold II
General Counsel
Texas Department of Water Resources

Proposed Date of Adoption: December 16, 1980
For further information, please call (512) 475-7836.

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter F. Motor Vehicle Sales and Use Tax Division

The Comptroller of Public Accounts proposes to amend §3.79 (026.02.06.030) of this title. The proposed amendments would provide definitions for the terms "lease" and "lease/purchase" and would now distinguish between a transaction which is a lease and a transaction which is a lease/purchase for the purposes of the application of the motor vehicle sales and use tax. The proposed amendments would include a statement that an executed lease/purchase agreement is considered a retail sale to the buyer/lessee. These proposed amendments reflect a change in policy.

Since virtually every subsection of the existing section would be affected, the proposed amendments are submitted as a complete revision of the existing section. The text which is being deleted follows the amended section.

There are no significant fiscal implications expected from the proposed amendments (source: revenue estimating staff, comptroller of public accounts).

Public comment on the proposed amendments is invited. Persons should submit their comments in writing to Richard Montgomery, Drawer SS, Austin, Texas 78711.

These amendments are proposed under the authority of Texas Taxation—General Annotated, Article 6.02 (Vernon, 1969).

*§3.79 (026.02.06.030). **Motor Vehicle Tax Application to Lease and Lease Purchase Transactions.** [Sale of Previously Leased Motor Vehicle.]*

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

Lease—An agreement whereby possession and exclusive use of a motor vehicle is transferred for a consideration and for a specified period exceeding 180 days. A lease/purchase as defined below, is specifically excluded from the definition of a "lease."

Lease/purchase—A conditional sale. A lease/purchase (conditional sale) is a security device, whereby the seller/lessor retains title to the motor vehicle, and the buyer/lessee is under contractual and/or economic compulsion to complete a purchase option, take title, or otherwise acquire ownership of the motor vehicle. A lease/purchase (conditional sale) is considered a sale and not a lease. A contract which contains any one of the following provisions or conditions will be presumed to be a lease/purchase (conditional sale):

(A) Contract provides that title to the motor vehicle must be automatically transferred to the buyer/lessee at the end of the lease term. This automatic transference of title may or may not be for additional consideration.

(B) Contract contains an option to purchase the motor vehicle for nominal consideration. Nominal consideration is an amount substantially less than the vehicle's fair market value at the time the option is exercised.

(C) The lease term is equal to 75% or more of the estimated economic life of the motor vehicle and the contract makes no provisions for the return of the vehicle to the seller/lessor except in case of default.

(D) Contract provides that the seller/lessor is entitled to look to the buyer/lessee for a predetermined residual amount at the end of the lease term. This predetermined residual amount must constitute a portion of the original agreed-upon selling price of the vehicle; it is not an option price, a payment in the event of default, or a penalty assessed for excessive use or wear and tear. The buyer/lessee may satisfy payment of this predetermined residual amount in one of several ways. Some examples are:

(i) The buyer/lessee may pay the predetermined residual amount and obtain title to the vehicle.

(ii) The buyer/lessee may return the vehicle to the seller/lessor to be sold to a third party with the provision that if the sale proceeds exceed the predetermined residual amount, the buyer/lessee is entitled to the difference, but if the sale proceeds do not equal the predetermined residual amount, the buyer/lessee must pay the seller/lessor the difference.

(iii) The buyer/lessee may trade the vehicle to the seller/lessor on the purchase of another vehicle with the provision that if the trade-in allowance exceeds the predetermined residual amount, the buyer/lessee is entitled to the difference, but if the trade-in allowance does not equal the residual amount, buyer/lessee must pay the seller/lessor the difference.

Purchase option or option to purchase—An agreement between the buyer and seller of a vehicle or between the lessee and lessor of a vehicle which gives the buyer/lessee the right to purchase the vehicle at a fixed price within a specified period of time.

Total consideration—The amount paid or to be paid for a motor vehicle and all accessories attached thereto at the time of the sale. Total consideration does not include separately stated finance charges, carrying charges, service charges, or interest from credit extended on a lease/purchase agreement.

(b) Application of motor vehicle sales tax to a lease or a lease/purchase.

(1) Lease.

(A) The purchase of a motor vehicle in Texas for lease is a retail sale subject to 4.0% motor vehicle sales tax. The tax is due from the purchaser (lessor) and is paid at the time the vehicle is titled in the lessor's name. Subsequent lease payments are not subject to motor vehicle sales tax.

(B) A lessee who exercises an option to purchase a motor vehicle under a lease owes 4.0% motor vehicle sales tax on the option purchase price. Credit against this tax is given for any use tax the lessee has previously paid to the State of Texas in accordance with subsection (c)(1) of this section. The retail sale of the motor vehicle to the lessor, and the subsequent retail sale of the vehicle to the lessee, are taxed as two separate transactions.

(2) Lease/purchase (conditional sale).

(A) The purchase of a motor vehicle in Texas for the exclusive purpose of selling it by means of a lease/purchase (conditional sale) agreement is treated as a purchase for resale, and is not subject to the motor vehicle sales tax. The executed lease/purchase (conditional sale) agreement is a retail sale to the buyer/lessee and is subject to 4.0% motor vehicle sales tax on the total consideration. Tax is paid by the buyer/lessee at the time he takes possession of the motor vehicle and the vehicle is titled in the seller/lessor's name.

(B) No additional motor vehicle sales tax is due at the time a buyer/lessee takes title to the motor vehicle under a lease/purchase (conditional sale) agreement, provided the correct amount of tax was previously paid on the total consideration. If the correct amount of tax was not paid on the total consideration, the buyer/lessee must pay the difference when the vehicle is titled in his name.

(c) Application of motor vehicle use tax to a lease or a lease/purchase (conditional sale).

(1) Lease. A lessee residing, domiciled, or doing business in Texas owes 4.0% motor vehicle use tax on a leased motor vehicle which he operates in Texas and which was purchased by the lessor at retail sale outside the state. The tax is 4.0% of the total consideration paid by the lessor at the retail sale. Credit will be given for any legally imposed tax paid to another state on that vehicle by either the lessor or the lessee.

(2) Lease/purchase (conditional sale). A person residing, domiciled, or doing business in Texas owes 4.0% motor vehicle use tax on the total consideration paid or to be paid for any vehicle which he acquires out of state under a lease/purchse (conditional sale) agreement and operates in Texas. Credit will be given for any legally imposed tax paid by the buyer/lessee to another state on that vehicle. The tax is due when the vehicle is initially titled in Texas. If title is later transferred to the buyer/lessee pursuant to the lease/purchase (conditional sale) agreement, no additional motor vehicle sales tax will be due provided the correct amount of tax was paid at the time the vehicle was initially titled in Texas. If the correct amount of tax was not paid, the buyer/lessee must pay the difference at the time a Texas title is issued in his name.

[(a) Motor vehicles which are purchased by a lessor to be leased are subject to motor vehicle sales or use tax based upon the purchase price of the motor vehicle to the lessor. Such tax is due at the time of purchase.

[(b) If, at the termination of a lease a motor vehicle is sold by the lessor to the lessee and the lease contained an "option to purchase" or a "must purchase" clause, the amount subject to the motor vehicle sales and use tax would be the total amounts paid lessor by the lessee under such an agreement, since it would be considered a sale rather than a lease agreement.

[(c) If the motor vehicle is sold to a person not privy to the lease, the amount subject to the motor vehicle sales and use tax would be the agreed upon sales price. (See Attorney General Opinion WW-771 (1959).]

Issued in Austin, Texas, on November 7, 1980.

Doc. No. 808493

Bob Bullock
Comptroller of Public Accounts

Proposed Date of Adoption: December 15, 1980
For further information, please call (512) 475-1720.

NONCODIFIED

Coordinating Board, Texas College and University System

Administrative Council

The Administrative Council of the Coordinating Board, Texas College and University System proposes to amend Rule 251.20.02.002 to add the definition of "equal" with respect to insurance coverage standards provided under the Texas State College and University Employees Uniform Insurance Benefits Act. The council also proposes to amend Rule .003 to change the basic coverage standards required under the Texas State College and University Employees Uniform Benefits Act.

The staff of the Administrative Council has determined that there are no fiscal implications to the state or to units of local government.

Public comments on the proposed amendments are invited. Comments may be submitted for a period of 30 days from the date of publication by telephoning the office of the Administrative Council at (512) 475-2033 or by writing to the Administrative Council at P.O. Box 12788, Austin, Texas 78711.

Administration of the Texas State College and University Employees Uniform Insurance Benefits Program 251.20.02.002

This amendment is proposed under the authority of Article 3.50.3 of the Texas Insurance Code.

.002. Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as used in these rules shall have the following meanings:

(1)-(16) (No change.)

(17) Equal—When used in the Act in reference to coverage standards equal to those provided in private industry and those provided employees of other agencies of the State of Texas, shall mean generally comparable in overall benefits to the employees of a particular institution, and shall not mean the same exact coverage. With respect to changes in the standards of coverage provided to employees of other state agencies, it shall also mean equal within one year of such change or the next time an institution rebids its program after such change, whichever occurs first.

Doc. No. 808461

251.20.02.003

These amendments are proposed under the authority of Article 3.50.3 of the Texas Insurance Code.

.003. Basic Coverage Standards. Each institution shall provide in its program of group insurance a basic plan for active employees and retired employees that includes at least the following minimum coverage standards.

(1) Hospital care expense. The plan shall cover the reasonable charges for the following hospital services:

(A) room allowance of semiprivate rate for 365 days per year ***except for the treatment of mental illness which may be limited to 90 days per calendar year.***

(B) (No change.)

(2) Other medical expense. The plan shall cover the reasonable charges for the following items of services or supplies furnished by or at the direction or prescription of a physician.[:] ***If any of the following services or supplies are used while the participant is confined as a hospital bed patient, other than professional services of a physician, psychologist, or certified registered nurse-anesthetist, the charges will be considered as hospital care expenses, rather than other medical expense:***

(A) services of physicians [(not including a doctor of psychiatry)], except that [(1)] the charges of a doctor of dentistry shall be considered other medical expense only if such service is related to treatment of accidental injury, to natural teeth, occurring within 24 months of the accident, and [(2)] the charges of a doctor of podiatry shall be considered other medical expense only if such service is an operative or cutting procedure, the setting of a fracture or dislocation, or a diagnostic x ray or laboratory procedure;

(B)-(P) (No change.)

(Q) ***services of a psychologist or a doctor of psychiatry during the first 90 days of hospital confinement for mental illness*** [complications of pregnancy, namely, toxemia, pernicious vomiting, extra uterine pregnancy, and Caesarean section].

(3) Accidental bodily injury. The plan shall provide accidental bodily injury coverage where benefits will be provided for hospital care expense and/or other medical expense within 90 days after such accidental bodily injury for eligible expenses not otherwise paid under the plan. Maximum benefits per participant, per accident is $300.

(4) Outpatient expenses of psychiatrist or psychologist. The plan shall provide for the services of a psychologist or services of a doctor of psychiatry for the treatment of mental illness while the participants are not hospital confined. Benefits shall be provided for a minimum of 50 visits per calendar year at 80% coinsurance with a minimum eligible expense of $30 per visit. The plan may require that the deductible be satisfied prior to availability of benefits.

(5)[(3)] Life insurance for active employees. Each participating active employee shall be enrolled for basic group life insurance with accidental death and dismemberment and loss of sight (AD&D) benefits. Amounts of group term life and AD&D shall be at least as follows:

(A) Active employees under age *70* [65]:

(i) Life insurance.....$5,000

(ii) AD&D.....$5,000

(B) Active employees age *70* [65] and over:

(i) Life insurance.....$2,500

(ii) AD&D.....$2,500

(6)[(4)] Life insurance for retired employees. Retired employees shall be allowed, at their option, to retain $2,500 of the group term life insurance in effect under their plan at the time of retirement. AD&D does not have to be provided.

(7)[(5)] Deductible. A yearly deductible may be included in the plan, but shall be no more than ***$100*** [$250]

before benefits become available, ***and shall be waived on hospital care expense.***

(8)[(6)] Benefit percentage. After the deductible has been satisfied, the plan shall pay at least 80% of the covered charges for hospital care expense and other medical expense, and after the hospital care expense and other medical expense for a benefit year has reached no more than ***$2,500*** [$5,000], then the benefit percentage shall increase to 100% for all additional hospital care expense and other medical expense incurred in the remainder of that benefit year.

(9)[(7)] Life time maximum. The plan shall provide that the total amount of benefits available to any one participant for ***medical care*** [hospital care expense and other medical expense] shall be at least $250,000.

(10) Definitions. When used in this rule, these terms shall have the following meaning:

(A) Physician—A person (other than a hospital resident or intern) who is a doctor of medicine, doctor of osteopathy, doctor of podiatry, doctor of dentistry, doctor of optometry, or a doctor of chiropractic and who is a member of his or her county medical society, State Osteopathic Association, State Podiatry Association, State Dental Association, State Optometric Association, or State Chiropractic Association, or eligible for membership in such society or association; the term shall not include a doctor of medicine, osteopathy, podiatry, dentistry, optometry, or chiropractic ineligible for membership in his respective society or association. The terms doctor of medicine, doctor of osteopathy, doctor of podiatry, doctor of dentistry, doctor of optometry, and doctor of chiropractic, as used herein, shall have the meaning assigned to them by the Insurance Code of Texas.

(B) Psychologist—A person who is certified and licensed by the state as a psychologist.

(C) Reasonable and customary charges—The actual charge of portion thereof for services and supplies to the extent such services or supplies are reasonably priced in the light of the injury, sickness, or pregnancy being treated. In determining the reasonable charge for a service rendered by a physician, the carrier shall consider the charges for similar services usually made by the physician rendering the service, the charges for similar services customarily made by physicians in the locality with similar training and experience, and unusual circumstances or medical complications requiring additional time, skill, and experience in connection with a particular service.

(D) Hospital—A legally constituted institution for the care and treatment of sick and injured persons, with 24-hour nursing service and organized facilities for diagnosis and major surgery, except that the requirement for a major surgery facility will be waived in a hospital established for the treatment of mental illness or nervous disorders, and shall include obstetrical centers, surgicenters, and radiation therapy centers. The term shall also include Veterans Administration hospitals and public health hospitals, provided the patient is legally obligated to pay for the services received. It does not include one which is used principally as a facility for nursing, convalescence, the aged, or remedial education or training, or one used primarily for treatment of alcoholism or drug addiction.

(E) Care—The furnishing of any item of service or supply provided such service or supply is necessary and consistent with the illness or injury for which the patient is being treated.

Issued in Austin, Texas, on October 30, 1980.

Doc. No. 808462 James McWhorter, Executive Secretary
Administrative Council
Coordinating Board, Texas College and University System

Proposed Date of Adoption: December 18, 1980
For further information, please call (512) 475-2033.

Texas Department of Health

Controlled Substances

Controlled Substances Therapeutic Research Program 301.39.02

The Texas Department of Health proposes to adopt Rules 301.39.02.001-.006. The purpose of these proposed rules is to set forth the mechanisms of control and distribution and other procedures necessary for the implementation of controlled substance therapeutic research programs. These programs will study the effectiveness of tetrahydrocannabinols (THC) and its derivatives in the alleviation of patient side effects when administered prior to and during cancer chemotherapy. The Texas Department of Health will acquire and receive THC and its derivatives by contracting with the National Cancer Institute according to its regulations. These proposed department rules are intended to conform with all safety and security regulations of the U.S. Food and Drug Administration, the Drug Enforcement Administration of the U.S. Department of Justice, and the Texas Controlled Substances Act as amended.

The department's Chronic Disease Division and Budget Office have determined that the total probable cost to the state and units of local governments for enforcing or administering the proposed rules during the next five years is as follows: $11,958 for fiscal year 1981; $75,933 for fiscal year 1982; and $65,508 for fiscal years 1983, 1984, and 1985.

Public comments are invited and should be submitted in writing no later than 30 days after these proposed rules are published in the *Register* to C. R. Allen, Jr., M.D., chief, Bureau of Personal Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

These rules are proposed under authority of Articles 4418a, 4476-15, and 6252-13a, Texas Revised Civil Statutes.

.001. Definitions.

(a) Board—The Controlled Substance Therapeutic Research Review Board as defined in the Texas Controlled Substances Act, Article 4476-15, Vernon's Civil Statutes.

(b) Medical school researcher—A licensed professional or other qualified investigator approved by the board who has received approval of an independent protocol in accordance with the requirements of the Texas Controlled Substances Act and applicable federal regulations.

(c) Research program participant—

(1) the patient who is the ultimate user and who is approved by the board; or

(2) any physician approved by the board; or

(3) any hospital pharmacy approved to participate in a program under the sponsorship of a federal agency.

(d) DEA—The U.S. Drug Enforcement Agency.

(e) NCI—The National Cancer Institute.

.002. *Special Instructions.* Information and forms necessary to comply with these rules will be furnished upon request by writing to Amelia M. Menchetti, director, Cancer and Heart Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

.003. *NCI Delta-9-THC Program Participation Requirements.* Persons and eligible institutions interested in participating in the NCI research program must comply with all NCI procedures as set forth in the "Mechanism of Drug Distribution for Delta 9 Tetrahydrocannabinol" (adopted by reference in Rule .006) and must comply with the additional following requirements.

(1) Hospital pharmacies.

(A) Registration procedures. Pharmacies applying to NCI and DEA for registration must file a copy of their letter of application, notice of approval, and DEA Schedule I designation with the board.

(B) Record keeping and reporting. Pharmacies participating in the NCI program must submit to the board copies of all prescriptions presented, as well as copies of all reports filed with NCI and DEA.

(2) Physicians.

(A) Registration procedures.

(i) Pharmacy will mail a copy of the physician application to the board.

(ii) Pharmacy will notify the board of NCI action on application.

(iii) The board will review application and determine whether or not applicant is qualified and inform the pharmacy.

(iv) The pharmacy will notify the physician of his eligibility status.

(B) Application review procedures.

(i) If a registered pharmacy feels a physician has failed to adhere to established standards of medical practice in the prescribing of controlled substances, the board should be notified in writing. Information rendered will be held in the strictest confidence.

(ii) If the board rejects a physician's application, the board will contact the physician stating the basis for rejection.

(iii) The physician may resubmit his application to the board along with a written statement of rebuttal. This document will be reviewed by the board for final decision.

(C) Record keeping and reporting.

(i) Physicians will report adverse drug reactions immediately to the board.

(ii) Physicians shall submit, if requested, patient participation analyses.

.004. *Patient Application for Registration as a Participant.*

(a) Patient eligibility criteria.

(1) Recommendation to the board by a person in charge of an approved research program or a program-registered physician who certifies that the patient:

(A) has cancer; and

(B) is undergoing chemotherapy and is experiencing severe side effects from treatment; and

(C) has symptoms or side effects from treatment that may be alleviated by medical use of THC or its derivatives; and

(D) is an acceptable subject who meets the criteria of the research program to which application is made.

(b) Patient registration procedures.

(1) Physician must complete a patient application form, which certifies that the proposed patient meets the eligibility criteria, and send the form to the board.

(2) Physician must obtain a signed and witnessed consent from the patient.

(3) Physician will make available upon request the patient's medical history to the board for its review (patient medical history will be held in confidence).

(4) The board will evaluate information to determine the patient's continued eligibility for the program and inform the physician.

(c) Patient eligibility review.

(1) If patient eligibility is discontinued, the board will notify the physician, stating the basis for such action.

(2) A physician may ask for reconsideration and submit a written statement of rebuttal. This document will be reviewed for final decision by the board.

.005. *Termination of THC Participant.* The board may terminate at any time the distribution of THC to a program, program participant, or researcher.

.006. *Mechanism of Drug Distribution for Delta-9-Tetrahydrocannabinol.* The department adopts by reference the NCI publication entitled "Mechanism of Drug Distribution for Delta 9-Tetrahydrocannabinol." Copies of this publication may be obtained from Amelia M. Menchetti, director, Cancer and Heart Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas, on November 6, 1980.

Doc. No. 808479

A. M. Donnell, Jr., M.D.
Deputy Commissioner
Texas Department of Health

Proposed Date of Adoption: December 15, 1980
For further information, please call (512) 458-7265.

An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register*, and the adoption may go into effect no sooner than 20 days after filing, except where a federal statute or regulation requires implementation of a rule on shorter notice.

Upon request, an agency shall provide a statement of the reasons for and against adoption of a rule. Any interested person may request this statement from the agency before adoption or within 30 days afterward. The statement shall include the principal reasons for overruling objections to the agency's decision.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Noncodified."

CODIFIED

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 23. Family Farm and Ranch Security Program

General Provisions

The commissioner of the Texas Department of Agriculture adopts the following sections which implement, in part, the Texas Family Farm and Ranch Security Program.

There were no comments received on these sections; however, the department's staff felt that it was necessary in §23.1 (176.70.01.001) of this title to change the wording in the definition of "commissioner" to correctly reflect the legal title of the commissioner of agriculture. Also, additional wording was added to the structure of the definition of "eligible loan" in three places. The additional wording "or his designee" was added after administrator in each instance. The department's staff felt the additional wording was necessary for the convenience of the beneficiaries and the commissioner in handling foreclosure proceedings in case of default.

The following sections are adopted under the authority of Article 55g, Texas Civil Statutes, and Article III, Section 50c, of the Texas Constitution.

§23.1 (176.70.01.001). Definition of Terms. For the purposes of these sections, the following words and terms, when used herein, shall have the following meanings:

Act—Article 55g, Texas Revised Civil Statutes.

Active agricultural production—Land is currently devoted to one or more of cultivating the soil, producing crops for human food, animal feed, planting seed, and for the production of fibers; floriculture, viticulture, and horticulture; raising or keeping livestock; and planting cover crops or leaving land idle for the purpose of participating in any governmental program, or normal crop or livestock rotation procedure, all in a manner consistent with generally accepted farm and ranch management practices for farmland and ranchland of like or similar size, type, and location and under the economic conditions prevailing from time to time.

Administrator—The person designated from time to time by the commissioner as the senior official of the Texas Department of Agriculture charged with the administration of the Family Farm and Ranch Security Program.

Advisory council—The Family Farm Advisory Council created under Section 5 of the Act.

Applicant—An individual who, together with one or more eligible lenders, applies to the commissioner for a guarantee of an eligible loan under the Act for the purpose of assisting the applicant in acquiring farmland or ranchland for active agricultural production.

Application—The official form prescribed as such by the administrator under these sections with all accompanying documents or instruments required by the commissioner or the administrator which seeks or supports the request of an applicant for a guarantee under these sections and the Act.

Commissioner—The holder of the office of commissioner of Agriculture created in Article 47, Texas Revised Civil Statutes.

Eligible lender—A seller who is an individual, and also any bank, savings bank, mutual savings bank, credit union, building and loan association organized under the laws of this state or the United States, trust companies and other financial institutions subject to the supervision of the banking commissioner, and any corporation engaged in the business of insurance that is subject to the supervision of the State Board of Insurance under the Insurance Code, as amended, (together with their successors and assigns) who joins with an applicant in seeking a guarantee of an eligible loan.

Eligible loan—For seller sponsored loans, means:

(A) if the seller is the sole lender, a seller-sponsored loan by the seller to an applicant, evidenced by one or more notes which conform(s) to the standards herein prescribed and which is or are secured by a first deed of trust lien on the farmland or ranchland to be acquired by an applicant, in which the administrator or his designee is named as trustee, or

(B) if the seller and another are lenders, a seller-sponsored loan by either the seller or other lender, whichever seeks a guarantee, evidenced by one or more notes which conform(s) to the standards herein prescribed and which is or are secured by a first deed of trust lien on the farmland or ranchland to be acquired by an applicant, in which the administrator or his designee is named as trustee; and for loans other than seller-sponsored loans, means a loan by a lender (other than a seller) which seeks a guarantee evidenced by one or more notes which conform(s) to the standards herein prescribed and which is or are secured by a first deed of trust lien on the farmland or ranchland to be acquired by an applicant, in which the administrator or his designee is named as trustee.

Farm and Ranch Loan Security Fund—The fund established by Section 14 of the Act, from which all obligations created under any guarantee and all guarantees collectively shall be payable.

Farmland and ranchland—Land in Texas that is capable of supporting the commercial production of agricultural crops, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or other horticultural products.

Guarantee—The written assurance, promise, and guaranty obligation executed by the commissioner on official forms prepared by the administrator in accordance with these sections and by which the commissioner obligates the State of Texas to pay solely from the Farm and Ranch Loan Security Fund to an eligible lender not more than 90% of the principal and interest due and payable, either at maturity or upon acceleration, of an eligible loan in the event of default thereon by an applicant, but in total amount never in excess of 90% of the purchase price.

Maximum aggregate loan guarantee—That dollar amount which equals five times the amount of funds, including the face value of any securities then being held therein or for the account thereof, certified by the administrator to be on deposit in the Farm and Ranch Loan Security Fund at the close of the fiscal year of said fund next preceding the date of each certification required by these sections.

Purchase price—The total of all dollar amounts to be paid by an applicant to a seller or vendor of the farmland or ranchland to which an eligible loan applies, plus the unpaid principal balance of any loans, if any, assumed by the applicant, and plus all costs and expenses which are to be paid by the applicant in connection therewith, including costs and expenses of appraisals, abstracts, title opinions, or policies of title insurance, surveys, attorneys' fees, points paid to lenders, or other costs related to the acquisition of such property, but shall not include any amounts to be set aside or obtained from any source by either the applicant or the seller or vendor for any improvements or additions thereto.

Residential homestead—The homestead of the applicant designated by him, if any, owned on the date of the application and as determined in accordance with the laws of the state.

Seller—An owner of farmland or ranchland being sold to an applicant who finances all or any part of the purchase price thereof.

Seller sponsored loan—A loan in which a part or all of the purchase price of farmland or ranchland is financed by a loan from the seller with the remainder of the loan, if any, supplied by a lender other than a seller.

§23.2 (176.70.01.002). The Advisory Council. Meetings of the advisory council shall be held in accordance with, and the procedures to be followed by the council in the performance of their duties under the Act and these sections shall be set forth in rules of procedure adopted by the council and published in the *Texas Register* and certified to the secretary of state.

§23.3 (176.70.01.003). Discrimination. In carrying out their respective duties under the Act, neither the commissioner nor the advisory council shall discriminate against any persons because of age, race, color, creed, religion, national origin, sex, marital status, disability, or political or ideological persuasion.

§23.4 (176.70.01.004). Privacy. The administrator, to the extent authorized by law, shall hold all applications that are being preliminarily reviewed by the commissioner in accordance with these sections in confidence as being confidential information. However, from and after any final action thereon, all applications, communications, documents, and records pertaining thereto shall be and remain public records and available for public inspection in accordance with law.

§23.5 (176.70.01.005). Communications with Commissioner. All communications with the commissioner or to the advisory council pertaining to these sections, or otherwise pertaining to the Family Farm and Ranch Security Program under the Act, should be addressed to the proper party in care of the administrator, Family Farm and Ranch Security Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

§23.6 (176.70.01.006). Amendment to Sections. These sections may be amended by the commissioner at any time in accordance with the Act and the Administrative Procedure and Texas Register Act, Article 6252-13a, Texas Revised Civil Statutes, but such amendments shall be effective only after being filed with the secretary of state and only after conforming to the rulemaking procedures specified therein.

Doc. No. 808431

Official Documents

The following sections are adopted under the authority of Article 55g, Texas Civil Statutes, and Article III, Section 50c, of the Texas Constitution.

§23.21 (176.70.02.001). Forms.

(a) The administrator shall prepare and prescribe, and, as need from time to time shall revise the following official forms to be utilized by all applicants and eligible lenders under and in accordance with these sections:

(1) the form of the application, including as a part thereof an applicant's statement of net worth, affidavits of intent and essential facts required to be determined under the Act and these sections, and a statement of history and educational experience, farming or ranching and other business experience and the personal background of the applicant;

(2) the form of note or notes to be executed by the applicant in favor of the eligible lenders;

(3) the form of the deed of trust securing the note or notes to be executed in accordance herewith;

(4) the form of the guarantee to be executed by the commissioner to and with eligible lenders; and

(5) such other forms as the administrator shall deem appropriate to efficiently and effectively administer the provisions of these sections.

(b) All of such forms, when and as prepared, adopted or revised by the administrator shall be submitted to the commissioner and, upon approval by the commissioner, shall be submitted to the attorney general as required by the Act. Upon the attorney general's approval, the same shall constitute the official forms to be used by all applicants lenders, and other persons interested in transactions to be consummated under these sections.

§23.22 (176.70.02.002). Waivers of Form Provisions. Upon the request of an applicant, and upon a determination by the administrator that the use or application of one or more provisions of the official forms, as prescribed in §23.21 (.001) of this title would be impractical, unworkable, or incomplete in connection with an application, or if such would work an extreme hardship upon an applicant or an eligible lender, then the commissioner, to the extent such action would not be in conflict with the express requirements of these sections and the Act, may waive or alter the provisions under question and may approve such substitutes, additions, or deletions as he may consider appropriate and recommended by the administrator and consistent with the commissioner's duties under and the purposes of the Act.

Doc. No. 808432

Application Procedures

The following sections are adopted under the authority of Article 55g, Texas Civil Statutes, and Article III, Section 50c, of the Texas Constitution.

§23.31 (176.70.03.001). Filing.

(a) Any natural person who considers himself or herself to be qualified under the Act and these sections may, together with an eligible lender, file an application with the administrator for a guarantee of an eligible loan under these sections.

(b) The application shall be filed in quadruplicate and shall be accompanied by at least one true and correct copy of a binding and effective purchase contract between the seller or vendor of the farmland or ranchland to be acquired and the applicant and such others as may be required to pass title thereto. Such contract may contain such terms and provisions as may be agreed by the parties thereto and may be contingent upon obtaining a guarantee under these sections or upon other contingencies, but the same must represent the complete and total agreement of the parties pertaining to the transaction proposed, accompanied by appropriate affidavits to that effect.

§23.32 (176.70.03.002). Postfiling. Upon receipt of an application, the administrator shall thoroughly review the same to ascertain eligibility under eligibility standards established in these sections and qualification within the program limitations specified herein. If the administrator shall preliminarily determine that the application is eligible for approval by the commissioner, the administrator shall forward a copy of the application and the contract of purchase to the appraiser required by these sections for preliminary review who, shall within 10 days after receipt, submit in writing a statement of his proposed fees, costs, and charges for the performance of the appraisal required by the Act and these sections.

§23.33 (176.70.03.003). Preliminary Review. Upon receipt of the appraiser's statement of proposed charges, the administrator shall forward a copy of the application together with his recommendation and any conditions thereto, to the commissioner for preliminary review. If the commissioner shall determine preliminarily that the application is eligible for approval, then the commissioner shall advise the administrator of this determination and shall advise of any conditions the commissioner imposes in connection therewith.

§23.34 (176.70.03.004). Notice of Eligibility and Payment for Appraisal.

(a) After receipt of a favorable determination by the commissioner, the administrator shall, by registered or certified mail, notify the applicant and eligible lender of such action and shall further advise them:

(1) of the name of the appraiser and the amount of the appraiser's charges for making the appraisal required hereby;

(2) of all unsatisfied conditions imposed by the commissioner or by the administrator as conditions to approval of the application including specific notice of the appraisal standards required hereby and the need for advisory council recommendations; and

(3) of all other conditions to closing the transaction and to delivery of the guarantee imposed by the commissioner and the administrator in accordance with these sections.

(b) If the applicant and the eligible lender shall determine to accept all of such conditions, if any, the applicant and the eligible lender shall, within 20 days after receipt of the notice required under this subsection, notify the administrator of their acceptance of such conditions and shall concurrently remit to the administrator a certified or bank cashier's check payable to the Texas Department of Agriculture in the amount of the charges for such appraisal.

(c) Upon receipt of such acceptance and payment, the administrator shall order the appraisal as required by the Act and these sections and shall deliver a check in the amount previously agreed upon and provided by the seller to the appraiser but only upon completion of the work required hereby.

§23.35 (176.70.03.005) Receipt of Appraisal. Upon receipt of the appraisal, the same shall be reviewed by the administrator and the commissioner and, if the commissioner shall approve the same, the administrator shall schedule the application for consideration by the advisory council at its next available opportunity in accordance with its rules of procedure. After receipt of the advisory council's recommendation, the commissioner shall make his final determination as to the application. If the commissioner shall determine to approve the application, the administrator shall by registered or certified mail notify the applicant and the eligible lender that the application has been approved and that a closing may be held in accordance with the contract of the parties, subject to satisfaction of the conditions imposed by the commissioner and the administrator.

§23.36 (176.70.03.006). Closing. A closing of the transaction contemplated by an application must be held within 45 days from the date of receipt of authorization to close as required by §23.35 (.005) of this title, unless such time is extended by the administrator. Prior to the closing, the parties shall deliver to the administrator satisfactory evidence of compliance with all conditions imposed by the commissioner and the administrator as conditions to closing. Such conditions will include conditions as to title, title opinions, or acceptable title and mortgagee's insurance, hazard, and other insurance, and such conditions relating to farm and ranch management practices, to financial requirements, and to such other similar or dissimilar matters as the commissioner or the administrator shall require and in such form and substance as the administrator shall approve.

§23.37 (176.70.03.007). Delivery of Guarantee. At or promptly after a closing, and upon satisfaction of all conditions thereof as imposed by the commissioner and the administrator, the commissioner shall execute and the administrator shall forthwith deliver an appropriate guarantee to the eligible lender which shall thereafter represent a binding obligation of the State of Texas, enforceable in accordance with its terms and these sections.

§23.38 (176.70.03.008). Denial of Application.

(a) If an application is denied, the commissioner shall notify the applicant and the eligible lender of such denial and shall state the reasons therefor.

(b) If the commissioner shall determine after review of the appraisal that the reason for denial is the failure of the financial arrangements to qualify under these sections, the commissioner will not formally deny the application until the applicant and the eligible lender are given not less than 30 days to modify their contract in such manner as will permit the application, as revised, to conform to the requirements of these sections.

(c) If an applicant's circumstances change so that he or she becomes eligible under these sections, the applicant may reapply.

Doc. No. 808433

Eligibility Standards

The following sections are adopted under the authority of Article 55g, Texas Civil Statutes, and Article III, Section 50c, of the Texas Constitution.

§23.51 (176.70.04.001). Eligible Applicants. To be eligible for a Family Farm and Ranch Security Loan under the Act and these sections, an applicant must:

(1) be a citizen of the United States;

(2) have been a resident of the State of Texas for five years preceding the date of the application;

(3) have education, training, or experience in the type of farming or ranching for which the applicant proposes to utilize the farmland and ranchland being acquired;

(4) together with the applicant's spouse and their dependents have a total net worth (computed in accordance with generally accepted accounting practices consistently applied) of less than $100,000, exclusive of the value of any residential homestead owned by the applicant on the date of the application, and demonstrate the need for a guarantee;

(5) intend to purchase the farmland or ranchland for use by the applicant and family for active agricultural production as the applicant's primary occupation;

(6) based upon an analysis by the administrator and the commissioner of the information supplied in the application, be worthy of personal credit after giving due regard to the availability to the applicant of credit without a guarantee and to the security value of the farmland and ranchland being acquired and on which a deed of trust lien will be attached under these sections;

(7) demonstrate the existence of or provision for financing for necessary equipment, operating costs and normal improvements, together with the ability to repay the eligible loan when and as due and payable and to provide a reasonable standard of living on a consistent basis for the applicant and family, considering all sources of income including the income potential of the land as determined by the appraiser under these sections;

(8) not have committed or permitted a default under any eligible loan to which the applicant has ever been a party prior to the date of the current application; and

(9) not be a person related within the second degree by affinity or the third degree by consanguinity to any member of the advisory council or to the commissioner, the deputy commissioner, or any assistant commissioner of the Texas Department of Agriculture or the administrator.

§23.52 (176.70.04.002). Eligible Lender. Before an application will be finally approved:

(1) the eligible lender, subject to the rights of waiver elsewhere contained herein, must upon acceptance of a guarantee agree to, at the time of the assertion of any claim under a guarantee, assign to the commissioner acting on behalf of the state all interest in the eligible loan and the security delivered as security therefor, except the right of the eligible lender to receive payments of and to sue for deficiencies as provided elsewhere in these sections;

(2) if the eligible lender is a seller who is not the parent or grandparent of the applicant, the eligible lender must not have obtained a guarantee under the Act or these sections in more than three separate transactions during the five calendar years next preceding the date of the application;

(3) the eligible lender must comply with all conditions imposed by the commissioner or the administrator as conditions to closing specified elsewhere herein; and

(4) the eligible lender must not be or ever have been in default under these sections or under the terms of any prior guarantee issued to that eligible lender under the program implemented by these sections.

§23.53 (176.70.04.003). Eligible Farmland or Ranchland.

(a) As required by Section 8 of the Act, the commissioner will not approve any application until he shall first receive an appraisement of the value of the farmland or ranchland being acquired by a duly qualified appraiser designated for that purpose by the administrator and determined by the commissioner to be reasonably qualified to give competent appraisals of land. The appraiser shall make a written report to the commissioner on forms prepared by the administrator in affidavit form, sworn to before a notary public or other official authorized to administer oaths, showing:

(1) the appraised market value of the land by both the market data approach and the income approach;

(2) the income potential of the property determined in accordance with nationally recognized appraisal practices and procedures;

(3) the names and addresses of any persons with whom the appraiser communicated relative to the valuation of the land;

(4) that the appraiser has examined the records of the county clerk's office relative to the land;

(5) that the appraiser has checked recent prior sales of adjacent lands and if none then the most recent and nearest sales thought to be comparable, to aid in determining valuation, and giving the findings thereof; and

(6) that, except for the fees to be paid to the appraiser, neither the appraiser nor any member of the appraiser's family has received any personal benefits from the

transaction and does not expect to receive any future personal benefits.

(b) In determining the income potential of the land, the appraiser shall express his opinions as to the gross operating income and direct normal operating costs (without reference to debt) for such land. In doing so, he may give due consideration to the type or types of active agricultural production being proposed by the applicant, together with then existing and available markets for animals, goods, or products of a similar kind, historical experience in the market, farming or ranching region, the agricultural farming and ranching policies then in effect by the federal government, and other matters considered by the appraiser to be relevant. The appraiser for such purposes shall assume that the land will be operated in accordance with generally accepted farm and ranch management practices and that such policies, markets, and other factors will remain as they exist at the time of the appraisal.

§23.54 (176.70.04.004). Eligible Financial Arrangements. The financial terms and conditions of the transaction pertaining to eligible loan shall conform to the following requirements and standards:

(1) the eligible loan must be supported and evidenced by official documents prepared, promulgated, and approved under these sections;

(2) the purchase price shall not exceed the appraised value of the land as determined by the appraiser under either the market data approach or the income approach, whichever is the higher;

(3) the interest rate to be paid by the applicant shall not exceed the lower of the usury or interest rate limit for individuals established by the laws of the State of Texas in effect at the time, or 1.0% above the general interest rate in effect at the time for similar loans made in the ordinary course of business by commercial lending sources, as determined by the administrator;

(4) the final maturity date of the eligible loan must be not later than 30 years from the date of the note and the schedule of principal payments must be designed to accomplish an orderly reduction and payout of the principal balance of the eligible loan, in a manner approved by the administrator;

(5) the eligible loan must be subject to prepayment in whole or in part not less frequently than on any interest or principal payment date without premium and penalty of any kind; and

(6) the financial arrangements in all other respects must conform to generally accepted financial standards, terms, and conditions customarily prescribed for loans of a similar type by commercial lending institutions or governmental agencies except that for seller-sponsored loans down payments need not be required by the eligible lender unless imposed as a condition by the commissioner or the administrator.

Doc. No. 808434

Program Limitations

The following sections are adopted under the authority of Article 55g, Texas Civil Statutes, and Article III, Section 50c, of the Texas Constitution.

§23.61 (176.70.05.001). Issuance of Bonds. Applications will be finally approved by the commissioner only after the commissioner has authorized the issuance of all or a portion of the farm and ranch loan security bonds authorized by Section 13 of the Act and such bonds have been delivered to and paid for by the purchasers thereof in accordance with law.

§23.62 (176.70.05.002). Maximum Aggregate Loan Guarantee.

(a) All applications will be assigned a number in the order received and will be processed and considered active until denied by the commissioner under these sections.

(b) As soon as may be practicable after the close of each fiscal year of the Farm and Ranch Loan Security Fund, the administrator shall certify to the commissioner the amount of the maximum aggregate loan guarantee. No application will be approved if its approval would cause the total principal balance of all guarantees theretofore executed by the commissioner and then outstanding, plus the total principal amount of all guarantees requested under all of the active applications having a lower number than the application under consideration, would cause the maximum aggregate loan guarantee to be exceeded.

Doc. No. 808435

Defaults of Eligible Loans

The following sections are adopted under the authority of Article 55g, Texas Civil Statutes, and Article III, Section 50c, of the Texas Constitution.

§23.71 (176.70.06.001). Defaults by Applicant. The applicant under any finally approved eligible loan which has closed shall commit a default if, while the same is outstanding and after the conclusion of the procedures prescribed in §23.82 (176.70.07.002) of this title (relating to consequences of default), the commissioner shall determine that any of the following events have occurred:

(1) the applicant has failed to pay when due any amount due and payable upon an eligible loan, or upon any note, deed of trust, or other instrument requiring the payment of money in connection with an eligible loan;

(2) the applicant has defaulted in the performance or observance of any other of the terms or provisions, requirements contained in any note, deed of trust, or guarantee and has failed to cure the same within the time specified therein;

(3) except for sales, conveyances, or transfers effected by operation of law, or by the applicant for transfers effected under a will or for the benefit of the applicant's family or heirs under an instrument of trust in which the applicant is the trustor, the applicant has sold or conveyed, except for mineral leases approved by the administrator, the farmland or ranchland to which the eligible loan relates without either the concurrent prepayment of all amounts due with respect to the eligible loan or the execution by the eligible lender of a binding release of the commissioner and the state from their obligations under the applicable guarantee;

(4) the applicant has failed to maintain the farmland and ranchland to which an eligible loan relates in active agricultural production for any period of time longer than one year unless such period has been extended by the commissioner upon proper showing of the applicant's physical disability or other extenuating circumstances; or

(5) the applicant has failed to execute an affidavit of no-default as required under §23.82 (176.70.07.002) of this title (relating to consequences of default), or the applicant has filed such affidavit or has filed an affidavit with the application and in either case the commissioner has determined the affidavit to be false in any material respect.

§23.72 (176.70.06.002). Defaults by Eligible Lender. An eligible lender for whom a guarantee has been issued under these sections shall be in default under these sections if:

(1) the eligible lender consents to the change or alteration of any of terms and provisions of the eligible loan, note, or deed of trust, or attempts or purports to waive, or waives, any rights of the eligible lender, the commissioner, or the state thereunder, in any manner inconsistent with terms thereof as represented to and approved by the commissioner at the time of the delivery of the guarantee, without the advance written consent and approval of the administrator;

(2) the eligible lender fails to notify and file with the commissioner by registered or certified mail a claim under a guarantee because of a default under an eligible loan as defined in this section within 190 days of the eligible lender's first knowledge of such default as determined in accordance with §23.82 (176.70.07.002) of this title (relating to consequences of default);

(3) the eligible lender fails to notify the commissioner by registered or certified mail of the eligible lender's transfer or assignment of the eligible loan and the applicable guarantee within 30 days of such transfer; or

(4) the eligible lender violates any terms, provisions, covenants, or conditions of any document or agreement to which the eligible lender is a party or which is approved or endorsed by the eligible lender as a part of the eligible loan including the guarantee.

Doc. No. 808436

Consequences of Default

The following sections are adopted under the authority of Article 55g, Texas Civil Statutes, and Article III, Section 50c, of the Texas Constitution.

§23.81 (176.70.07.001). As to Eligible Lenders.

(a) If an eligible lender shall ever be in default in the obligations of the eligible lender as specified in §23.72 (176.70.06.002) of this title (relating to defaults of eligible lenders), or in any guarantee or other document pertaining to the eligible loan, the commissioner and the state shall be immediately and forever released from any and all claims and demands by reason of the guarantee in relation to which such default has occurred.

(b) In such event, the commissioner shall promptly relinquish and release to the eligible lender any and all claims of the commissioner and the state in and to the eligible loan, and the eligible lender shall have the right to appoint such substitute trustee under the applicable and then effective deed of trust in lieu of the administrator as the eligible lender may deem appropriate.

§23.82 (176.70.07.002). As to an Applicant.

(a) For the purposes of this section and §23.72 (176.70.06.002) of this title (relating to defaults of eligible lenders), an eligible lender shall be conclusively deemed to have first knowledge of a default in the payment of money by an applicant on and as of the first day after such payment is due. The eligible lender shall be deemed to have first knowledge of a default, other than default in the payment of money, on the date of the eligible lender's actual knowledge of such default or on the first day after the day upon which the eligible lender is required to obtain an affidavit on no default specified by the administrator at the time of approval of an application and on which no such affidavit is thus received, whichever is earlier. For the purpose of determining the existence of defaults of a character other than the payment of money, an eligible lender may for the purposes of this section and §23.72 (176.70.06.002) of this title (relating to defaults of eligible lenders), conclusively rely upon an affidavit as to material facts on forms to be prepared by the administrator executed by th applicant not less frequently than on dates specified by the administrator in connection with the approval of an application. Forthe purposes of this section, default by the applicant shall be deemed to have occurred on the date of the eligible lender's first knowledge of default as determined in accordance with this section.

(b) The commissioner at any time he shall determine such to be the case may, by registered or certified mail, notify an eligible lender that he believes an applicant to be in default if the commissioner shall after appropriate and reasonable preliminary investigation determine that an applicant has filed with the commissioner at the time of an application, or with an eligible lender when required under this section, an affidavit that the commissioner believes to be false in any material respect. For the purposes of this section, the eligible lender shall be deemed to have first knowledge of such default on the date of receipt of such notice and such date shall be deemed to be the date of default by an applicant for all purposes of this section.

(c) Within 90 days after the date of a default by an applicant, as determined by this section, the eligible lender shall notify the applicant that the eligible lender must notify the commissioner if the default continues for an additional 90 days from the date the default first occurred, as determined in subsections (a) and (b) above, and shall advise the applicant of the consequences of such default if not cured within the period permitted by these sections. The eligible lender and the applicant may agree to take reasonable steps to insure the fulfillment of the applicant's obligations under the eligible loan but they may not (1) agree to an extension of any time or any amount of payment of money, or (2) agree to extend the period during which any other default may be cured beyond the 180th day following the date of the default (as such date is determined by this section), without the express approval and consent of the administrator. The administrator shall have no right to approve any extension of time or amount of payment of money without the consent of the eligible lender; however, the administrator may agree to arrangements to cure other defaults without the consent of the eligible lender.

(d) If the applicant has not made arrangements to cure a default by the end of the 180th day following the date of default or if arrangements are proposed and the administrator and the eligible lender have not approved extensions beyond that date to the extent required above, the eligible lender shall within 10 days thereafter give notice to the commissioner and, by registered or certified mail, file a claim with the commissioner on guarantee claim forms prepared by the administrator in accordance with these sections.

(e) Promptly upon receipt of such notice and claim, the administrator on behalf and in the name of the commissioner shall schedule and the commissioner shall conduct a hearing on the question whether or not the applicant is in default under an eligible loan and these sections. Such hearing shall be conducted as a contested case under the Administrative Procedure and Texas Register Act, cited elsewhere. Either the applicant or any other interested party dissatisfied with the decision may appeal the commissioner's determination to the district court under the substantial evidence rule.

(f) If the commissioner has determined that the applicant is in default and whether or not an applicant has appealed the commissioner's findings of default, the commissioner shall pay to the eligible lender the total amount due under the guarantee upon receipt by the commissioner of an effective assignment on forms prepared by the administrator of the eligible lender's right, title, and interest in the eligible loan and all notes, security, and other rights obtained in connection therewith, whereupon the state shall then become the holder and owner thereof. Notice of such action shall be given to the defaulting applicant. If an appeal is taken by an applicant, the eligible lender may participate therein in order to protect such rights to the payment of deficiencies due the eligible lender as may be permitted by law. If the commissioner's finding shall not be sustained on appeal then the eligible lender shall have the right to receive 10% of all payments subsequently made on the eligible loan for so long as any amount remains owing to the eligible lender thereunder. The remainder shall be deposited to the Farm and Ranch Loan Security Fund.

(g) If the state makes payment under a guarantee, becomes the owner of the mortgage and deed of trust, and all appeals are concluded upholding the findings of the commissioner, as provided in subsection (f) above, the administrator shall forthwith cause a sale to be made of the affected farmland or ranchland in the manner required by Section 11(c) of the Act. Upon completion of a sale of such property the proceeds of the sale thereof shall be distributed as follows and in accordance with the following priorities:

(1) to the Farm and Ranch Loan Security Fund, an amount equal to the amount paid to the eligible lender under the guarantee;

(2) to the eligible lender, an amount equal to the amount due and payable to the lender by the applicant on the eligible loan after deducting the amount paid to the eligible lender under the guarantee, plus reasonable expenses of collection in amounts approved by the administrator; and

(3) to the applicant in default, all amounts remaining from the proceeds of the sale of such property after making the payments required in paragraphs (1) and (2).

(h) After the distribution required by subsection (g) above, the commissioner and the eligible lender shall have such full and continuing rights to seek and obtain collection from the defaulting applicant of any deficiencies remaining due on the eligible loan as may be provided or permitted by law in order to obtain full and complete satisfaction thereof, and the administrator shall be authorized to execute such consents or other agreements with the eligible lender as will permit full recovery by the eligible lender on the eligible loan in default.

Doc. No. 808437

Miscellaneous Provision

The following sections are adopted under the authority of Article 55g, Texas Civil Statutes, and Article III, Section 50c, of the Texas Constitution.

§23.91 (176.70.08.001). Waiver of Guarantee. In lieu of any remedy, rights, or procedure contained in these sections for collection of amounts due on a guarantee, the eligible lender may at any time waive all rights thereunder and thereby release the commissioner and the state from all liabilities or obligations in connection therewith; whereupon, the commissioner and the state shall be released forever and the eligible lender shall have the right to designate such substitute trustee under the applicable deed of trust, in lieu of the administrator or his designee as the eligible lender may deem appropriate and the commissioner shall have no further interest therein.

§23.92 (176.70.08.002). Claims for Official Action. All applicants and eligible lenders shall agree in writing at the time of filing each application to release, relieve, and hold harmless the State of Texas, the Department of Agriculture, the commissioner, the administrator, the advisory council, and all agents, servants, and employees of same from any and all claims and demands relative to or arising from or because of any and all official actions taken pursuant to the Act and these sections in processing, approving, or denying such application.

Issued in Austin, Texas, on November 5, 1980.

Doc. No. 808438 Reagan V. Brown
Commissioner
Texas Department of Agriculture

Effective Date: November 26, 1980
Proposal Publication Date: September 26, 1980
For further information, please call (512) 475-6467.

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 3. Landscape Architects

Subchapter E. Fees

The Texas Board of Architectural Examiners has adopted §3.87 (376.02.05.507) of this title (relating to fees) under the authority of Article 249c, Vernon's Texas Civil Statutes.

§3.87 (376.02.05.507) Emeritus Fee. Registrants 65 years of age or older, who have retired from active practice and/or other related professional activities, may request emeritus status. The annual renewal fee for approved emeritus registrants will be $5.00. Failure to pay the renewal fee will result in revocation.

Issued in Austin, Texas, on November 3, 1980.

Doc. No. 808463 Philip D. Creer, FAIA
Executive Director
Texas Board of Architectural Examiners

Effective Date: November 27, 1980
Proposal Publication Date: August 26, 1980
For further information, please call (512) 458-4126.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XIV. Texas Board of Irrigators

Chapter 425. Certificate of Registration and Seal

Seal

Section 425.41 (409.03.05.001) is amended pursuant to the authority of Article 8751, Section 7, Vernon's Texas Civil Statutes.

§425.41 (409.03.05.001). Seal Required.

(a) (b) (No change.)

(c) Each licensed irrigator who, on August 28, 1979, held a valid license as a landscape irrigator under Texas Laws 1973, Chapter 629, as amended, and therefore is registered pursuant to Section 15 of Article 8751, Vernon's Texas Civil Statutes, shall file with the board before January 1, 1981, in duplicate, a sample impression of his seal or rubber stamp facsimile of the design required by §425.44 (.005) of this subchapter on letterhead or other business stationery which he uses.

Issued in Austin, Texas, on October 30, 1980.

Doc. No. 808424 M. Reginald Arnold II
General Counsel
Texas Department of Water Resources

Effective Date: November 26, 1980
Proposal Publication Date: September 23, 1980
For further information, please call (512) 475-7836.

NONCODIFIED

Texas Education Agency

Instructional Development

Program Guidelines for Administration of Title IV, as Amended by Public Law 95-561 226.36.95

The Texas Education Agency has amended Rules 226.36.95.113, .120, .124, .224, .236, .237, .314, .318, .320, .321, .330, and .331, the program guidelines for administration of programs under Title IV of the Elementary and Secondary Education Act, as amended by Public Law 95 561.

Under Title IV, Part B, federal funds are provided to local education agencies for the acquisition of school library resources and instructional equipment (see Rules .220-.240). Funds are provided under Part C for improvement in local educational practices (see Rules .313-.335).

The rules are adopted with several minor changes from the text as proposed. The title of the rule subcategory has been expanded for clarification. The most significant change occurs in Rule .237, which concerns the expenditure of Title IV-B funds for equipment and materials for instruction. In the proposed rules, band instruments were listed as ineligible. In accordance with amended federal guidelines, band instruments may be purchased with Title IV-B funds, provided they are to be used in providing education in an academic subject.

Editorial changes in the text all occur in Rule .320 and include the following: subsection (b)(1)(A)—"priority areas of citizenship . . ."; subsection (b)(1)(C)(*ii*)(VII)—"particularly for elementary students . . ."; and subsection (b)(1)(C)(*iv*)(V)—". . . an appropriate affective component in mathematics education." The sentence which begins "Development of . . ." is part of clause (*vi*) but not of subclause (V).

These rule amendments are adopted under the authority of Section 11.02, Texas Education Code.

.113. Participation of Private Nonprofit Elementary or Secondary School Students.

(a) Students attending a private nonprofit elementary or secondary school located within the local education agency geographic boundaries are eligible to participate in all of the programs, projects, or activities to public school students which have been funded under Title IV, Parts B, C, or D. Each local education agency having such private schools within its geographic boundaries must provide nonprofit private school officials with information concerning the eligibility of and provisions for participation by such private school students in the various programs. The local education agency must maintain on file, and provide copies to the Texas Education Agency when requested, statements from nonprofit private school officials indicating an intent to participate or not to participate in the Title IV programs.

(b) In the event nonprofit private school officials elect to participate in the Title IV program, local education agency officials must confer with such private school officials in the determination of the educational needs of private school students which can be met through the Title IV funded programs.

(c) Section 406 of the Education Amendments of 1978 contains specific information pertaining to the participation of nonprofit private school students.

.120. Consultants' Fees. A consultant is not to receive a fee in excess of $100 per day or a total of more than $500 unless prior written approval is obtained from the Texas Education Agency.

.124. Property Management.

(a) (No change.)

(b) Each item purchased under an approved application must be marked or labeled in such a manner that it can be identified as having been purchased with funds under Title IV, Part B, Part C, or Part D of the Elementary and Secondary Education Act. For example, "ESEA IV-B" or "Title IV-C."

(c)-(e) (No change.)

.224. Amendments. If either the program or budget to support the program require change, an amendment must be filed with the Texas Education Agency and approved prior to the implementation of the proposed changes. If funds are to be transferred from one class/object code to another, i.e., from 6300, supplies and materials, to 6630, equipment and library books, or additional funds requested, a complete amendment must be filed. If changes within a class/object code are required and the total dollar amount for that code remains unchanged, i.e., items of equipment or quantities need to be changed within the approved dollar amount,

revised Schedule E for Title IV, Part B, page 6 of the application is all that is required.

.236. *Transportation and Processing.*

(a) Transportation. Cost of shipment of materials purchased under this program from supplier to central distribution point in the local education agency or to the point of initial delivery within the local education agency.

(b) Processing. Processing and cataloging costs are considered as part of the cost of acquisition to the extent that these services are necessary to make these materials available to pupils and teachers. Allowable expenditures are:

(1) Partial processing. Includes printed catalog cards or processing kits purchased from a commercial processing company, and for which there is an itemized invoice. Local education agencies using partial processing may not include the cost of supplies not included in the commercially prepared kit or packet.

(2) Total processing. Includes processing done by a commercial processing company and for which there is an itemized invoice. Local education agencies using total processing may not include the cost of supplies not included in the commercial processing.

(3) Local processing. Includes processing done by a central unit under the direction of a trained librarian. Large local education agencies may choose to establish a central processing center where a trained librarian can supervise the processing of all materials for all the schools within the local education agency. Local education agencies using this type of processing must have proper supporting data to substantiate the actual cost. Personal services for which funds are requested are considered expenditures on the basis of the time when such services are rendered or received rather than on the basis of entering into a contract. If the local education agency employs a person for the sole purpose of processing purchased under Title IV, the total cost (including materials) may not exceed the total amount which would have been charged for commercial processing of these same items. The following types of materials may be purchased under the program for local processing:

(A) book pockets and cards;
(B) catalog cards;
(C) due date slips;
(D) identification stamp or labels.

.237. *Equipment and Materials for Instruction.*

(a) Equipment and materials to strengthen instruction in academic subjects which may include but is not limited to science, mathematics, foreign languages, history, civics, geography, economics, English, reading, industrial arts, and the arts.

(b) (No change.)

(c) There is nothing inherent in equipment which in and of itself determines eligibility. Rather it is the use to be made of the equipment and its direct relationship to instruction in academic subjects which determine its eligibility for purchase under an approved project. Thus it becomes evident that an item of equipment or material which is otherwise eligible under the Act and regulations is eligible for inclusion in a project for acquisition with Title IV, Part B funds only when it is to be acquired for use in providing education in academic subjects. However, general purpose equipment such as desks, chairs, and tables are ineligible. Gym equipment and library furniture are also ineligible.

(d)-(e) (No change.)

.314. *Project Duration.* Projects will be approved for Title IV, Part C, support based on the proposal types. Developmental projects may be approved not to exceed three years. All other types of projects will be approved for one year. Funding of a project will be awarded one year at a time. Applicants are encouraged to plan for continuation of worthwhile projects after Title IV, Part C, funding has ended.

.318. *Facilitator.* The assistance provided by a regional service center in cooperation with the Texas Education Agency to other local agencies within the state in locating appropriate exemplary and effective programs to meet the educational needs of Texas students.

.320. *Priorities for New Proposals.*

(a) New proposals in the below-listed priority areas may be focused upon educationally disadvantaged, limited English-speaking students, and gifted and talented, or upon students across the total student population at one or more of the following levels: early elementary, upper elementary, middle school, and secondary school. Priorities for projects focused upon handicapped students (special education) are described under "priorities for adoption and implementation projects." No developmental projects directed only toward handicapped students (special education) are solicited.

(b) The priorities described in Rule .320 have been chosen because regional and state assessments of student needs indicated that ESEA Title IV-C effort so targeted might make a cumulative effect. If, however, additional priorities can be documented in local assessment data, proposals addressed toward these priorities will be accepted for review and possible funding.

(1) Priorities for developmental projects.

(A) There are 35 developmental projects directed to the priority areas of citizenship, writing, reading, and mathematics that are in the second year of development during 1980-81. Specific areas of concern which are not addressed in projects currently operating now call for attention. Therefore, the request for developmental projects is focused on specific areas where there is a lack of information and materials.

(B) Each proposal should address one or more aspects of the selected priority and should result in a product such as a curriculum model, a manual or guide describing processes for instruction, or a manual or guide for staff development. Priority consideration unless otherwise noted will be given to projects addressing specific groups of teachers or students, i.e., elementary (K grade 5), middle or junior high school (grades 5-9), high school (grades 9-12), rather than the entire staff or students across all grades. A school which addresses the total audience (K-12) should justify its decision in terms of capability to produce a quality product.

(C) The term developmental projects means the development and testing of ideas, practices, techniques, and services which are new and not otherwise available to a state, geographic area, or school district.

(i) Citizenship. Creation and testing of staff development models for teachers consistent with the Framework for the Social Studies K-grade 12, 1980. The staff development models must address increased teacher knowledge and competency to teach in one of the following categories:

(I) history, geography, economics, political science (civics);

(II) students' values and attitude development;

(III) higher cognitive skills.

(iii) Writing (composition). Development of writing projects consistent with the English Language Arts Curriculum Framework, K-12, 1980. Both the projects and the products they develop should reflect current research in composition and rhetoric and a process oriented approach to student writing. They should focus on one or more of the following:

(I) instructional processes or materials for teaching each stage of the composing process: prewriting, writing, rewriting;

(II) curricula or instructional sequences based on the purpose and forms of writing;

(III) techniques for providing writing teachers with conceptual and theoretical bases for teaching writing and the practical applications which follow from these bases;

(IV) motivational techniques for the teaching of writing;

(V) teacher competencies for describing and measuring writing performances;

(VI) procedures for providing instruction based upon techniques of error analysis or diagnosis of mistakes occurring in student writing;

(VII) procedures for making the transition from oral language to written discourse, particularly for elementary students;

(VIII) methods or materials that integrate instruction in writing and reading;

(IX) instructional processes that use student writing as a primary vehicle for instruction (e.g., student models, peer editing);

(X) strategies for teaching usage and mechanics within a total writing context rather than as isolated activities;

(XI) curricula that utilize sentence-combining procedures for improving student writing.

(iii) Reading. Development of instructional strategies designed to improve the performance of students in grades 7-12 in the higher cognitive comprehension skills as identified in the Texas assessment project. The products describing processes for instruction should address the following:

(I) drawing logical conclusions;

(II) distinguishing between fact and nonfact;

(III) predicting future actions or outcomes;

(IV) making generalizations based upon given details or assumptions;

(V) other higher level cognitive skills.

Development of staff development programs in reading for teachers in grades 7-12. The staff development priorities must be directed to the following: questioning strategies; higher skill development; reading/thinking skills.

(iv) Mathematics. Development of instructional strategies designed to improve student achievement in mathematics concept development, application, and problem solving as identified in the Texas assessment project. The products describing instructional processes should focus on the development of one or more of the following:

(I) effective materials and techniques for concept learning in mathematics;

(II) instructional materials for using the calculator;

(III) new and imaginative approaches to geometry in middle or junior high school and/or elementary school;

(IV) preparation of curriculum materials for a junior high or middle school course in computer literacy (awareness of computer uses and limitation, and use of the computer as a tool in applying mathematical concepts and computational skills to the solution of common, "real world" problems);

(V) an appropriate affective component in mathematics education.

Development of staff development programs in mathematics should focus on the following: an in-service program for elementary teachers to provide instruction in concept development in mathematics; a teacher training institute (a sequence of training sessions) to focus attention on the total learning needs of mathematics students including decision making and problem solving.

(2) Priorities for adoption and implementation projects. An adoption and implementation project is a project in which a local education agency selects and implements a program which has not been developed by that agency, but that has been proven effective elsewhere.

(A) Citizenship. Implementation of citizenship projects or programs that (1) will meet a priority educational need of students in the applicant's region or district and (2) are consistent with the citizenship program described in the Texas Education Agency publication Framework for the Social Studies, K-Grade 12, 1980. Projects should provide for the adoption and implementation of staff development and/or curriculum products that:

(i) improve student competencies to perform higher level cognitive skills in citizenship;

(ii) help students develop and examine those values and attitudes essential for self development, positive human relationship, and civic participation;

(iii) strengthen student knowledge and understanding of citizenship concepts and competencies;

(iv) aid teachers to modify instructional materials and teaching strategies to meet the special needs of students;

(v) implement school community arrangements for the improvement of citizenship education.

(B) Writing. Implementation of writing projects consistent with the English Language Arts Curriculum Framework, K-12, 1980. Projects may include:

(i) in-service education for writing teachers on the composing process and techniques for teaching writing;

(ii) adoption of curricula according to the purposes or forms of writing;

(iii) implementation of writing instruction that focuses on deficiencies identified in state and local assessments.

(C) Mathematics. Implementation of mathematics instruction project that are consistent with the state mathematics program described in TEA publications BU3 839 01, Mathematics: Levels Kindergarten through Eight, and BU3 839 02, Mathematics: Levels 9-12, including the supplemental volumes, BU6 839 01, Volume I Mathematics 9-12, BU6 839 02, Volume II Mathematics 9-12, and BU6 839 03, Volume III Mathematics 9-12. Projects should provide for:

(i) the use of varied concrete manipulative materials in teaching mathematics;

(ii) the use of activity methods, student interaction with peers and the environment, and carefully planned objectives for the evaluation of student progress;

(iii) tested mathematics programs using methods that fit varied learning styles.

(D) Reading. Implementation of reading instruction strategies as described in the Texas Education Agency Publication GE7 838 01, The Elementary Reading Program, and Publication BU4 832 01, The Improvement of Reading in the Secondary School.

(i) The following are prerequisites for implementation:

(I) appoint part of a local director for a reading improvement program;

(II) establish part of a local committee to plan program improvements;

(III) conduct of a comprehensive assessment of the total reading program; and

(IV) develop a plan of action congruent with the Criteria of Excellence for School Reading Programs, TEA Publication GE9 838 01.

(ii) Project should provide for:

(I) in-service education for local reading directors and/or campus level administrators in planning and implementing diagnostic teaching of reading when such training has not previously been provided;

(II) in-service education in diagnostic teaching of reading for teachers of reading as a separate class and/or for teachers of content areas; and

(III) implementation of general reading instruction and reading instruction in the content areas that focuses upon deficiencies as indicated by state and local assessments.

(E) Special education. Implementation of special education projects to serve students eligible for special education based upon state board policies and procedures. These projects must be directed toward one of priority areas of citizenship, writing, reading, or mathematics. Projects should provide for staff development, instruction improvement, evaluation, or curriculum implementation.

.321. Distribution of Funds.

(a) Part C funds are considered to be "seed money" to establish projects which are within the capability of the applicant to continue after Part C assistance ceases. Procedures will be used to ensure that local education agencies have an opportunity to compete for available funds on an equitable basis. Personnel from each regional education service center have been informed about the various aspects of the application process and are prepared to assist local school districts in the development of project applications.

(b) While Public Law 95-561 tightens the use of Title IV, Part C funds, flexibility in the use of project funds is possible provided expenditures are necessary to the success of the project and are properly documented. Use of projects funds for remodeling of facilities will have low priority. Projects which would require use of Part C funds to purchase or construct facilities will have lowest priority.

(c) Not less than 15% of funds available under Part C will be used consistent with the purposes and priorities set forth in the preceding sections for projects serving the needs of handicapped students as defined in Section 602(1) of the Education of the Handicapped Act.

(d) In the event that Texas shall be allocated for 1981 a sum in excess of that allocated for 1980 under authority of Title IV, Part C, 5.0% of such excess which is distributed to Texas shall be used for projects related to plans for improved school management and for the coordinated use in schools of all available resources. Additionally, 50% of any such excess appropriation which is distributed to Texas shall be used for innovation and improvement in compensatory educational efforts.

.330. Continuation Proposals.

(a) Proposals which have previously been funded may be resubmitted for consideration during 1980-81 if additional time is needed to complete the existing project. Such proposals should continue in the same area of emphasis as previously funded. No consideration for extension beyond three operational years will be given unless there is a compelling need for such extension.

(b) Review process for continuation proposals. The review process for this type of proposal will be as follows:

(1) Each continuation proposal will be reviewed by three Texas Education Agency staff members. Attention will be given to monitoring evaluation information and current status report which includes a self evaluation report, all of which reflect a need to continue a project.

(2) Based on this review, projects will be evaluated for continued funding.

(3) Analysis of all projects will be provided to the Educational Improvement Advisory Council for consideration of funding alternatives within the limits of available funds.

(4) The advisory council will recommend to the commissioner the funding alternative which appears to be most equitable in terms of quality of projects.

(5) The commissioner will make a final determination on projects to be funded.

(c) Criteria for continuation proposals. The proposal upon which the project was based should be reviewed to reaffirm or refocus any areas of concern that need attention. All of the application must be completed. The narrative for number 4, page 3 may be accomplished by submitting only a current status report.

Current status report. Evidence should be given as to how the project is progressing in regard to completing the objectives as scheduled. If there is a need to refocus any area(s) of the proposal, i.e., needs assessment objectives, activities, project management, evaluation, or dissemination and replication, the changes must be documented with the reasons for the change.

.331. New Proposals. Proposals which will be submitted for first time funding during 1980-81 may be one of three types: (1) developmental, (2) adoption and implementation, or (3) other. Type (1) will have a different review process than for types (2) and (3).

(1) Developmental proposals. This type of proposal may be recommended for one to three years' operation subject to available funds, annual evaluation findings, and the negotiation of an annual budget.

(A) Review process for developmental proposals. The review process for this type proposal will be as follows:

(i) each developmental proposal will be rated by a minimum of three Texas Education Agency staff members.

(iii) projects will be selected for negotiation based on these ratings;

(iiii) representatives for each proposed project selected will be invited to a conference with a four-person panel which shall include one member of the Educational Improvement Advisory Council, an external expert, and two agency staff members;

(iv) the four member panel will elect one member to make a report to the full advisory council on its recommendations for each project;

(v) the advisory council will recommend to the commissioner projects to be funded and the level for first year funding;

(vi) the commissioner will make a final determination on projects to be funded.

(B) (No change.)

(2) Adoption and implementation proposals. This type proposal may be recommended for one year operation with Part C funding and implies funding thereafter by the local agency. Projects to be adopted must be identified for the proposal reader in sufficient detail to document that the project has been effective in improving performance at another location. If the project to be adopted is identified as a part of the national diffusion network, or demonstration programs for school improvement network, a component of the Texas diffusion network, the information should be specific enough for the reader to locate the project from these lists.

(A) Review process for this type proposal will be as follows:

(i) Each adoption and implementation proposal will be reviewed by two Texas Education Agency staff members and one external reader.

(ii) Based on this review, projects will be rank ordered by mean scores and categorized by geographic distribution and LEA size.

(iii) Analysis of all projects will be provided to the Educational Improvement Advisory Council for consideration of funding alternatives within the limits of funds available.

(iv) The advisory council will recommend to the commissioner the funding alternative which appears to be most equitable in terms of quality of projects, geographic distribution, and size of LEAs.

(v) The commissioner will make a final determination on projects to be funded.

(B) (No change.)

Issued in Austin, Texas, on November 5, 1980.

Doc. No. 808445 A. O. Bowen
Commissioner of Education

Effective Date: November 27, 1980
Proposal Publication Date: March 28, 1980
For further information, please call (512) 475-7077.

Texas Department of Health

Solid Waste Management

Environmental and Consumer Health Protection
301.82.01

(Editor's note: The Texas Department of Health adopts new environmental and consumer health protection rules on municipal solid waste management effective November 18, 1980. The texts of the new rules are being published serially beginning in the November 4 issue (5 TexReg 4335). The final installment of the serialization, Rules 301.82.01.027-.036, appears below.)

The Texas Department of Health adopts the new rules which were proposed and published in the August 12, 1980, issue of the *Texas Register* (5 TexReg 3193). Numerous changes have been made as a result of written comments received by the department from other state agencies, federal agencies, local governments and agencies, and individuals, and verbal and written comments received at five public hearings on the proposed rules held throughout the state. The department carefully and fully considered all comments received and incorporated into the final rules the following changes:

(A) Major and significant changes.

(1) Generally. The bulk of the changes that were made to the proposed rules resulted from comments received from the Environmental Protection Agency (EPA). In accordance with the Federal Resource Conservation and Recovery Act of 1976, the EPA or a state, if the state meets certain criteria established through EPA regulations, must implement a hazardous waste management program. On May 19, 1980, the EPA, after many meetings and public hearings nationwide, promulgated voluminous hazardous waste regulations prescribing standards which it will use or which a state would have to follow if it desired to obtain interim authorization from EPA to implement a state program. (See *Federal Register*, "Environmental Protection Agency, Hazardous Waste and Consolidated Permit Regulations," Monday, May 19, 1980.) In the process of obtaining interim authorization from EPA to operate the State of Texas Hazardous Waste Program, the department, on behalf of the State of Texas, submitted a copy of the proposed rules published in the August 12, 1980, issue of the *Texas Register* (5 TexReg 3193) to EPA to demonstrate the state's ability to conduct a program equivalent to that which EPA would conduct. The Texas Department of Water Resources made a similar submission, inasmuch as hazardous waste managment responsibilities within the state are split between the two agencies. EPA reviewed the submissions of the two agencies, and by letter of September 2, 1980, identified problem areas in the agencies' proposed rules which would have to be corrected by November 19, 1980, (the date the federal regulations become effective) before the State of Texas could be granted interim authorization for hazardous waste management. (If interim authorization cannot be granted, EPA will operate the program within the state and the federal regulations will be applicable to all persons involved in hazardous waste activities.)

(2) The following is a summarized list of requirements imposed by EPA on the department which have been made a part of the department's final rules.

(a) Standards applicable to municipal hazardous waste covering management of ignitable, reactive, and incompatible wastes, and standards for tanks, surface impoundments, waste piles, thermal treatment, and chemical, physical, and biological treatment.

(b) A form for the municipal manifest system has been identified (see Rule .027(g)(4)).

(c) A requirement for cleanup of discharges in transport now exists (see Rule .027(h)(6)).

(d) Interim status standards for facilities with respect to containers, ground water monitoring, land treatment, landfills, facility personnel training, and facility inspection, monitoring, record keeping, and reporting (see Rule .027(j)).

(e) The definition for "solid waste" identifies a universe of hazardous waste nearly identical to that under 40 Code of Federal Regulations 261 (see Rule .027(b)(13)).

(f) An exemption for hazardous wastes which are reused on site or accumulated, stored, or treated prior to reuse on site is similar to the exclusion contained in 40 Code of Federal Regulations 261.6, which requires hazardous waste regulation of all reused sludges and all reused listed wastes up to the point of actual reuse (see Rule .027(d)(2)).

(g) The present status of mixtures of hazardous and nonhazardous waste conforms with 40 Code of Federal Regulations 261.3 (see Rule .027(d)(2)(C)(Note)).

(h) The generator record retention requirements has been strengthened by adding a provision that the required periods must be extended during the course of unresolved enforcement actions (see Rule .027(g)(6)(E)).

(i) Short-term accumulations by generators will be stored in a manner which would not present a danger to human health and the environment (see Rule .027(g)(2)).

(j) The requirements of 40 Code of Federal Regulations 262.50, International Shipments, has been added. The international shipment requirements for generators contains references to importers of hazardous waste. The requirements for exporters address the use of manifest, confirmation of delivery, and notification to EPA in cases where confirmation is not received within 90 days (see Rule .027(g)(4)(E)).

(k) Time limits within which exception reports of unreturned manifests must be filed by generators in accord with the requirements of 40 Code of Federal Regulations 123.128(b)(8) (see Rule .027(g)(5)(C)(*ii*)).

(l) The exception reporting requirements will be reported to the state in which the shipment originated in accordance with the requirements of 40 Code of Federal Regulations 123.128(b)(7)(ii) (see Rule .027(g)(5)(C)(*iii*)).

(m) The interstate exception reporting requirement provides a reporting time limit from the date of acceptance by the initial transporter and for notification to the state in which the shipment may have been delivered (see 40 Code of Federal Regulations 123.128(b)(8)). (See Rule .027(g)(5)(C)(*iii*)).

(n) The terms "transport" or "transporters" are defined (see Rule .027(b)(47)).

(o) The transporter record retention requirement provides that the required periods must be extended during the course of unresolved enforcement actions (see Rule .027(h)(4)(D)).

(p) Transporters have an affirmative duty to clean up a spill while enroute. "Corrective action" includes the duty to clean up a discharge. Appropriate officials may authorize removal of waste without use of a manifest and that immediate notice be given to the National Response Center (see Rule .027(h)(5) and (6)).

(q) The term "treatment" has been defined and the term "processing" has been given a meaning which is substantially equivalent to "treatment" as it is defined in RCRA and the federal regulations (see Rule .027(b)(37) and (48)).

(r) The closure plan requirements are more specific by requiring that an estimate of the maximum inventory of wastes in storage or treatment at any given time be included in the closure plan. Furthermore, closure must be initiated within 90 days after receiving the final volume of hazardous wastes. In addition, a time limit by which the owner or operator must submit a survey plan of the facility has been added (see Rule .027(j)(8)).

(s) Standards for surface impoundments have been added (see Rule .027(j)(12)).

(t) The owner or operator is required to take remedial action upon the detection of malfunction or the deterioration of equipment and structures when a potential hazard is imminent (see Rule .027(j)(3)(D)).

(u) A minimum three year retention period is required for the maintenance of logs and records (see Rule .027(j)(3)(D)(*iii*)).

(v) Requirements for the receipt of hazardous waste from a rail or water transporter that has been properly manifested (see Rule .027(j)(6)(A)).

(w) Requirements for the shipments of hazardous waste outside of the United States and the receipt of hazardous wastes from a foreign source (see Rule .027(g)(4)(E)).

(x) Provisions regarding state program requirement for ignitable, reactive, or incompatible waste. This requirement is important, particularly in view of the listing of hazardous wastes from municipal generators that appears in the department's program description, many of which are ignitable (see Rule .027(j)(3)(F)).

(y) Provisions regarding the use and management of containers, including: (1) areas where containers are stored must be inspected weekly; (2) containers holding ignitable or reactive waste must be located at least 15 meters from the facility's property line; and (3) that during the storage of incompatible waste, these waste materials be separated or protected from other materials that may be stored nearby (see Rule .027(j)(10)).

(z) Provisions regarding the utilization of tanks for the placement of municipal hazardous waste and provisions regarding the utilization of surface impoundments, waste piles, thermal treatment, or chemical, physical, and biological treatment for municipal wastes (see Rule .027(j)(11)-(18)).

(aa) Appropriate facility standards meeting the requirements of 40 Code of Federal Regulations 123.128(e):

(*i*) a provision for the utilization of surface impoundments for the management of municipal hazardous wastes (see Rule .027(j)(12));

(*ii*) provisions on the utilization of waste piles to manage municipal hazardous waste (see Rule .027(j)(13));

(*iii*) provisions for the thermal treatment and the chemical, physical, and biological treatment of municipal hazardous waste (see Rule .027(j)(17) and (18)).

(bb) A provision requiring notification by the owner or operator to the state director within 60 days after the effective date of Part 265 of the EPA regulations if food chain crops are grown on a land treatment facility (see Rule .027(j)(14)(D)).

(cc) Provisions for the placement or nonplacement of ignitable or reactive waste in a land treatment facility and that incompatible wastes are not placed in the same land treatment area (see Rule .027(j)(14)(H) and (I)).

(dd) A provision for the placement or nonplacement of ignitable or reactive waste, incompatible wastes, bulk or noncontainerized liquid waste; water containing free liquids or containers holding liquid waste in a landfill. In addition, a

provision has been added regarding the reduction in volume of empty containers (see Rule .027(i)(15)).

(B) Minor changes made.

(1) The definition of a Type V municipal solid waste site expanded to include facilities which receive, store, and process radioactive waste collected from municipal sources. This was inadvertently omitted in the proposed rules and this fact was discussed at the public hearings.

(2) The permit requirements for land application of solid waste were clarified by specifically excluding domestic sewage sludge or domestic septic tank pumpings unless these wastes have been determined to be hazardous by the generator.

(3) The technical information required for landfill sites serving 5,000 persons or more was revised to provide an option to a permit applicant for a large site to submit a phased site development plan wherein the overall concept is provided but the detailed working drawings are limited to an area of approximately five to eight years of estimated site life. This provision was suggested at the last public hearing and supported by several individuals present.

(4) The minimum separating distance between a disposal operation and the adjacent property line was changed from 20 to 50 to correct a typographical error. This was discussed at the public hearings.

(5) The requirement to submit with a permit application detailed data for water wells within 500 feet of a land disposal site and an estimate of the number of wells within 1,000 feet of the site was deleted. Comments received at public hearings indicated that this information is irrelevant inasmuch as the disposal sites were to be designed so as to preclude any ground water pollution.

(6) The paragraph on ground water protection design requirements was revised to delete references to an allowable liquid limit and plasticity index. The ASTM test procedures mentioned under this paragraph are specifically prescribed under the soil data requirements as discussed at the public hearings. The testing procedures have been elaborated upon to provide guidance as to when specific tests are or are not required.

(7) The time for publication of a public hearing was extended from 20 to 30 days prior to the date of the hearing. Although a period of 60 days or longer was requested by some individuals, a 30 day period appears to be reasonable in view of the longer advance notification provided through the "notice of filing" made following the receipt of a permit application.

(8) The operational standards for Type V and VI sites were expanded to reflect in this section the design requirements which had been previously required under the design section.

(9) The operational standards for Type VII sites were reorganized to provide a clearer presentation of the standards. No changes were made in the previous requirements.

(10) Numerous other suggested changes and revisions have been incorporated into the adopted rules but these are minor and involve the rephrasing of statements for clarification, the relocation of definitions from the end of a section to its beginning, and other miscellaneous editorial changes.

(11) The number of rules has been increased from Rule .031 to Rule .036 to include five tables relating to hazardous wastes as a result of comments from the U. S. Environmental Protection Agency (EPA), as explained above.

Several recommendations were not adopted, mainly because they would have been too restrictive or impractical to enforce or apply on a statewide basis. For example, a recommendation was made to require a public hearing before a permit could be transferred. This was not considered appropriate inasmuch as a majority of the transfers are as a result of only a name change in the original permittee's business designation or the assumption of the operational responsibility of a site by a city or other person when the original permittee is no longer able to operate the site. The regulations contain sufficient prerequisites for a permit transfer to provide assurance that the new permittee can operate the site in accordance with the requirements of the original permit. Comments were received recommending the use of definite and firm land use criteria in the siting of a solid waste facility. This is not practical in that by doing so, many communities, particularly the larger cities, would be deprived of facilities where they could economically dispose of their solid wastes. Inasmuch as conditions vary from one locale to another, the factors to be considered cannot be given the same weight in every situation. Accordingly, the factors contained in the regulations have been selected to give the department as much applicable information as possible for consideration in making a land use decision. One comment was received questioning the failure to include provisions for the open dump inventory required by the Federal Resource Conservation and Recovery Act of 1976. This is a federal program conducted by the state following EPA regulations. Inasmuch as some federal requirements differ from state requirements, a disposal site may be in compliance with state criteria and in noncompliance with federal criteria, thereby being classified as an open dump. There are no provisions in the federal criteria or law that will exempt a facility from an open dump classification if it is in compliance with state criteria. These state regulations as originally proposed and adopted incorporate the federal criteria to bring state standards in conformance with the federal criteria. Although several comments were received requesting deviation from some of the federal criteria, this could not be done because any such deviation would result in placing facilities in noncompliance with the federal requirements.

Copies of the adopted rules are available at the following location:

(1) Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(2) Texas Department of Health's Public Health regional offices located as follows:

(a) Public Health Region 1, P.O. Box 968, West Texas State University Station, Canyon, Texas 79016, phone (806) 655-7151.

(b) Public Health Region 2, 3411 Knoxville, Lubbock, Texas 79413, phone (806) 797-4331.

(c) Public Health Region 3, P.O. Box 10736, El Paso, Texas 79997, phone (915) 779-3531.

(d) Public Health Region 4, second floor, old courthouse, 301 Oak Street, Abilene, Texas 79602, phone (915) 673-5231.

(e) Public Health Region 5, 701 Directors Drive, Arlington, Texas 76011, phone (817) 460-3032.

(f) Public Health Region 6, P.O. Box 190, Temple, Texas 76501, phone (817) 778-6744.

(g) Public Health Region 7, P.O. Box 2501, Tyler, Texas 75710, phone (214) 595-3585.

(h) Public Health Region 8, P.O. Box 592, Harlingen, Texas 78550, (512) 423-0130.

(i) Public Health Region 9, P.O. Drawer 630, Uvalde, Texas 78801, phone (512) 278-7173.

(j) Public Health Region 11, 1110 Avenue G, Rosenberg, Texas 77471, phone (713) 342-8685.

Copies of the rules are also available for inspection at organized local health departments and districts.

The department adopts these rules pursuant to Article 4477-7, Vernon's Texas Civil Statutes.

.027. *Hazardous Waste Management.*

(a) Purpose, applicability, and release of information.

(1) Purpose. The purpose of regulations provided in this section is to promote the protection of health and the environment by establishing standards for proper management of municipal or industrial hazardous wastes under the jurisdiction of the Texas Department of Health, as provided for in the Texas Solid Waste Disposal Act, Article 4477-7, Vernon's Texas Civil Statutes.

(2) Applicability. These regulations are substantially equivalent to federal requirements under the Resource Conservation and Recovery Act (RCRA) as promulgated in Title 40 Code of Federal Regulations Parts 260 through 265; are applicable to all persons who generate or transport municipal hazardous waste, and to owners and operators of municipal solid waste management facilities receiving hazardous waste for treatment, storage, or disposal; and are effective November 19, 1980.

(3) Release of information. Any information obtained or used in the administration of this hazardous waste management program may be made available to the administrator, Environmental Protection Agency (EPA), without restriction. Information obtained and provided to the EPA by the Texas Department of Health under this provision which contains but is not limited to trade secrets, processes, operations, style of work, or apparatus, or to identify statistical data, and financial information shall be protected under 18 United States Code 1905 and information provided under a valid claim of confidentiality shall be protected under the provision of Title 40 Code of Federal Regulations Part 260.

(b) Definitions of terms and abbreviations. The following definitions apply specifically to regulations contained in this section:

(1) "Acute hazardous waste" means a hazardous waste identified and listed by the administrator, Environmental Protection Agency (EPA), in 40 Code of Federal Regulations Part 261, which has been found to be fatal to humans in low doses or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity (rat) of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity (rat) of less than 2 milligrams per liter, or a dermal LD 50 toxicity (rabbit) of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible illness.

(2) "CFR" means Code of Federal Regulations. (This abbreviation will be used throughout these regulations in conjunction with the number 40; e.g., 40 CFR meaning Title 40 Code of Federal Regulations, which is dedicated to matters relating to the Federal Environmental Protection Agency.)

(3) "Container" means any portable device in which a material is stored, transported, treated, disposed of, or otherwise handled.

(4) "Contingency plan" means 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 which could threaten human health or the environment.

(5) "Designated facility" means a hazardous waste treatment, storage, or disposal facility which has achieved interim status pursuant to 40 Code of Federal Regulations Part 122, or has been permitted by the Texas Department of Health or the Texas Department of Water Resources and has been designated on the manifest to receive the generator's shipment of hazardous waste.

(6) "Discharge" means the accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous waste into or on any land or water.

(7) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste 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 ground waters.

(8) "Disposal facility" means a facility or part of a facility at which hazardous waste is intentionally placed into or on any land or water, and at which waste will remain after closure.

(9) "EPA identification number" means the number assigned by the U.S. Environmental Protection Agency to each generator, transporter, and owner or operator of a treatment, storage, or disposal facility.

(10) "Facility" means a site and includes all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste .

(11) "Facility personnel" means 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 these regulations.

(12) "Generator" means any person whose act or process produces hazardous waste.

(13) "Hazardous waste" means a solid waste (or combination of solid wastes) which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or

(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise improperly managed; and is identified or listed as a hazardous waste by the administrator, U.S. Environmental Protection Agency (EPA) pursuant to the Federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. (An interim listing and criteria for identifying hazardous waste based on certain levels of ignitability, corrosivity, reactivity, and toxicity are published in 40 Code of Federal Regulations Part 261 in *Federal Register*, dated May 19, 1980, and July 16, 1980. Applicable portions of the federal regulations are included as Tables .028, .029, and .030 of these regulations. EPA may publish changes to the listing of hazardous wastes in the future. Changes may be obtained from the Division of Solid Waste Management, Texas Department of Health.)

(14) "Hazardous waste leachate" means any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(15) "Incinerator" means an enclosed device using controlled flame combustion, the primary purpose of which is to thermally break down hazardous waste.

(16) "Industrial hazardous waste" means any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the U.S. Environmental Protection Agency pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976.

(17) "Industrial solid waste" means solid waste resulting from or incidental to any process of industry or manufacturing, or mining, or agricultural operations.

(18) "Inner liner" means 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.

(19) "In operation" refers to a facility which is treating, storing, or disposing of hazardous waste.

(20) "International shipment" means transportation of hazardous waste into or out of the jurisdiction of the United States.

(21) "Landfill" means 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.

(22) "Landfill cell" means 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).

(23) "Land treatment facility" means 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.

(24) "Liner" means a continuous layer of natural or manmade materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell which restricts the downward or lateral escape of hazardous waste, its constituents, or leachate.

(25) "Local government" means a county; an incorporated city or town; or a political subdivision which has been granted power by the legislature to regulate solid waste handling or disposal practices or activities within its jurisdiction.

(26) "Management" means the systematic control of the collection, source, separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(27) "Manifest" means the shipping document originated and signed by the generator which contains the information required by the Texas Department of Health; i.e., a state waste shipping control ticket.

(28) "Manifest document number" means the serially increasing number assigned to the manifest for recording and reporting purposes.

(29) "Municipal hazardous waste" means a municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator, U.S. Environmental Protection Agency.

(30) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(31) "On-site" means the same or geographically contiguous property which may be divided by a public or private right-of-way, provided the entrance and exit between the properties are 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.)

(32) "Operator" means the person responsible for the overall operation of a facility.

(33) "Owner" means the person who owns a facility or part of a facility.

(34) "Permit" means the formal written document issued to a person by an authorized state agency, authorizing management of a hazardous waste treatment, storage, or disposal facility.

(35) "Person" means an individual, corporation (including a government corporation), organization, government, governmental subdivision, or agency, federal agency, state, political subdivision of a state, interstate agency or body, business or business trust, partnership, association, firm, company, joint stock company, commission, or any other legal entity.

(36) "POTW" is an abbreviation for "publicly owned treatment works" and means any device or system used in the storage or treatment (including recycling and reclamation) of municipal sewage which is owned by a city, town, county, district, authority, association, or other public body created by or under state law and having jurisdiction over disposal of sewage, or an Indian tribe or authorized Indian tribal organization, and federal agencies treating and disposing of sewage. (Sewers, pipes, or other conveyances are included in this definition only if they convey waste water to a POTW providing treatment.)

(37) "Processing" means 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 so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

(38) "Refuse" means all putrescible and nonputrescible solid wastes, excluding body wastes, and is virtually the same as solid waste.

(39) "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial waste water treatment plant, water supply treatment plant, or air pollution control facility or any other such wastes having similar characteristics and effect exclusive of the treated effluent from a waste water treatment plant.

(40) "Solid waste" means all putrescible and nonputrescible discarded or unwanted materials including garbage, refuse, radioactive waste collectd from multiple sources, 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, commercial, mining, and agricultural operations and from community activities, but does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or in-

dustrial discharges which are point sources subject to regulation by permit issued pursuant to the Texas Water Quality Act or Section 402 of the Federal Clean Water Act;

(B) soil, dirt, rock, sand, and other natural or manmade inert solid waste materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements;

(C) waste materials which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Railroad Commission of Texas; or

(D) source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended.

(41) "Storage" means the holding of hazardous waste for a temporary period, at the end of which the hazardous waste is treated, disposed of, or stored elsewhere.

(42) "Surface impoundment" means 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 manmade materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids; e.g., holding, storage, settling, and aeration pits, ponds, and lagoons, but not an injection well.

(43) "Tank" means a stationary device, designed to contain an accumulation of hazardous waste which is constructed primarily of nonearthen materials (e.g., wood, concrete, steel, plastic) to provide structural support for the containment.

(44) "Thermal treatment" means the treatment 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 waste. (Examples of thermal treatment processes include incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.)

(45) "Totally enclosed treatment facility" means a facility for the treatment of hazardous waste which is directly connected to the production process of a hazardous waste generator and which is constructed and operated in a manner which prevents the release of any hazardous waste or constituent thereof into the environment during treatment. (An example is a pipe in which waste acid is neutralized.)

(46) "Transportation" means the movement of hazardous waste by air, rail, highway, or water.

(47) "Transporter" means a person engaged in the off-site transportation of hazardous waste by air, rail, highway, or water.

(48) "Treatment" means any method, technique, or process, including neutralization, 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 resources 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.

(c) Hazardous waste determination.

(1) Procedures. A person whose act or process produces any municipal solid waste must determine if the waste is a hazardous waste and subject to these regulations, using the following steps:

(A) determine if any waste is an exclusion identified in Rule .027(c)(2) and not subject to regulation;

(B) determine if any nonexcluded waste or any constituent thereof is specifically listed as a hazardous waste in 40 Code of Federal Regulations Part 261, Subpart D (see Tables .028 and .029);

(C) determine if any nonexcluded waste or any constituent thereof, though not specifically listed as a hazardous waste, exhibits any characteristics of hazardous waste identified in 40 Code of Federal Regulations Part 261, Subpart C (see Table .030);

(2) Exclusions. The following waste materials are not solid wastes and are not subject to regulations contained in this Rule .027:

(A) domestic sewage; e.g., untreated sanitary wastes that pass through a sewer system;

(B) any mixture of domestic sewage and other wastes that pass through a sewer system to a POTW for treatment;

(C) industrial waste water discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. (Note: This exclusion applies only to the actual point source discharge. It does not exclude industrial waste waters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial waste water treatment.)

(3) Exceptions. The term "solid waste" as currently defined in the Texas Solid Waste Disposal Act and included in these regulations, Rule .027(b)(40), excludes certain materials from the definition; e.g., "(B) soil, dirt, rock, sand, and other natural or manmade inert solid waste materials used to fill land if the object of the fill is to make the land suitable for construction or surface improvements." Soil, dirt, rock, sand, and other natural or manmade inert materials containing hazardous wastes that are identified or listed in accordance with this Rule .027 are considered hazardous wastes subject to the provisions of these regulations.

(d) Hazardous wastes regulated.

(1) Criteria and time-limited quantities. Municipal hazardous waste generated by a person by criteria and in time-limited quantities identified below is subject to regulation under this Rule .027.

(A) One thousand or more kilograms of hazardous waste in a calendar month which is identified and listed in 40 Code of Federal Regulations Part 261, Subpart D (see Tables .028 and .029), or which exhibits any of the characteristics identified in 40 Code of Federal Regulations Part 261, Subpart C (see Table .030).

(B) One or more kilograms in a calendar month or at any time of any commercial product or manufacturing chemical intermediate identified as acute hazardous waste and having the generic name listed in Section 261.33(e) of 40 Code of Federal Regulations Part 261 (see Table .029).

(C) One or more kilograms in a calendar month or at any time, of any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in Section 261.33(e) of 40 Code of Federal Regulations Part 261 (see Table .029).

(D) Ten or more kilograms of discarded (or intended to be discarded) containers or inner liners from containers (or any containers exceeding 20 liters capacity) in a calendar month or at any time, that have been used to hold any chemical identified as acute hazardous waste and having the generic name listed in Section 261.33(e) of 40 Code of

Federal Regulations Part 261 (see Table .029). (Note: The foregoing materials are not hazardous wastes, 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.)

(E) One hundred or more kilograms in a calendar month or at any time of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, or any commercial chemical product or manufacturing chemical intermediate identified as acute hazardous waste and having the generic name listed in Section 261.33(e) of 40 Code of Federal Regulations Part 261 (see Table .029).

(2) Exceptions.

(A) Waste reused/recycled/reclaimed.

(*i*) A hazardous waste which exhibits characteristics of hazardous waste established by 40 Code of Federal Regulations Part 261, Subpart C (see Table .030) but is not specifically identified and listed in Subpart D (see Tables .028 and .029) is not subject to these regulations if:

(I) it is being beneficially used or reused or legitimately recycled or reclaimed,

(II) it is being accumulated, stored, or physically, chemically, or biologically treated prior to beneficial use or reuse or legitimate recycling or reclamation.

(*ii*) A hazardous waste which is a sludge or which is specifically identified and listed in Subpart D, or which contains one or more hazardous wastes listed in Subpart D; and which is transported or stored prior to being used, recycled, or reclaimed is subject to these regulations.

(B) Industrial hazardous waste. Industrial hazardous waste shipped to a municipal solid waste management facility for treatment, storage, or disposal is subject to regulation under Rule .027(i) and is subject to generator and carrier rules established by the Texas Department of Water Resources.

(C) Small waste quantities. Municipal hazardous waste generated by a person by criteria and in time-limited quantities less than those provided in Rule .027(d)(1) is not subject to the requirements for identification number, notification, generators, transporters, and owner/operators of treatment, storage, or disposal facilities provided the person complies with the following:

(*i*) Makes a hazardous waste determination as required in Rule .027(c).

(*ii*) Treats or disposes of the waste in an on-site facility, or ensures delivery to an off-site treatment, storage, or disposal facility either of which is authorized to treat, store, or dispose of hazardous waste.

(*iii*) Ensures delivery to a Type I, V, or VII municipal solid waste site authorized by the Texas Department of Health under Rule .020 of these regulations. The department will furnish a list of authorized sites upon request.

(Note: The provisions of the foregoing subparagraph (C) also apply if the small waste quantities described are mixed with nonhazardous waste and the resultant mixture exceeds specified quantity limitations unless the resultant mixture exhibits any of the hazardous waste characteristics identified in Table .030).

(3) Exclusions. The following materials are not subject to regulation under this Rule .027(d):

(A) Materials which are not solid wastes.

(*i*) Domestic sewage; i.e., untreated sanitary wastes that pass through a sewer system.

(*ii*) Any mixture of domestic sewage and other wastes that passes through a sewer system to a POTW for treatment.

(*iii*) Industrial waste water discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. (Note: This exclusion applies only to the actual point source discharge. It does not exclude industrial waste waters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial waste water treatment.)

(*iv*) Irrigation return flows.

(*v*) Source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, 42 United States Code 2011, et seq.

(*vi*) Materials subjected to in situ mining techniques which are not removed from the ground as part of the extraction process.

(B) Nonhazardous solid wastes.

(*i*) Household waste (i.e., any waste material such as garbage, trash, and sanitary wastes in septic tanks derived from households, including single and multiple residences, hotels, and motels), including household waste that has been collected, transported, stored, treated, disposed, recovered (e.g., refuse derived fuel) or reused.

(*ii*) Wastes generated by the growing and harvesting of agricultural crops and which are returned to the soils as fertilizers.

(*iii*) Wastes generated by the raising of animals, including animal manures, and which are returned to the soils as fertilizers.

(*iv*) Mining overburden returned to the mine site.

(*v*) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(*vi*) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal energy.

(e) Notification of hazardous waste activity.

(1) Existing activities. A person who generates or transports municipal hazardous waste, or who owns or operates a municipal solid waste management facility for treatment, storage, or disposal hazardous waste must provide notification of the hazardous waste activity.

(A) Notification shall be made in writing to the Texas Department of Health not later than November 19, 1980.

(B) A person who has previously notified the U.S. Environmental Protection Agency of the hazardous waste activity is not required to notify the Texas Department of Health.

(C) A person who becomes subject to these regulations because of an amendment to 40 Code of Federal Regulations Part 261 must provide notification to the Texas Depart-

ment of Health within 90 days of the effective date of the amendment.

(2) Proposed activities. A person who plans to initiate a new activity which involves the generation or transportation of municipal hazardous waste or operation of a municipal solid waste facility for the treatment, storage, or disposal of hazardous waste must notify the Texas Department of Health prior to engaging in this new hazardous waste activity.

(3) Mailing address. Required modifications shall be sent to the following address: Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(f) EPA identification number. Persons who generate or transport municipal hazardous waste, or who own or operate a municipal solid waste management facility for the treatment, storage, or disposal of hazardous waste and have not applied for (using EPA Form 8700-12) and received an EPA identification number from the U.S. Environmental Protection Agency must obtain an identification number from the Texas Department of Health or the U.S. Environmental Protection Agency prior to engaging in any of the foregoing hazardous waste activities after effective date of these regulations.

(g) Generators. These regulations establish standards for persons who generate municipal hazardous waste.

(1) Scope and applicability.

(A) A generator who treats, stores, or disposes of municipal hazardous waste on site must comply with requirements of Rule .027(c) (hazardous waste determination), Rule .027(d) (hazardous waste regulated), Rule .027(f) (EPA identification number), Rule .027(g)(5) (reporting requirements), Rule .027(g)(6) (record keeping requirements), Rule .020 (permit procedures and design criteria).

(B) A person who generates municipal hazardous waste by criteria and in time-limited quantities identified in Rule .027(d) and does not treat, store, or dispose of the waste on site is subject to provisions of Rule .027(c), (d), and (f), and is responsible for shipping the waste to a permitted or otherwise approved facility in accordance with this Rule .027(g).

(C) Any person who imports municipal hazardous waste into the United States (or exports out of) is subject to provisions of this Rule .027(g) concerning generators.

(D) A farmer who generates waste pesticides which are hazardous waste and who complies with all of the requirements in the note included under subparagraph (D) of Rule .027(d)(1) is not required to comply with provisions of this Rule .027(g) or other sections in these regulations.

(2) Hazardous waste accumulation.

(A) A generator may accumulate municipal hazardous waste on site, if such accumulation does not present a danger to human health and the environment, for 90 days or less (short-term) without a storage facility permit provided that the following requirements are met:

(i) The waste is placed in containers which meet applicable Department of Transportation regulations on packaging and labeling or in tanks which meet standards for facilities established in Rule .027(i).

(ii) The date each period of accumulation begins is clearly marked and visible for inspection on each storage container.

(iii) All accumulated waste is shipped off site in 90 days or less.

(B) A generator who accumulates municipal hazardous waste on site for more than 90 days (long-term) is subject to regulations for storage facility owners/operators contained in Rule .027(i) and is required to obtain a storage facility permit from the Texas Department of Health in accordance with Rule .020 of these regulations.

(3) Pretransport requirements.

(A) Packaging. Before transporting municipal hazardous waste or offering such waste for transportation off site, a generator must package such waste in accordance with applicable Department of Transportation regulations on packaging under 49 Code of Federal Regulations Parts 173, 178, and 179.

(B) Labeling. Before transporting or offering municipal 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 179.

(C) Marking. Before transporting or offering municipal hazardous waste for transportation off site, a generator must:

(i) Mark each package of such waste in accordance with the applicable Department of Transportation regulations on hazardous materials, under 49 Code of Federal Regulations Part 172.

(ii) Mark each container of 110 gallons or less used in transportation of such waste with the following words and information displayed in accordance with the requirements of 49 Code of Federal Regulations Part 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

(D) Placarding. Before transporting municipal hazardous waste or offering such 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.

(4) Manifest requirements.

(A) Before transporting municipal hazardous waste or offering such waste for transportation off site, a generator must furnish to the transporter a properly executed manifest (State Waste Shipping Control Ticket, Form TDWR-0311, revised 9-80) available from the Division of Solid Waste Management, Texas Department of Health.

(Note: Generator must not offer hazardous waste to transporters or to treatment, storage, or disposal facilities that do not have an EPA identification number.)

(B) The generator must designate on the manifest one facility which has a permit to receive and handle the hazardous waste described on the manifest. One alternate permitted facility may be designated in the event an emergency prevents delivery to the primary facility.

(Note: Generator must instruct transporter to return hazardous waste if transporter notifies that delivery cannot be made to designated primary or alternate facility.)

(C) The generator must prepare the manifest in at least the number of copies which will provide the generator, each transporter, and the owner or operator of designated receiving facilities with one copy each for their records and

(I) The name and address of the foreign generator and the importer's name, address, and EPA identification number shall be used on the manifest.

(II) The U.S. importer or his agent must sign and date the certification and obtain the signature of the initial transporter on the manifest.

(5) Reporting requirements. Requirements differ for the generator who ships municipal hazardous waste off site and for the generator who treats, stores, or disposes of such waste on site.

(A) Annual reports.

(i) A generator of municipal hazardous waste who treats, stores, or disposes of hazardous waste on site is subject to annual reporting requirements as an owner or operator of a treatment, storage, or disposal facility as set forth in Rule .027(j)(6). Reports will be submitted to the Texas Department of Health no later than March 1 for the preceding year, using the Annual Waste Disposal Summary, Form TDWR 0436/TDH, revised 9-80). (Forms may be obtained from the Division of Solid Waste Management, Texas Department of Health.)

(ii) A generator of municipal hazardous waste who ships all such waste off site for disposal is not subject to annual reporting requirements but is subject to monthly reporting requirements established in subparagraph (B) following.

(Note: A generator of municipal hazardous waste who ships part of such waste off site for disposal, and who treats, stores, or disposes of part of such waste on site is subject to both reporting requirements established by clauses *(i)* and *(ii)*, above.)

(B) Monthly waste shipment summary. A generator who ships municipal hazardous waste off site must prepare this report from manifest forms, summarizing the quantity and classification of each waste shipment for the month itemized by manifest number, and shall submit this report as follows:

(i) on Monthly Waste Shipment Summary (Form TDWR 0040/TDH, revised 9-80);

(ii) to the Texas Department of Health, Division of Solid Waste Management, 1100 West 49th Street, Austin, Texas 78756;

(iii) no later than the 10th day of each month for shipments originating during the previous month. (Note: Forms and instructions for completion may be obtained from the Division of Solid Waste Management, Texas Department of Health.)

(C) Exception reporting. A generator must take the following actions in the event that acknowledgement of receipt of a manifested municipal hazardous waste shipment is not received within specified times:

(i) Follow-up action. If a generator does not receive a return copy of the manifest with the signature of the owner or operator of the designated facility, within 35 days of the date that the hazardous waste was accepted by the initial transporter, he must promptly contact the transporter and/or the owner or operator of the designated facility to determine the status of the waste shipment.

(ii) Exception report. A generator who has not received a return copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of date that the hazardous waste was accepted by the initial transporter, must submit an exception report to one additional copy to be returned to generator by facility receiving the hazardous waste.

(D) The generator must obtain the handwritten signature of initial transporter and date of hazardous waste acceptance on the manifest, shall retain one copy for record, and shall provide initial transporter with remaining copies to accompany waste shipment to receiving facility. (Exception: Copies of the manifest are not required for each transporter when shipment of hazardous waste within the United States is solely by railroad or solely by water (bulk shipments only).) In such instances, generator must send three copies of the signed and dated manifest directly to the owner or operator of the designated receiving facility. Such shipments require compliance with the manifest system and record-keeping requirements established under 40 Code of Federal Regulations Part 263, Sections 263.20 and 263.22 of Subpart B.

(E) International shipments. Any person who exports municipal hazardous waste to a foreign country or imports municipal hazardous waste from a foreign country must comply with the following special requirements, as established under 40 Code of Federal Regulations Part 262, Subpart E:

(i) Exporting. When shipping hazardous waste outside the United States, the generator must:

(I) Notify the Texas Department of Health and the administrator (EPA) in writing four weeks before the initial shipment of hazardous waste to each country in each calendar year.

(a) The waste must be identified by its EPA hazardous waste identification number and its DOT shipping description.

(b) The name and address of the foreign consignee must be included in the notification.

(c) The notification must be sent to Hazardous Waste Export, Division for Oceans and Regulatory Affairs (A 107), U.S. Environmental Protection Agency, Washington, D.C. 20460.

(d) A copy of the notification must be sent to Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(II) 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.

(III) Meet manifest requirements established by these regulations except that:

(a) in place of the name, address, and EPA identification number of the designated facility, the name and address of the foreign consignee must be used;

(b) the generator must identify the point of departure from the United States through which the waste must travel before entering a foreign country.

(IV) Provide an exception report to the administrator (EPA) and to the Texas Department of Health, in accordance with requirements and in the event of circumstances explained in subparagraph (C) of Rule .027(g)(5).

(ii) Importing. A person shall not import hazardous waste into the state from a foreign country for processing, storage, or disposal at a municipal solid waste facility in the state without first having written permission from the Texas Department of Health. A person engaging in such activity shall meet all manifest requirements of these regulations except that:

the Texas Department of Health, Division of Solid Waste Management, 1100 West 49th Street, Austin, Texas 78756. The exception report must include:

(I) a cover letter signed by the generator or his authorized representative explaining the efforts to locate the shipment of municipal hazardous waste and the results of those efforts; and

(II) a legible copy of the manifest (State Waste Shipping Control Ticket, Form TDWR-0311, revised 9-80) for which the generator does not have confirmation of delivery.

(iii) Interstate shipments. In the case of interstate shipments of hazardous waste for which the generator has not received a return copy of the manifest within 45 days of acceptance of the waste by initial transporter, the generator shall take the following actions:

(I) 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; and

(II) submit an exception report to the Texas Department of Health.

(iv) International shipments. In the case of international shipments of hazardous waste, a generator must submit an exception report to the Texas Department of Health if:

(I) 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 the waste was accepted by the initial transporter; or

(II) within 90 days from the date the waste was accepted by the initial carrier, the generator has not received written confirmation from the foreign consignee that the waste was received.

(6) Record keeping requirements.

(A) Manifest. Generator must retain a copy of the manifest (State Waste Shipping Control Ticket, Form, TDWR-0311, revised 9-80) provided to an initial transporter for three years, or until a signed copy is received from the designated facility acknowledging receipt of the hazardous waste shipment. Copy of manifest signed by facility must then be retained for three years from the date waste was accepted by the initial transporter.

(B) Annual report. A generator who is required to submit an annual waste disposal summary in accordance with subparagraph (A)(v) of Rule .027(g)(5) must retain a copy of each report for at least three years from the March 1 due date for each report.

(C) Monthly waste shipment summary. Generator must retain a copy of each report (Form TDWR-0040/TDH, revised 9-80) for at least three years from the due date of summary.

(D) Exception report. Generator must retain a copy of any exception report submitted for three years from date of the report.

(E) Retention period extension. The retention periods for records indicated above are extended automatically during the course of any unresolved enforcement action regarding a generator's activity or as requested by the Texas Department of Health.

(h) Transporters.

(1) Scope.

(A) These regulations apply to persons transporting municipal hazardous waste which is subject to manifest requirements of Rule .027(g).

(B) These regulations do not apply to on-site transportation of hazardous waste by generators, owners, and operators of a permitted municipal hazardous waste management facility.

(C) Transporters who accumulate unmanifested municipal hazardous waste by criteria and in time-limited quantities identified in Rule .027(d) of these regulations are generators, and as such, are also subject to requirements under Rule .027(g) of these regulations.

(D) Transporters who accumulate and store manifested or unmanifested hazardous waste regulated under Rule .027(d) for more than 90 days are facility operators, and as such, are also subject to permit and other requirements under Rule .027(i) of these regulations.

(E) A transporter of municipal hazardous waste must comply with requirements for generators under Rule .027(g) of these regulations, if he:

(i) transports hazardous waste into the United States from abroad; or

(ii) mixes hazardous wastes of different DOT shipping descriptions by placing them into a single container.

(2) Compliance with manifest requirements.

(A) Before transporting municipal hazardous waste manifested according to Rule .027(g)(4) of these regulations, the transporter must sign and date the manifest acknowledging acceptance of the waste from the generator, and provide a signed copy to the generator before leaving the generator's property.

(B) A transporter of manifested hazardous waste must ensure that the manifest accompanies the waste shipment, unless:

(i) the hazardous waste is delivered by rail or water (bulk shipment only) to the designated facility; and

(ii) a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) accompanies the hazardous waste shipment; and

(iii) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the designated facility on either the manifest or the shipping paper, and

(iv) the person delivering the hazardous waste to the initial rail or water transporter obtains the date of delivery and signature of the rail or water transporter on the manifest and forwards it to the designated facility; and

(v) a copy of the shipping paper or manifest is retained by each rail or water transporter in accordance with record keeping requirements under Rule .027(h)(4).

(C) Transporters who transport hazardous waste out of the United States must:

(i) indicate on the manifest the date the hazardous waste left the United States; and

(ii) sign the manifest and retain one copy in accordance with record-keeping requirements under Rule .027(h)(4); and

(iii) return a signed copy of the manifest to the generator.

(D) A transporter who delivers a hazardous waste to another transporter or to a designated facility must obtain the date of delivery and the handwritten signature of the receiving transporter or the owner or operator of the designated facility on the manifest, retain one copy, and give remaining copies to the accepting transporter or owner or operator.

(3) Delivery requirements.

(A) The transporter must deliver the entire quantity of municipal hazardous waste which he has accepted from a generator or a preceding transporter to:

(i) the designated facility listed on the manifest; or

(ii) the alternate designated facility, if an emergency prevents delivery to the designated facility; or

(iii) the next designated transporter; or the place outside the United States designated by the generator.

(B) If the hazardous waste shipment cannot be delivered in accordance with subparagraph (A) above, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

(4) Record keeping requirements.

(A) A transporter of municipal hazardous waste must keep a copy of the manifest which has been signed by the generator, himself, and the next designated transporter, or the owner or operator of the designated facility for a period of three years from the date the hazardous waste shipment was accepted by the initial transporter.

(B) For shipments delivered to the designated facility by rail or water (bulk shipments only), each rail or water transporter must retain a copy of a shipping paper containing all the information required in subparagraph (B) of Rule .027(b)(2) concerning compliance with manifest requirements for a period of three years from the date the hazardous waste was accepted by the initial transporter.

(C) A transporter who transports municipal hazardous waste out of the United States must keep a copy of the manifest indicating that the hazardous waste left the United States for a period of three years from the date the waste was accepted by the initial transporter.

(D) The periods of record retention referred to above are extended automatically during the course of any unresolved enforcement action regarding activities related to a transporter, or as requested by the EPA administrator of the Texas Department of Health.

(5) Hazardous waste discharges.

(A) A transporter must take the following actions in the event of an accidental, unintended, or unauthorized intentional discharge of municipal hazardous waste:

(i) Immediate action. Take appropriate action to protect human health and the environment, notify local authorities, and dike or contain the discharge area, and

(ii) Follow up action. In accord with Section .007 of the State of Texas Oil and Hazardous Substances Spill Contingency Plan, provide telephone notification as soon as possible but not later than 24 hours after discharge occurrence to the Texas Department of Water Resources' central office:

Telephone Contacts

normal: (512) 475-2786 or 327-4174; (512) 475-5633 or 926-0278;

nights/weekends (512) 475-2651.

(B) If a discharge of hazardous waste occurs during transportation and an official (state or local government or a federal agency) 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:

(i) 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

(ii) report in writing as required by 49 Code of Federal Regulations 171.16 to the director, Office of Hazardous Materials Regulations, 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.

(6) Cleanup of hazardous waste discharge. A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as may be required or approved by federal, state, or local officials so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

(i) Facility owners and operators.

(1) Purpose and scope. The purpose of regulations in this subsection is to establish standards for facilities and for the management by owners and operators of facilities used for the treatment, storage, or disposal of

(A) municipal hazardous waste regulated under Rule .027(d) of these regulations, and

(B) industrial hazardous waste which has been authorized by the Texas Department of Health for treatment, storage, or disposal at a municipal hazardous waste facility.

(Note: Municipal hazardous waste which exhibits characteristics similar to industrial hazardous waste is authorized to be treated, stored, or disposed of at facilities permitted by the Texas Department of Water Resources, if:

(i) approved by the Texas Department of Water Resources, and

(ii) the transportation, storage, treatment, or disposal is in accordance with applicable regulations of the Texas Department of Health and the Texas Department of Water Resources.)

(2) Applicability.

(A) The standards in this Rule .027(i) apply to owners and operators of municipal solid waste facilities which treat, store, or dispose of hazardous waste who are subject to the determination, waste regulation, notification, and EPA identification requirements in Rule .027(c)-(f). A municipal solid waste facility shall not be used for the storage, treatment, or disposal of hazardous waste without the owner or operator having obtained interim status authorized in accordance with Section 3006(c) of the Resource Conservation and Recovery Act of 1976, Public Law 94-580, and having notified the Texas Department of Health of these activities or having obtained a permit from the Texas Department of Health approving such activities.

(Note: A permit holder of a municipal solid waste disposal site may be authorized to operate a hazardous waste activity on his permitted site by obtaining a permit amendment from the department in accordance with Rule .020(a)(4) to authorize the establishment of a hazardous waste activity within a designated portion of the site. The hazardous waste design and operating criteria will be applicable only to the designated portion of the site. The procedures for obtaining a per-

mit for a new or separate hazardous waste facility are as prescribed in Rule .020. A prospective permit applicant in all cases should consult with the department to determine specific application requirements for the proposed facility.)

(B) The standards in this Rule .027(i) do not apply to:

(i) A person disposing of municipal hazardous waste by means of ocean disposal subject to a permit issued under the Marine Protection, Research, and Sanctuaries Act. (Note: These regulations do apply to the treatment or storage of municipal hazardous waste before it is loaded onto an ocean vessel for incineration or disposal at sea, as provided in the preceding subparagraph (A).)

(ii) A person disposing of municipal hazardous waste by means of underground injection subject to a permit issued under an underground injection control (UIC) program approved or promulgated under the Safe Drinking Water Act. (Note: Except where the facility is regulated by the Texas Department of Water Resources, these regulations do apply to the aboveground treatment or storage of municipal hazardous waste before it is injected underground, as provided in the preceding subparagraph (A).)

(iii) The owner or operator of a POTW which treats, stores, or disposes of municipal hazardous waste.

(Note: Although the standards in this Rule .027(i) do not specifically require testing of sludge by the owner or operator of a POTW to determine whether or not it is a hazardous waste, the owner or operator shall be responsible for determining whether the sludge does or does not contain hazardous materials listed in Tables .028 and .029 or exhibits hazardous characteristics identified in Table .030. If a determination is made that sludge from a POTW is hazardous waste, the owner or operator is a generator and subject to provisions of Rule .027(g).)

(iv) A generator accumulating waste on site in compliance with subparagraph (A) of Rule .027(g)(2).

(v) A farmer disposing of waste pesticides from his own use, provided he triple rinses each emptied pesticide container in accordance with requirements of the note included under subparagraph (D) of Rule .027(d)(1).

(vi) The owner or operator of a totally enclosed treatment facility, as defined in Rule .027(b)(45).

(3) General.

(A) Required notices.

(i) The owner or operator of a facility that has arranged to receive hazardous waste from a foreign source must notify the Texas Department of Health and EPA regional administrator in writing at least four weeks in advance of the date that the waste is expected to arrive at the facility.

(ii) Before transferring ownership or operation of a facility during its operating life, or of a disposal facility during the postclosure care period, the owner or operator must notify the Texas Department of Health in accordance with Rule .020.

(B) Waste analysis requirements.

(i) Before an owner or operator treats, stores, or disposes of any hazardous waste, he must obtain a detailed chemical and physical analysis of a representative sample of the waste. At a minimum, this analysis must contain all the information which must be known to treat, store, or dispose of the waste in accordance with the requirements of this subsection.

(ii) The analysis may include data developed under Rule .027(c) and (d) of these regulations, and existing published or documented data on the hazardous waste or on waste generated from similar processes.

(Note: For example, the facility's record of analyses performed on the waste before the effective date of these regulations, or studies conducted on hazardous waste generated from processes similar to that which generated the waste to be managed at the facility, may be included in the data base required to comply with subparagraph (B)(i), above. The owner or operator of an off-site facility may arrange for the generator of the hazardous waste to supply part or all of the information required by subparagraph (B)(i), above. If the generator does not supply the information and the owner or operator chooses to accept a hazardous waste, the owner or operator is responsible for obtaining the information to comply with analysis requirements.)

(iii) The analysis must be repeated as necessary to ensure that it is accurate and up to date. At a minimum, the analysis must be repeated:

(I) when the owner or operator is notified or has reason to believe, that the process or operation generating the hazardous waste has changed; and

(II) for off-site facilities, when the results of the inspection required in subparagraph (B)(iii) following, indicate that hazardous waste received at the facility does not match the waste designated on the accompanying manifest or shipping paper.

(iv) The owner or operator of an off-site facility must inspect and, if necessary, analyze each hazardous waste movement received at the facility to determine whether it matches the identity of the waste specified on the accompanying manifest or shipping paper.

Waste analysis plan. The owner or operator must develop and follow a written waste analysis plan which describes the procedures which he will carry out to comply with subparagraph (B)(i), above. He must keep this plan at the facility. At a minimum, the plan must specify:

(I) the parameters for which each hazardous waste will be analyzed and the rationale for the selection of these parameters (i.e., how analysis for these parameters will provide sufficient information on the waste's properties to comply with subparagraph (B)(i), above.);

(II) the test methods which will be used to test for these parameters;

(III) the sampling method which will be used to obtain a representative sample of the waste to be analyzed. A representative sample may be obtained using either:

(-a-) one of the sampling methods described in Appendix I of 40 Code of Federal Regulations Part 261; or

(-b-) an equivalent sampling method.

(IV) The frequency with which the initial analysis of the waste will be reviewed or repeated to ensure that the analysis is accurate and up to date;

(V) for off-site facilities, the waste analyses that hazardous waste generators have agreed to supply;

(VI) for off-site facilities, the waste analysis plan must also specify the procedures which will be used to inspect and, if necessary, analyze each movement of hazardous waste received at the facility to ensure that it matches the identity of the waste designated on the accompanying manifest or shipping paper. At a minimum, the plan must describe:

(-a-) the procedures which will be used to determine the identity of each movement of waste managed at the facility; and

(-b-) the sampling method which will be used to obtain a representative sample of the waste to be identified, if the identification method includes sampling.

(C) Security.

(*i*) The owner or operator must prevent the unknowing entry and minimize the possibility for the unauthorized entry of persons or livestock onto the active portion of his facility, unless:

(I) physical contact with the waste, structures, or equipment with the active portion of the facility will not injure unknowing or unauthorized persons or livestock which may enter the active portion of a facility; and

(II) disturbance of the waste or equipment by the unknowing or unauthorized entry of persons or livestock onto the active portion of a facility, will not cause violation of the requirements of this subsection.

(*ii*) Unless exempt under subclauses (I) and (II) above, a facility must have:

(I) a 24-hour surveillance system (e.g., television monitoring or surveillance by guards or facility personnel) which continuously monitors and controls entry onto the active portion of the facility; or

(II) an artificial or natural barrier (e.g., a fence in good repair or a fence combined with a cliff), which completely surrounds the active portion of the facility; and

(III) a means to control entry at all times through the gates or other entrances to the active portion of the facility (e.g., an attendant, television monitors, locked entrance, or controlled roadway access to the facility).

(*iii*) Unless exempt under subclauses (I) and (II) above, a sign with the legend, "danger—unauthorized personnel keep out," must be posted at each entrance to the active portion of a facility and at other locations in sufficient numbers to be seen from any approach to this active portion. The legend must be written in English and in any other language predominant in the area surrounding the facility, and must be legible from a distance of at least 25 feet. Existing signs with a legend other than "danger—unauthorized personnel keep out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

(D) Inspection requirements.

(*i*) The owner or operator must inspect his facility for malfunctions and deterioration, operator errors, and discharges often enough to identify and correct problems before they harm human health or the environment.

(*ii*) The owner or operator must develop and follow a written schedule for inspecting all monitoring equipment, safety and emergency equipment, security devices, and operating and structural equipment (such as dikes and sump pumps) that are important to preventing, detecting, or responding to environmental or human health hazards.

(I) He must keep this schedule at the facility.

(II) The schedule must identify the types of problems (e.g., malfunctions or deterioration) which are to be looked for during the inspection (e.g., inoperative sump pump, leaking fitting, eroding dike, etc.).

(III) The frequency of inspection may vary for the items on the schedule. However, it should be based on the rate of possible deterioration of the equipment and the probability of an environmental or human health incident if the deterioration or malfunction or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected when in use. At a minimum, the inspection schedule must include containers, tanks, surface impoundments, and components of incinerators and thermal treatment equipment, and chemical, physical, and biological treatment facilities specified for these items in respective paragraphs of this Rule .027(i).

(*iii*) The owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately.

(*iv*) The owner or operator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observation made, and the date and nature of any repairs or other remedial actions.

(E) Personnel training.

(*i*) Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this subsection. The owner or operator must ensure that this program includes all the elements described in the documents required under clause (*vi*), following.

(*ii*) This program must be directed by a person trained in hazardous waste management procedures, and must include instruction which teaches facility personnel hazardous waste management procedures (including contingency plan implementation) relevant to the positions in which they are employed.

(*iii*) At a minimum, the training program must be designed to ensure that facility personnel are able to respond effectively to emergencies by familiarizing them with emergency procedures, emergency equipment, and emergency systems, including where applicable:

(I) procedures for using, inspecting, repairing, and replacing facility emergency and monitoring equipment;

(II) key parameters for automatic waste feed cut-off systems;

(III) communications or alarm systems;

(IV) response to fires or explosions;

(V) response to ground-water contamination incidents; and

(VI) shutdown of operations.

(*iv*) Facility personnel must successfully complete the required training program within six months after the effective date of these regulations or six months after the date of their employment or assignment to a facility, or to a new position at a facility, whichever is later. Employees hired after the effective date of these regulations must not work in unsupervised positions until they have completed the training requirements.

(*v*) Facility personnel must take part in an annual review of the initial training required in clause (*i*), above.

(*vi*) The owner or operator must maintain the following documents and records at the facility;

(I) The job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.

(II) A written job description for each position. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.

(III) A written description of the type and amount of both introductory and continuing training that will be given to each person filling a position.

(IV) Records that document that the training or job experience required under clauses *(i)*, *(ii)*, and *(iii)* of this subsection has been given to and completed by facility personnel.

(vii) Training records on current personnel must be kept for at least three years from the date the employee last worked at the facility. Personnel training records may accompany personnel transferred within the same company.

(F) Ignitable, reactive, or incompatible wastes.

(i) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. This waste must be separated and protected from sources of ignition or reaction including but not limited to: open flames, smoking, cutting and welding, hot surfaces, frictional heat, sparks (static, electrical or mechanical), spontaneous ignition (e.g., from heat-producing chemical reactions), and radiant heat. While ignitable or reactive waste is being handled, the owner or operator must confine smoking and open flame to specially designated locations. "No smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

(ii) Where specifically required by other standards in Rule 027(i), treatment, storage, or disposal of ignitable or reactive waste, and the mixture or commingling of incompatible wastes, or incompatible wastes and materials, must be conducted so that it does not:

(I) generate extreme heat or pressure, fire or explosion, or violent reaction;

(II) produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;

(III) produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;

(IV) damage the structural integrity of the device or facility containing the waste; or

(V) through other like means threaten human health or the environment.

(4) Preparedness and prevention.

(A) Maintenance and operation of facility. Facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

(B) Equipment requirements. All facilities must be equipped with the following emergency items, unless none of the hazards posed by waste handled at the facility could require them:

(i) an internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to facility personnel;

(ii) a device, such as a telephone (immediately available at the scene of operations) or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or state or local emergency response teams;

(iii) portable fire extinguishers, fire control equipment (including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals), spill control equipment and decontamination equipment; and

(iv) water at adequate volume and pressure to supply water hose streams, or foam-producing equipment, or automatic sprinklers, or water spray systems.

(C) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained as necessary to assure its proper operation in time of emergency.

(D) Access to communications or alarm system.

(i) Whenever hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless none of the hazards posed by waste handled at the facility could require them.

(ii) If there is ever just one employee on the premises while the facility is operating, he must have immediate access to a device, such as a telephone (immediately available at the scene of operation) or a hand-held two-way radio, capable of summoning external emergency assistance, unless none of the hazards posed by waste handled at the facility could require them.

(E) Aisle space requirements. The owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(F) Arrangements with local authorities.

(i) The owner or operator must attempt to make the following arrangements, as appropriate, for the type of waste handled at his facility and the potential need for the services of these organizations.

(I) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of hazardous waste handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possibile evacuation routes.

(II) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority.

(III) Agreements with state emergency response teams, emergency response contractors, and equipment suppliers; and

(IV) Arrangements to familiarize local hospitals with the properties of hazardous waste handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(ii) Where state or local authorities decline to enter into such arrangements, the owner or operator must document the refusal in the operating record.

(5) Contingency plan and emergency procedures.

(A) Purpose and implementation of contingency plan.

(i) Each owner or operator must have a contingency plan for his facility approved by the Texas Department of Health. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

(ii) The provisions of the plan must be carried out immediately whenever there is fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(B) Content of contingency plan.

(i) The plan must describe the actions facility personnel must take in response to fires, explosions, or any unplanned sudden or nonsudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water at the facility.

(ii) The plan must describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

(iii) The plan must list names, addresses, and phone numbers (office and home) of all persons qualified to act as emergency coordinator, and this list must be kept up to date. Where more than one person is listed, one must be named as primary emergency coordinator and others must be listed in the order in which they will assume responsibility as alternates.

(iv) The plan must include a list of all emergency equipment at the facility (such as fire extinguishing systems, spill control equipment, communications, and alarm systems (internal and external), and decontamination equipment), where this equipment is required. This list must be kept up to date. In addition, the plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(v) The plan must include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where the primary routes could be blocked by releases of hazardous wastes or fires).

(C) Copies of contingency plan:

(i) a copy of the contingency plan and any revisions must be maintained at the facility; and

(ii) a copy of the plan and any revisions must be submitted to all local police departments, fire departments, hospitals, and state and local emergency response teams that may be called upon to provide emergency services.

(D) Amendment to contingency plan. The plan must be reviewed and promptly amended, if necessary, whenever:

(i) applicable regulations are revised;

(ii) the plan fails in an emergency;

(iii) the facility changes—in its design, construction, operation, maintenance, or other circumstances—in a way that materially increases the potential for fires, explosions, or releases of hazardous waste or hazardous waste constituents, or changes the response necessary in an emergency;

(iv) the list of emergency coordinators changes; or

(v) the list of emergency equipment changes.

(E) Emergency coordinator.

(i) At all times, there must be at least one employee either on the facility premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures.

(ii) This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan.

(F) Emergency procedures.

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator (or his designee when the emergency coordinator is on call) must immediately:

(I) activate internal facility alarms, or communication systems, where applicable, to notify all facility personnel; and

(II) notify appropriate local, county, and state authorities with designated response roles. If emergency involves accidental spill or discharge of a hazardous substance, provide notification to the Texas Department of Water Resources as soon as possible, in accord with Section .007 of the State of Texas Oil and Hazardous Substances Spill Contingency Plan:

telephone contacts

normal: (512) 475-2786 or 327-4174; (512) 475-5633 or 926-0278;
nights and weekends: (512) 475-2651.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator must immediately identify the character, exact source, amount, and a real extent of any released materials. He may do this by observation or review of facility records of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator must assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment must consider both direct and indirect effects of the release, fire, or explosion (e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run offs from water or chemical agents used to control fire and heat-induced explosions).

(iv) 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:

(I) 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 officials decide whether local areas should be evacuated; and

(II) he must immediately notify either the government official designated as the on-scene coordinator for that geographical area, or the National Response Center (using their 24-hour toll free number (800) 424-8802). The report must include:

(-a-) name and telephone number of reporter;

(-b-) name and address of facility;

(-c-) time and type 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.

(v) During an emergency, the emergency coordinator must take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other hazardous waste at the facility. These measures must include, where applicable, stopping processes and operations, collecting and containing released waste, and removing or isolating containers.

(vi) If the facility stops operations in response to a fire, explosion, or release, the emergency coordinator must monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator must provide for treating, storing, or disposing of recovered waste, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(Note: Unless the owner or operator can demonstrate that the recovered material is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with Rule .027(g) of these regulations.)

(viii) The emergency coordinator must ensure that, in the affected area(s) of the facility:

(I) no waste that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed; and

(II) all emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(ix) The owner or operator must notify the EPA regional administrator and appropriate state and local authorities that the facility is in compliance with clause (viii), above, before operations are resumed in the affected area(s) of the facility.

(x) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the EPA regional administrator and the Texas Department of Health. The report must include:

(I) name, address, and telephone number of the owner or operator;

(II) name, address, and telephone number of the facility;

(III) date, time, and type of incident (e.g., fire, explosion);

(IV) name and quantity of material(s) involved;

(V) the extent of injuries, if any;

(VI) an assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(VII) estimated quantity and disposition of recovered material that resulted from the incident.

(Note: The complexity and content of the contingency plan will depend on the type, quantity, and variety of waste handled by the facility and the type and complexity of the facility. Therefore, the Texas Department of Health will consider variance from any of the above requirements where it is demonstrated that such requirements are not applicable or otherwise unnecessary.)

(6) Manifest system, record keeping, and reporting.

(A) Use of manifest system. If a facility receives hazardous waste accompanied by a manifest, the owner or operator or his authorized agent must:

(i) sign and date each copy of the manifest to certify receipt of hazardous waste covered by the manifest;

(ii) record any significant discrepancies in the manifest on each copy of the manifest;

(Note: It is not required that the owner or operator of the facility perform waste analysis required under subparagraph (B) of Rule .027(i)(3) before signing the manifest and giving it to the transporter. However, it is required that the owner or operator submit a letter to the Texas Department of Health reporting any unreconciled discrepancy discovered during later analysis.)

(iii) immediately give the transporter at least one copy of the signed manifest;

(iv) not later than 30 days after delivery of the hazardous waste, send a copy of the signed manifest to the generator; and

(v) retain at the facility a copy of each manifest for at least three years from the date of delivery of the hazardous waste;

(vi) exception. If a facility receives from a rail or water (bulk shipment) transporter, hazardous waste which is accompanied by a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator's certification, and signatures), the owner or operator or his agent must:

(I) sign and date each copy of the shipping paper to certify that the hazardous waste covered by the shipping paper was received;

(II) record any significant discrepancies on the shipping paper (see "note" under clause (ii), above;

(III) immediately give the rail or water (bulk shipment) transporter at least one copy of the shipping paper;

(IV) within 30 days after the delivery, send a copy of the shipping paper to the generator; however, if the manifest is received within 30 days after the delivery, the owner or operator or his agent must sign and date the manifest and return it to the generator in lieu of the shipping paper; and

(Note: Subparagraph (D) of Rule .027(g)(4) requires the generator to send three copies of the manifest to the facility when hazardous waste is sent by rail or bulk water shipment.)

(V) retain at the facility a copy of each shipping paper and manifest for at least three years from the date of the delivery.

(B) Manifest discrepancies.

(*i*) Manifest discrepancies are differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste a facility actually receives. Significant discrepancies in quantity are:

(I) for bulk waste, variations greater that 10 in weight, and

(II) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

(*ii*) 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 Texas Department of Health, a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue.

(C) Facility operating records.

(*i*) The owner or operator must keep a written operating record at his facility.

(*ii*) The following information must be recorded as it becomes available and maintained in the operating record until closure of the facility:

(I) A description and the quantity of each hazardous waste received and the method and date of its treatment, storage, or disposal at the facility (see Table .031 for handling codes and units of measure).

(II) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to specific manifest document numbers if the waste was accompanied by a manifest.

(III) Information on results of waste analyses and trial tests required by subparagraph (B) of Rule .027(i)(3).

(IV) Summary reports and details of all incidents that require implementing the contingency plan required by subparagraph (F) of Rule .027(i)(5).

(V) Results of inspections required by subparagraph (D) of Rule .027(i)(3). (Note: These data need be kept only three years.)

(VI) Cost estimates to close the facility and cost estimates for monitoring and maintenance after closing facility.

(VII) Results of ground-water monitoring and required sampling.

(D) Availability, retention, and disposition of records.

(*i*) All records including plans required under Rule .027(i) must be furnished upon request and made available at all reasonable times for inspection by any inspection by any authorized representative of the Texas Department of Health or the EPA.

(*ii*) The specific retention period for all records required under Rule .027(i) is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Texas Department of Health or administrator of the EPA.

(*iii*) A copy of records and waste disposal locations and quantities required under subparagraph (C) of Rule .027(i)(6) must be submitted to the Texas Department of Health, and to local land authority upon closure of the facility.

(E) Reporting requirements.

(*i*) Annual reports. The owner or operator must prepare and submit a single copy of an annual report, as follows:

(I) Submit report by March 1 of each year to the Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(II) Use the Annual Waste Disposal Summary, Form TDWR-0436/TDH for the annual report prepared according to instruction on the form; and

(III) Prepare the annual report using information which covers facility hazardous waste activities during calendar year previous to submission date.

(Note: Required report forms are available from address given in subclause (I), above.

(*ii*) Monthly waste receipt summary. The owner or operator must prepare and submit a single copy of a monthly summary, as follows:

(I) submit report no later than the 25th day of each month to: Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756;

(II) use Monthly Waste Receipt Summary (Form TDWR-0113/TDH, revised 9-80) for this report, prepared according to attached instructions; and

(III) prepare the summary report using information on hazardous waste shipments received during the previous month.

(Note: Required report form and instructions for preparation are available from address given in subclause (I) above.)

(*iii*) Unmanifested waste report. If a facility accepts for treatment, storage, or disposal any hazardous waste from an off-site source without an accompanying manifest or shipping paper, then the owner or operator must prepare and submit a single copy of a report, as follows:

(I) submit report no later than 15 days after receiving the waste to: Division of Solid Waste Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756;

(II) use EPA Forms 8700-13 and 8700-13B for an unmanifested waste report; and

(III) include the following information in an unmanifested waste report:

(-a-) the EPA identification number, name, and address of the facility;

(-b-) the date the facility received the waste;

(-c-) the EPA identification number, name, and address of the generator and the transporter, if available;

(-d-) a description and the quantity of each unmanifested hazardous waste the facility received;

(-e-) the method of treatment, storage, or disposal for each hazardous waste;

(-f-) the certification by the owner or operator of the facility or his authorized representative; and

(-g-) a brief explanation of why the waste was unmanifested, if known.

(Note: Rule .027(d) identifies quantities of hazardous waste by criteria which are excluded from manifest requirements. Where a facility accepts unmanifested hazardous waste, it is recommended that the owner or operator obtain from the generator a certification that the waste qualifies for exclusion. Otherwise, it is recommended that the owner or operator file an unmanifested waste report for the waste accepted.)

(iv) Report retention periods. The owner or operator must retain a copy of each annual report, each monthly waste receipt summary, and each unmanifested waste report for at least three years from due date for each report. The retention period is automatically extended during the course of any unresolved enforcement action regarding activities of the facility.

(7) Ground-water monitoring.

(A) Applicability.

(i) Within one year after the effective date of these regulations, the owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste must implement a ground-water monitoring program capable of determining the facility's impact on the quality of ground water in the uppermost aquifer underlying the facility except as provided in clause *(iii)*, following.

(ii) Except as provided in clauses *(iii)* and *(iv)* following, the owner or operator must install, operate, and maintain a ground-water monitoring system which meets the requirement provided under subparagraph (B) following, and must comply with requirements for sampling and analysis; preparation, evaluation, and response; and record keeping and reporting provided in subparagraphs (C), (D), and (E) following. This ground-water monitoring program must be carried out during the active life of the facility and for disposal facilities during the postclosure care period as well.

(iii) All or part of the ground-water monitoring requirements of this subsection 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, with a copy provided to the Texas Department of Health. This demonstration must be certified by a registered professional engineer and must establish the following:

(I) 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, run off, and infiltration; and

(-b-) unsaturated zone characteristics (i.e., geologic materials, physical properties, and depth to ground water); and

(II) 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 ground-water flow); and

(-b-) the proximity of the facility to water supply wells or surface water.

(iv) If an owner or operator assumes (or knows) that ground-water monitoring of indicator parameters in accordance with requirements of subparagraphs (B) and (C) following, would show statistically significant increases (or decreases in the case of pH) when evaluated in accordance with requirements of subparagraph (D)*(iii)* following, he may install, operate, and maintain an alternate ground-water monitoring system (other than the one described in subparagraphs (B) and (C) following). If the owner or operator does decide to use an alternate ground-water monitoring system, he must:

(I) prior to November 19, 1981, submit to the Division of Solid Waste Management, Texas Department of Health, a specific plan certified by a registered professional engineer which satisfies requirements under subparagraph (D)*(iv)*(III) following, for an alternate ground-water monitoring system; and

(II) prior to November 19, 1981, initiate the determinations specified in subparagraph (D)*(iv)*(IV) following; and

(III) prepare and submit a written report in accordance with subparagraph (D)*(iv)*(V) following; and

(IV) continue to make the determinations specified in subparagraph (D)*(iv)*(IV) following, on a quarterly basis until final closure of the facility; and

(V) comply with the record keeping and reporting requirements under subparagraph (E)*(iv)* following.

(B) Ground-water monitoring system.

(i) A ground-water monitoring system must be capable of yielding ground water samples for analysis and must consist of:

(I) Monitoring wells (at least one) installed hydraulically upgradient (i.e., in the direction of increasing static head) from the limit of the waste management area. Their number, locations, and depths must be sufficient to yield ground-water samples that are:

(-a-) representative of background ground-water quality in the uppermost aquifer near the facility; and

(-b-) not affected by the facility.

(II) Monitoring wells (at least three) installed hydraulically downgradient (i.e., in the direction of decreasing static head) at the limit of the waste management area. Their number, locations, and depths must ensure that they immediately detect any statistically significant amounts of hazardous waste or hazardous waste constituents that migrate from the waste management area to the uppermost aquifer.

(ii) Separate monitoring systems for each waste management component of a facility are not required provided that provisions for sampling upgradient and downgradient water quality will detect any discharge from the waste management area.

(I) In the case of a facility consisting of only one surface impoundment, landfill, or land treatment area, the waste management area is described by the waste boundary (perimeter).

(II) In the case of a facility consisting of more than one surface impoundment, landfill, or land treatment area, the waste management area is described by an imagin-

ary boundary line which circumscribes the several waste management components.

(iii) 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 sample collection at depths where appropriate aquifer flow zones exist. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed with a suitable material (e.g., cement grout or bentonite slurry) to prevent contamination of samples and the ground water.

(C) Sampling and analysis.

(i) The owner or operator must obtain and analyze samples from the installed ground-water monitoring system. The owner or operator must develop and follow a ground-water sampling and analysis plan. He must keep this plan at the facility. The plan must include procedures and techniques for:

(I) sample collection;
(II) sample preservation and shipment;
(III) analytical procedures; and
(IV) chain of custody control.

(ii) The owner or operator must determine the concentration or value of the following parameters in ground water samples in accordance with clauses (iii) and (iv), following:

(I) Parameters characterizing the suitability of the ground water as a drinking water supply.

(II) Parameters establishing ground-water quality:

(-a-) chloride;
(-b-) iron;
(-c-) manganese;
(-d-) phenols;
(-e-) sodium;
(-f-) sulfate.

(Note: These parameters are to be used as a basis for comparison in the event of a ground-water assessment required under subparagraph (D)(iv) following.)

(III) Parameters used as indicators of ground-water contamination:

(-a-) pH;
(-b-) specific conductance;
(-c-) total organic carbon;
(-d-) total organic halogen.

(iii) Well monitoring.

(I) The owner or operator must establish initial background concentrations or values of all parameters specified in clause (ii) above. He must do this quarterly for one year.

(II) For each of the four indicator parameters specified in clause (ii)(III) above, at least four replicate measurements must be obtained for each sample and the initial background arithmetic mean and variance must be determined by pooling the replicate measurements for the respective parameter concentrations or values in samples obtained from upgradient wells during the first year.

(iv) After the first year, all monitoring wells must be sampled and the samples analyzed with the following frequencies:

(I) Samples collected to established ground water quality must be obtained and analyzed for the six parameters specified in clause (ii)(II) above, at least annually.

(II) Samples collected to indicate ground-water contamination must be obtained and analyzed for the four parameters specified in clause (ii)(III) above, at least semiannually.

(v) Elevation of the ground-water surface at each monitoring well must be determined each time a sample is obtained.

(D) Preparation, evaluation, and response.

(i) Within one year after the effective date of these regulations, the owner or operator must prepare an outline of a ground water quality assessment program. The outline must describe a more comprehensive ground-water monitoring program (than that described in subparagraphs (B) and (C) preceding) capable of determining:

(I) whether hazardous waste or hazardous waste constituents have entered the ground water;

(II) the rate and extent of migration of hazardous waste or hazardous waste constituents in the ground water; and

(III) the concentrations of hazardous waste or hazardous waste constituents in the ground water.

(ii) For each of the four indicator parameters under subparagraph (C)(ii)(III) preceding, the owner or operator must calculate the arithmetic mean and variance based on at least four replicate measurements on each sample for each well monitored in accordance with requirements in subparagraph (C)(iv) preceding, and compare these results with its initial background arithmetic mean. The comparison must consider individually each of the wells in the monitoring system, and must use the student's t-test at the 0.01 level of significance to determine statistically significant increases (and decreases in the case of pH) over initial background.

(iii) Comparisons for upgradient and downgradient wells.

(I) If the comparisons for the upgradient wells made under clause (ii) above, show a significant increase (or pH decrease), the owner or operator must submit this information in accordance with record keeping and reporting requirements under subclause (V) following.

(II) If the comparisons for downgradient wells made under subparagraph (D)(ii) above, show a significant increase (or pH decrease), the owner or operator must then immediately obtain additional ground-water samples from those downgradient wells where a significant difference was detected, split the sample in two, and obtain analyses of all additional samples to determine whether the significant difference was a result of laboratory error.

(iv) If the analyses performed under clause (iii)(II) above, confirm the significant increase or pH decrease:

(I) the owner or operator must provide written notice to the Texas Department of Health within seven days of the date of such confirmation that the facility may be affecting ground-water quality; and

(II) within 15 days after the notification, the owner or operator must develop and submit to the Division of Solid Waste Management, Texas Department of Health, a specific plan based on the outline required under subparagaph (D)(i) preceding, and certified by a registered professional engineer for a ground-water quality assessment program at the facility;

(III) the plan to be submitted under subparagraph (A)(iv)(I), or subparagraph (D)(iv)(II) of this subsection must specify:

(-a-) the number, location, and depth of wells;

(-b-) sampling and analytical methods for those hazardous waste or hazardous waste constituents in the facility;

(-c-) evaluation procedures, including any use of previously gathered ground water quality information; and

(-d-) a schedule of implementation;

(IV) the owner or operator must implement the ground-water quality assessment plan which satisfies the requirements of clause (iv)(III) above, and at a minimum, determines:

(-a-) the rate and extent of migration of the hazardous waste or hazardous waste constituents in the ground water; and

(-b-) the concentrations of the hazardous waste or hazardous waste constituents in the ground water;

(V) the owner or operator must make his first determination under clause (iv)(IV) preceding, as soon as technically feasible, and within 15 days after that determination, submit to the Texas Department of Health a written report containing an assessment of the ground water quality;

(VI) if the owner or operator determines, based on the results of the first determination under clause (iv)(V) preceding, that no hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he may reinstate the indicator or evaluation program described in subparagraph (C)(iii) preceding, concerning sampling and analysis. If the owner or operator reinstates the indicator evaluation program, he must so notify the Texas Department of Health in the written (15-day) report submitted under clause (iv)(V) above;

(VII) if the owner or operator determines, based on the first determination under clause (iv)(IV) above, that hazardous waste or hazardous waste constituents from the facility have entered the ground water, then he:

(-a-) must continue to make the determinations required under clause (iv)(IV) on a quarterly basis until final closure of the facility if the ground-water quality assessment plan was implemented prior to final closure of the facility; or

(-b-) may cease to make the determinations required under clause (iv)(IV) if the ground-water quality assessment plan was implemented during the postclosure care period.

(v) Notwithstanding any other provision under subparagraph (D), any ground-water assessment to satisfy the requirements of clause (iv)(IV) which is initiated prior to final closure of the facility must be completed and reported in accordance with clause (iv)(V) above.

(vi) Unless the ground water is monitored to satisfy the requirements of subclause (IV), at least annually the owner or operator must evaluate the data on ground-water surface elevations obtained under subparagraph (C)(iv) to determine whether the requirements under subparagraph (B)(i) for locating the monitoring wells continue to be satisfied. If the evaluation shows that subparagraph (B)(i) is no longer satisfied, the owner or operator must immediately modify the number, location, or depth of the monitoring wells to bring the ground-water quality system into compliance with this requirement.

(E) Record keeping and reporting.

(i) Unless the ground water is monitored to satisfy the requirements of subparagraph (D)(iv)(IV) above, the owner or operator must:

(I) keep records of the analyses required under subparagraphs (C)(iii) and (iv); the associated ground-water surface elevations required under subparagraph (C)(v); and the evaluations required under subparagraph (D)(ii) throughout the active life of the facility, and for disposal facilities, throughout the postclosure care period as well; and

(II) report the following ground-water monitoring information to the Division of Solid Waste Management, Texas Department of Health:

(-a-) During the first year initial background concentrations are being established for the facility concentrations or values of the parameters listed in subparagaph (C)(iii)(I) for each ground water 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.

(-b-) Annually, concentrations or values of the four parameters listed in subparagraph (C)(iii)(III) for each ground water monitoring well along with the required evaluations for these parameters under subparagraph (D)(ii). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with subparagraph (D)(iii)(I). During the active life of the facility, this information must be submitted as part of the annual report required under subparagraph (E) of Rule .027(i)(6).

(-c-) As part of the required annual report, results of the evaluation of ground water surface elevations under subparagraph (D)(v) preceding, and a description of the response to that evaluation, where applicable.

(ii) If the ground water is monitored to satisfy the requirements of subparagraph (D)(iv)(IV), the owner or operator must:

(I) keep records of the analyses and evaluations specified in the plan which satisfies the requirements of subparagraph (D)(iv)(III), throughout the active life of the facility, and for disposal facilities, throughout the postclosure care period as well; and

(II) annually, until final closure of the facility, submit to the Texas Department of Health, a report containing the results of his ground-water 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 ground water during the reporting period. This report must be submitted as part of the annual report required under subclause (V) of Rule .027(i)(6).

(8) Closure and postclosure.

(A) Applicability.

(i) The regulations in this subsection (which concern closure) apply to the owners and operators of all municipal solid waste facilities that process, store, or dispose of hazardous waste.

(ii) The regulations in this subsection (which concern postclosure care) apply to the owners and operators of all municipal solid waste facilities that dispose of hazardous waste.

(B) Closure performance standard. The owner or operator must close his facility in a manner that:

(i) minimizes the need for further maintenance; and

(ii) controls, minimizes, or eliminates to the extent necessary to protect human health and the environment, postclosure escape of hazardous waste, hazardous waste constituents, leachate, contaminated rainfall, or waste decomposition products to the ground water or surface waters or to the atmosphere.

(C) Closure plan and amendment of plan.

(i) On November 19, 1980, the owner or operator must have a written closure plan. He must keep this plan at the facility. This plan must identify the steps necessary to completely close the facility at any point during its intended life and at the end of its intended life. The closure plan must include, at least:

(I) a description of how and when the facility will be partially closed, if applicable, and ultimately closed. The description must identify the maximum extent of the operation which will be open during the life of the facility and how the requirement of subparagraph (D) following, and the applicable closure requirements contained in these regulations for specific waste management methods will be met;

(II) an estimate of the maximum inventory of wastes in storage or in treatment at any given time during the life of the facility;

(III) a description of the steps needed to decontaminate facility equipment during closure; and

(IV) a schedule for final closure which must include, as a minimum, the anticipated date when wastes will no longer be received, the date when completion of final closure is anticipated, and intervening milestone dates which will allow tracking of the progress of closure. (For example, the expected date for completing treatment or disposal of waste inventory must be included, as must the planned date for removing any residual wastes from storage facilities and treatment processes.)

(ii) The owner or operator may amend his closure plan at any time during the active life of the facility. (The active life of the facility is that period during which wastes are periodically received.) The owner or operator must amend his plan any time changes in operating plans or facility design affect the closure plan.

(iii) The owner or operator must submit his closure plan to the Texas Department of Health at least 180 days before the date he expects to begin closure. The Texas Department of Health will modify, approve, or disapprove the plan within 90 days of receipt and after providing the owner or operator and the affected public (through a newspaper notice) the opportunity to submit written comments. If an owner or operator plans to begin closure before May 19, 1981, he must submit the necessary plans on November 19, 1980.

(D) Time allowed for closure.

(i) Within 90 days after receiving the final volume of hazardous wastes, the owner or operator must treat all hazardous wastes in storage or in treatment, or remove them from the site, or dispose of them on site, in accordance with the approved closure plan.

(ii) The owner or operator must complete closure activities in accordance with the approved closure plan and within six months after receiving the final volume of wastes. The Texas Department of Health may approve a longer closure period under subparagraph (C)(iii) if the owner or operator can demonstrate that:

(I) the required or planned closure activities will, of necessity, take him longer than six months to complete; and

(II) that he has taken all steps to eliminate any significant threat to human health and the environment from the unclosed but inactive facility.

(E) Disposal or decontamination of equipment. When closure is completed, all facility equipment and structures must have been properly disposed of, or decontaminated by removing all hazardous waste and residues.

(F) Certification of closure. When closure is completed, the owner or operator must submit to the Texas Department of Health, certification both by the owner or operator and by an independent registered professional engineer that the facility has been closed in accordance with the specifications in the approved closure plan.

(G) Postclosure care and use of property/period of care.

(i) Postclosure must consist of at least:

(I) ground-water monitoring and reporting in accordance with Rule .027(j)(7); and

(II) maintenance of monitoring and waste containment systems required by Rule .027(j)(7) (ground-water monitoring system), Rule .027(j)(12) (surface impoundments); Rule .027(j)(14) (land treatment), and Rule .027(j)(15) (landfills), when applicable.

(ii) The Texas Department of Health may require maintenance of any or all of the security requirements of subparagraph (C) of Rule .027(j)(3), during the postclosure period, when:

(I) wastes may remain exposed after completion of closure; or

(II) short-term, incidental access by the public or domestic livestock may pose a hazard to human health.

(iii) Postclosure use of property on or in which hazardous waste remains after closure must never be allowed to disturb the integrity of the final cover, liner(s) or any other components of any containment system, or the function of the facility's monitoring systems, unless the owners or operators can demonstrate to the Texas Department of Health, either in the postclosure plan or by petition, that the disturbance

(I) is necessary to the proposed use of the property, and will not increase the potential hazard to human health or the environment; or

(II) is necessary to reduce a threat to human health or the environment.

(iv) The owner or operator of a disposal facility must provide a postclosure plan for at least 30 years after the date of completing closure. However, the owner or operator may petition the Texas Department of Health to allow some or all of the requirements for postclosure care to be discontinued or altered before the end of the 30 year period. The petition must include evidence demonstrating the secure nature of the facility that makes continuing the specified postclosure requirement(s) unnecessary (e.g., no detected leaks and none likely to occur, characteristics of the waste, application of advanced technology, or alternative disposal, treatment, or reuse techniques). Alternatively, the Texas Department of Health may require the owner or operator to continue one or more of the postclosure care and maintenance requirements contained in the facility's postclosure plan for a specified period of time. The Texas Department of

Health may do this if it is determined that there has been noncompliance with any applicable standards or requirements, or that such continuation is necessary to protect human health or the environment. At the end of the specified period of time, the Texas Department of Health will determine whether to continue or terminate postclosure care and maintenance at the facility. Anyone (a member of the public as well as the owner or operator) may petition the Texas Department of Health for an extension or reduction of the postclosure care period based on cause. These petitions will be considered by the department at the time the postclosure plan is submitted and at five year intervals after the completion of closure.

(H) Postclosure plan and amendment of plan.

(*i*) On November 19, 1980, the owner or operator of a disposal facility must have a written postclosure plan at the facility. This plan must identify the activities which will be carried on after final closure and the frequency of those activities. The postclosure plan must include at least:

(I) ground-water monitoring activities and frequencies as specified in Rule .027(i)(7) for the postclosure period; and

(II) maintenance activities and frequencies to ensure:

(-a-) the integrity of the cap and final cover or other containment structures as specified in Rule .027(i)(12), (14), and (15), where applicable; and

(-b-) the function of the facility's monitoring equipment as specified in subclause (II) of Rule .027(i)(7).

(*ii*) The owner or operator may amend his postclosure plan at any time during the active life of the disposal facility or during the postclosure care period. The owner or operator must amend his plan any time changes in operating plans or facilities design affect his postclosure plan.

(*iii*) The owner or operator of a disposal facility must submit his postclosure plan to the Texas Department of Health at least 180 days before the date he expects to begin closure. The department will modify or approve the plan within 90 days of receipt and after providing the owner or operator and the affected public (through a newspaper notice) the opportunity to submit written comments. The plan may be modified to include security equipment maintenance under subparagraph (G)(*iii*) of Rule .027(i)(8). If an owner or operator of a disposal facility plans to begin closure before May 19, 1981, he must submit the necessary plans by November 19, 1980. Any amendments to the plan under clause (*ii*) above, which occur after approval of the plan must also be approved by the Texas Department of Health before they may be implemented.

(I) Notice to county clerk. Within 90 days after closure is completed, the owner or operator of a disposal facility must submit to the county clerk and to the Texas Department of Health a survey plat indicating the location and dimensions of landfill cells or other disposal areas with respect to permanently surveyed benchmarks. This plat must be prepared and certified by a professional land surveyor. The plat filed with the county clerk must contain a note, prominently displayed, which states the owner's or operator's obligation to restrict disturbance of the site as specified in subparagraph (G)(*iii*) of Rule .027(i)(8). In addition, the owner or operator must submit to the Texas Department of Health and to the county clerk a record of the type, location, and quantity of hazardous wastes disposed of within each cell or area of the facility. For wastes disposed of before these regulations were promulgated, the owner or operator must identify the type, location, and quantity of the wastes to the best of his knowledge and in accordance with any records he has kept.

(J) Notice in deed to property. The owner of the property on which a disposal facility is located must record in accordance with state law, a notation on the deed to the facility property, or on some other instrument which is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used to manage hazardous waste, and its use is therefore restricted under subparagraph (G)(*iii*) of Rule .027(i)(8).

(9) Financial requirements.

(A) Applicability.

(*i*) The requirements in this subsection apply to owners and operators of all municipal solid waste facilities that process, store, or dispose of hazardous waste unless otherwise provided.

(*ii*) The requirements in subparagraph (B) following, concerning cost estimate for facility closure apply only to owners and operators of disposal facilities.

(*iii*) The requirements in this subsection do not apply to the State of Texas and the federal government.

(B) Cost estimate for facility closure.

(*i*) On November 19, 1980, each facility owner or operator must have a written estimate of the cost of closing the facility in accordance with the requirements under subparagraph (B) of Rule .027(i)(8) and applicable closure requirements contained in this Rule .027(i) for specific waste management methods. The owner or operator must keep this estimate, and all subsequent estimates required at the facility. The estimate must equal the cost of closure at the point in the facility's operating life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan.

(Note: For example, the closure cost estimate for a particular landfill may be for the cost of closure when its active disposal operations extended over 20 acres, if at all other times these operations extend over less than 20 acres. The estimate would not include costs of partial closures that the closure plan schedules before or after the time of maximum closure cost.)

(*ii*) The owner or operator must prepare a new closure cost estimate whenever a change in the closure plan affects the cost of the closure.

(*iii*) On November 19 of each year, the owner or operator must adjust the latest closure cost estimate using an inflation factor derived from the annual Implicit Price Deflator for Gross National Product as published by the U.S. Department of Commerce in its Survey of Current Business. The inflation factor must be calculated by dividing the latest published annual deflator by the deflator for the previous year. The result is the inflation factor. The adjusted closure cost estimate must equal the latest closure cost estimate times the inflation factor.

(Note: The following is a sample calculation of the adjusted closure cost estimate. Assume that the latest closure cost estimate for a facility is $50,000, the latest published annual deflator is 152.05, and the annual deflator for the previous year is 141.70. The deflators may be rounded to the nearest whole number. Dividing 152 by 142 gives the inflation factor

1.07. Multiply $50,000 by 1.07 for a product of $53,500—the adjusted closure cost estimate.)

(C) Cost estimate for postclosure monitoring and maintenance.

(i) On November 19, 1980, the owner or operator of a disposal facility must have a written estimate of the annual cost of postclosure monitoring and maintenance of the facility in accordance with the applicable postclosure requirements under subparagraph (G) of Rule .027(j)(8) and other applicable postclosure requirements contained in these regulations. The owner or operator must keep this estimate and all subsequent estimates required in this section at the facility.

(ii) The owner or operator must prepare a new annual postclosure cost estimate whenever a change in the postclosure plan affects the cost of postclosure care. The latest postclosure cost estimate is calculated by multiplying the latest annual postclosure cost estimate by 30.

(iii) On November 19 of each year during the operating life of the facility, the owner or operator must adjust the latest postclosure cost estimate using the inflation factor calculated in accordance with subparagraph (B)(iii) preceding. The adjusted postclosure cost estimate must equal the latest postclosure cost estimate times the inflation factor.

(D) Financial assurance requirements. The Texas Department of Health may require acceptable financial assurance of any person who is processing, storing, or disposing of hazardous waste. The applicant shall supply any requested information in addition to that provided in the application so that the Texas Department of Health may establish the cost of closing the facility in the event of total abandonment by the operator.

(10) Use and management of containers.

(A) Applicability. These requirements apply to owners and operators of municipal solid waste facilities that use containers to store hazardous waste.

(B) Condition of containers. If a container holding hazardous waste is not in good condition, or if it begins to leak, the owner or operator must transfer the hazardous waste from this deficient container to a container that is in good condition, or manage the waste in some other way that complies with requirements in this Rule .027(j).

(C) Compatibility of waste with container. The owner or operator must use a container made of or lined with materials which will not react with, and are otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired.

(D) Management of containers.

(i) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

(ii) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

(Note: A container that is a hazardous waste listed in 40 Code of Federal Regulations Part 261.33 (see Tables 1 and 2) must be managed in compliance with the requirements of this subsection. Reuse of containers in transportation is governed by U.S. Department of Transportation regulations, including those set forth in 49 Code of Federal Regulations 173.28.)

(E) Inspections. The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. (See subparagraph (B) preceding, for remedial action required if deterioration or leaks are detected.)

(F) Special requirements for ignitable or reactive waste. Containers holding ignitable or reactive waste must be located at 15 meters (50 feet) from and inside the facility's property line.

(G) Special requirements for incompatible wastes.

(i) Incompatible wastes or incompatible wastes and materials (see Table .032) must not be placed in the same container unless requirements under subparagraph (F) of Rule .027(j)(3) are complied with.

(ii) Hazardous waste must not be placed in an unwashed container that previously held an incompatible waste or material (see Table .032 for examples) unless requirements under subparagraph (F) of Rule .027(j)(3) are complied with.

(iii) A storage container holding a hazardous waste that is incompatible with any waste of other materials stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

(Note: The purpose of this regulation is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the mixing of incompatible wastes or materials if containers break or leak.)

(11) Tanks.

(A) Applicability. These requirements apply to owners and operators of municipal solid waste facilities that use tanks to store or process hazardous waste.

(B) General operating requirements.

(i) Processing or storage of hazardous waste in tanks must comply with requirements under subparagraph (F) of Rule .027(j)(3).

(ii) Hazardous wastes or treatment reagents must not be placed in a tank so they could cause the tank or its inner liner to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(iii) Uncovered tanks must be operated to ensure at least 60 centimeters (two feet) of freeboard, unless the tank is equipped with a containment structure (e.g., dike or trench), a drainage control system, or a diversion structure (e.g., stand by tank) with a capacity that equals or exceed the volume of the top 60 centimeters (two feet) of the tank.

(iv) Where hazardous waste is continuously fed into a tank, the tank must be equipped with a means to stop this inflow (e.g., a waste feed cut off system) or bypass system to a stand by tank).

(Note: These systems are intended to be used in the event of a leak or overflow from the tank due to a system failure (e.g., a malfunction in the treatment process, a crack in the tank, etc.))

(C) Waste analysis and trial tests. In addition to the waste analysis required under subparagraph (B) of Rule .027(j)(3) whenever a tank is to be used to:

(I) chemically process or store a hazardous waste which is substantially different from waste previously processed or stored in that tank; or

(II) chemically process hazardous waste with a substantially different method than any previously used in

that tank, the owner or operator must, before processing or storing the different waste or using the different method:

(-a-) conduct waste analyses and trial processing or storage tests (e.g., bench scale or pilot plant scale tests); or

(-b-) obtain written documented information on similar storage or processing of similar waste under similar operating conditions to show that this proposed processing or storage will meet all applicable requirements of subparagraph (B)(*i*) and (*ii*) preceding.

(Note: As required by subparagraph (B)(*i*) of Rule .027(i)(3), the waste analysis plan must include analyses needed to comply with subparagraphs (F) and (G) following. As required by subparagraph (C) of Rule .027(i)(6), the owner or operator must place the results from each waste analysis and trial test or the documented information in the operating record of the facility.)

(D) Inspections.

(*i*) The owner or operator of a tank must inspect, where present:

(I) discharge control equipment (e.g., waste feed cut off systems, bypass systems, and drainage systems), at least once each operating day, to ensure that it is in good working order;

(II) data gathered from monitoring equipment (e.g., pressure and temperature gauges), at least once each operating day, to ensure that the tank is being operated according to its design;

(III) the level of waste in the tank, at least once each operating day, to ensure compliance with subparagraph (B)(*iii*) above, concerning required freeboard;

(IV) the construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and

(V) the construction materials of and the area immediately surrounding discharge confinement structures (e.g., dikes), at least weekly, to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

(Note: As required by subparagraph (D)(*iii*) of Rule .027(i)(3), the owner or operator must remedy any deterioration or malfunction he finds.)

(E) Closure. At closure, all hazardous waste and hazardous waste residues must be removed from tanks, discharge control equipment, and discharge confinement structures.

(Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate that any solid waste removed from his tank is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Rule .027(g).)

(F) Special requirements for ignitable or reactive wastes.

(*i*) Ignitable or reactive waste must not be placed in a tank unless:

(I) the waste is treated, rendered, or mixed before or immediately after placement in the tank so that:

(-a-) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste (see Table .030);

(-b-) subparagraph (F) of Rule .027(i)(3) is complied with; or

(II) the waste is stored or treated in such a way that it is protected from any material or conditions which may cause the waste to ignite or react; or

(III) the tank is used solely for emergencies.

(*ii*) The owner or operator of a facility which treats or stores ignitable or reactive waste in covered tanks must comply with the National Fire Protection Association's (NFPA's) buffer zone requirements for tanks contained in Tables 2-1 through 2-6 of the Flammable and Combustible Code—1977.

(Note: See subparagraph (F) of Rule .027(i)(3) for additional requirements.)

(G) Special requirements for incompatible wastes.

(*i*) Incompatible wastes or incompatible wastes and materials (see Table .032 for examples) must not be placed in the same tank unless subparagraph (F) of Rule .027(i)(3) is complied with.

(*ii*) Hazardous waste must not be placed in an unwashed tank which previously held an incompatible waste or material unless subparagraph (F) or Rule .027(i)(3) is complied with.

(12) Surface impoundments.

(A) Applicability. These requirements apply to owners or operators of municipal solid waste facilities that use surface impoundments to store, process, or dispose of hazardous waste.

(B) General operating requirements. A surface impoundment must maintain enough freeboard to prevent any overtopping of the dike by overfilling, wave action, or a storm. There must be at least 60 centimeters (two feet) of freeboard.

(C) Containment system. All earthen dikes must have a protective cover such as grass, shale, or rock to minimize wind and water erosion and to preserve their structural integrity.

(D) Waste analysis and trial tests.

(*i*) In addition to the waste analyses required by subparagraph (B) of Rule .027(i)(3), whenever a surface impoundment is to be used to:

(I) chemically process a hazardous waste which is substantially different from waste previously processed in that impoundment; or

(II) chemically process hazardous waste with a substantially different method than any previously used in that impoundment; the owner or operator must, before processing the different waste or using the different method:

(-a-) conduct waste analyses and trial treatment tests (e.g., bench scale or pilot plant scale tests); or

(-b-) obtain written, documented information on similar processing or similar waste under similar operating conditions; to show that this processing will comply with subparagraph (F) of Rule .027(i)(3).

(Note: As required by subparagraph (B) of Rule .027(i)(3), the waste analysis plan must include analyses needed to comply with subparagraphs (G) and (H) following. As required by subparagraph (C) or Rule .027(i)(6) the owner or operator must place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.)

(E) Inspections. The owner or operator must inspect:

(ii) the freeboard level at least once each operating day to ensure compliance with subparagraph (B) above; and

(iii) the surface impoundment, including dikes and vegetation surrounding the dike, at least once a week to detect any leaks, deterioration, or failures in the impoundment.

(Note: As required by subparagraph (D) of Rule .0276(i)(3), the owner or operator must remedy any deterioration or malfunction he finds.)

(F) Closure and postclosure.

(i) At closure, the owner or operator may elect to remove from the impoundment:

(I) standing liquids;

(II) waste and waste residues;

(III) the liner, if any; and

(IV) underlying and surrounding contaminated soil.

(ii) If the owner or operator removes all the impoundment materials listed in clause (i) above, or can demonstrate that none of the materials listed in clause (i) remaining at any stage of removal are hazardous wastes, the impoundment is not further subject to the requirements of surface impoundments.

(Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate that any solid waste removed from the surface impoundment is not a hazardous waste, he becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Rule .0276(g).)

(iii) If the owner or operator does not remove all the impoundment materials in clause (i) above, or does not make the demonstration in clause (ii) above, he must closure the impoundment and provide postclosure care as for a landfill under Rule .0276(i)(8) and(15), if necessary to support the final cover specified in the approved closure plan, the owner or operator must treat remaining liquids, residues, and soils by removal of liquids, drying, or other means.

(Note: The closure requirements under Rule .0276(i)(15) will vary with the amount and nature of the residue remaining, if any, and the degree of contamination of the underlying and surrounding soil. Subparagraph (G) of Rule .0276(i)(8) allows the Texas Department of Health to vary postclosure care requirements.)

(G) Special requirements for ignitable or reactive waste. Ignitable or reactive waste must not be placed in a surface impoundment, unless

(i) the waste is treated, rendered, or mixed before or immediately after placement in the impoundment so that

(I) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste (see Table .032), and

(II) subparagaph (F) of Rule .0276(i)(3) is complied with; or

(ii) the surface impoundment is used solely for emergencies.

(H) Special requirements for incompatible wastes. Incompatible wastes or incompatible wastes and materials (see Table .032 for examples) must not be placed in the same surface impoundment unless subparagraph (F) of Rule .0276(i)(3) is complied with.

(13) Waste piles.

(A) Applicability. These requirements apply to owners or operators of municipal solid waste facilities that store or process hazardous waste in piles. Alternatively, a pile of hazardous waste may be managed as landfill under requirements of Rule .0276(i)(15).

(B) Protection from wind. The owner or operator of a pile containing hazardous waste which could be subject to dispersal by wind must cover or otherwise manage the pile so that wind dispersal is controlled.

(C) Waste analysis. In addition to the waste analyses required under subparagraph (B) of Rule .0276(i)(3) the owner or operator must analyze a representative sample of waste from each incoming movement before adding the waste to any existing pile, unless

(i) the only wastes the facility receives which are amenable to piling are compatible with each other, and

(ii) the waste received is compatible with the waste in the pile to which it is to be added. The analysis conducted must be capable of differentiating between the types of hazardous waste the owner or operator places in piles, so that mixing of incompatible waste does not inadvertently occur. The analysis must include a visual comparison of color and texture.

(Note: As required by subparagraph (B) of Rule .0276(i)(3), the waste analysis plan must include analyses needed to comply with subparagraphs (E) and (F) following. As required under subparagraph (C) of Rule .0276(i)(6), the owner or operator must place the results of this analysis in the operator record of the facility.)

(D) Containment. If leachate or run off from a pile is a hazardous waste, then either

(i) the pile must be placed on an impermeable base that is compatible with the waste under the conditions of treatment or storage, run on must be diverted away from the pile, and any leachate and run off from the pile must be collected and managed as a hazardous waste; or

(ii) the pile must be protected from precipitation and run on by some other means and no liquids or wastes containing free liquids may be placed in the pile.

(iii) owner or operator must be in compliance with clauses (i) and (ii) above, by November 19, 1981.

(E) Special requirements for ignitable or reactive waste. Ignitable or reactive wastes must not be placed in a pile unless:

(i) addition of the waste to an existing pile:

(I) results in the waste or mixture no longer meeting the definition of ignitable or reactive waste (see Table .032); or

(II) complies with subparagraph (F) of Rule .0276(i)(3); or

(ii) the waste is managed in such a way that it is protected from any material or conditions which may cause it to ignite or react.

(F) Special requirements for incompatible wastes.

(i) Incompatible wastes or incompatible wastes and materials (see Table .032 for examples) must not be placed in the same pile unless subparagraph(F) of Rule .0276(i)(3) is complied with.

(ii) A pile of hazardous waste that is incompatible with any waste or other material stored nearby in other containers, piles, open tanks, or surface impoundments must be separated from the other materials, or protected from them by means of a dike, berm, wall, or other device.

(Note: The purpose of this requirement is to prevent fires, explosions, gaseous emissions, leaching, or other discharge of hazardous waste or hazardous waste constituents which could result from the contact or mixing of incompatible wastes or materials.)

(iii) Hazardous waste must not be piled on the same area where incompatible wastes or materials were previously piled, unless that area has been decontaminated sufficiently to ensure compliance with subparagraph (F) of Rule 027(i)(3).

(14) Land treatment.

(A) Applicability. These requirements apply to owners and operators of municipal solid waste facilities using land treatment of hazardous waste.

(B) General operating requirements.

(i) 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.

(ii) Run on must be diverted away from the active portions of a land treatment facility.

(iii) Run off from active portions of a land treatment facility must be collected.

(iv) Owners and operators must be in compliance with clauses (ii) and (iii) above, by November 19, 1981.

(C) Waste analysis. In addition to the waste analyses required under subparagaph (B) of Rule 027(i)(3) before placing a hazardous waste in or on a land treatment facility, the owner or operator must

(i) determine the concentrations in the waste of any substances which exceed the maximum concentrations contained in Table 1 of 40 Code of Federal Regulations Part 261.24 that cause a waste to exhibit the EP toxicity characteristic (see Table 032),

(ii) for any waste listed in 40 Code of Federal Regulations Part 261, Subpart D (see Tables 028 and 029), determine the concentrations of any substances which caused the waste to be listed as a hazardous waste, and

(iii) if food chain crops are grown, determine the concentrations in the waste of each of the following constituents - arsenic, cadmium, lead, and mercury unless the owner or operator has written, documented data that show that the constituent is not present.

(Note: Forty Code of Federal Regulations Part 261 specifies the substances for which a waste is listed as a hazardous waste. As required by subparagaph (B) of Rule 027(i)(3), the waste analysis plan must include analyses needed to comply with subparagraphs (H) and (I) following. As required under subparagraph (C) of Rule 027(i)(6) the owner or operator must place the results from each waste analysis or the documented information in the operating record of the facility.)

(D) Food chain crops.

(i) An owner or operator of a hazardous waste land treatment facility on which food chain crops are being grown, or have been grown and will be grown in the future, must notify the Texas Department of Health by January 19, 1981.

(ii) Food chain crops must not be grown on the treated area of a hazardous waste land treatment facility unless:

(I) the owner or operator can demonstrate based on field testing, that any arsenic, lead, mercury, or other constituents identified under subparagraph (C)(iii) preceding:

(-a-) will not be transferred to the food portion of the crop by plan uptake or direct contact, and will not otherwise be ingested by food chain animals (e.g., by grazing); or

(-b-) will not occur in greater concentrations in the crops grown on the land treatment facility than in the same crops grown on untreated soils under similar conditions in the same region.

(II) the information necessary to make the demonstration required by clause (ii)(I) above, must be kept at the facility and must, at a minimim:

(-a-) be based on tests for the specific waste and application rates being used at the facility; and

(-b-) include descriptions of crop and soil characteristics, sample selection criteria, sample size determination, analytical methods, and statistical procedures.

(iii) Food chain crops must not be grown on a land treatment facility receiving waste that contains cadmium unless all requirements of subclauses (I)-(III) below, are met, or all requirements of subclauses (IV)-(VI) below, are met.

(I) The pH of the waste and soil mixture is 6.5 or greater at the time of each waste application, except for waste containing cadmium concentrations of 2 mg/kg (dry weight) or less.

(II) The annual application of cadmium from waste does not exceed 0.5 kilograms per hectare (kg/ha) on land used for production of tobacco, leafy vegetables, or root crops grown for human consumption. For other food chain crops, the annual cadmium application rate does not exceed:

Time Period	Annual Cd application rate (kg/ha)
Present to June 30, 1984.....	2.0
July 1, 1984 to December 31, 1986	1.25
Beginning January 1, 1987.....	0.5

(III) The cumulative application of cadmium from waste does not exceed the level in either (-a-) or (-b-) below:

(-a-)

Soil cation exchange capacity (meq/100g)	Maximum cumulative application (kg/ha) Background soil pH Less Than 6.5	Background soil pH Greater Than 6.5
Less than 5 ..	5	5
5-15.....	5	10
Greater than 15	5	20

(-b-) For soils with a background pH of less than 6.5 the cumulative cadmium application rate does not exceed the levels below, provided, that pH of the waste and soil mixture is adjusted to and maintained at 6.5 or greater whenever food-chain crops are grown.

Soil cation exchange capacity	Maximum cumulative application (kg/ha)
Less than 5	5
5-15	10
Greater than 15	20

(IV) The only food chain crop produced is animal feed.

(V) The pH of the waste and soil mixture is 6.5 or greater at the time of waste application or at the time the crop is planted, whichever occurs later, and this pH level is maintained whenever food chain crops are grown.

(VI) There is a facility operating plan which demonstrates how the animal feed will be distributed to preclude ingestion by humans. The facility operating plan describes the measures taken to safeguard against possible health hazards from cadmium entering the food chain, which may result from alternative land use.

(VII) Future property owners are notified by a stipulation in the land record or property deed which states that the property has received waste at high cadmium application rates and that food chain crops should not be grown, due to a possible health hazard.

(Note: As required by subparagraph (C) of Rule .0276(i)(6), if an owner or operator grows food chain crops on his land treatment facility, he must place the information developed in this regulation in the operating record of the facility.)

(E) Unsaturated zone (zone of aeration) monitoring.

(i) The owner or operator must have in writing, and must implement, an unsaturated zone monitoring plan which is designed to

(I) detect the vertical migration of hazardous waste and hazardous waste constituents under the active portion of the land treatment facility, and

(II) provide information on the background concentrations of the hazardous waste and hazardous waste constituents in similar but untreated soils nearby; this background monitoring must be conducted before or in conjunction with the monitoring required by clause (i)(I) above.

(ii) The unsaturated zone monitoring plan must include, at a minimum

(I) soil monitoring using soil cores, and

(II) soil pore water monitoring using devices such as lysimeters.

(iii) To comply with clause (ii)(I) above, the owner or operator must demonstrate in his unsaturated zone monitoring plan that

(I) the depth at which soil and soil pore water samples are to be taken is below the depth to which the waste is incorporated into the soil.

(II) the number of soil and soil pore water samples to be taken is based on the variability of

(a) the hazardous waste constituents as identified in subparagraph (C)(ii) and (iii) preceding, in the waste and in the soil, and

(b) the soil type(s), and

(III) the frequency and timing of soil and soil pore water sampling is based on the frequency, time, and rate of waste application, proximity to ground water, and soil permeability.

(iv) The owner or operator must keep at the facility his unsaturated zone monitoring plan, and the rationale used in developing this plan.

(v) The owner or operator must analyze the soil and soil-pore water samples for the hazardous waste constituents that were found in the waste during the waste analysis required under subparagraphs (C)(i) and (ii) preceding.

(Note: As required under subparagraph (C) of Rule .0276(i)(7), all data and information developed by the owner or operator to comply with the above requirement must be placed in the operating record of the facility.)

(F) Record keeping. 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 under subparagraph (C) of Rule .0276(i)(6).

(G) Closure and postclosure.

(i) In the closure plan required under subparagraph (C) of Rule .0276(i)(8) and the postclosure plan required under subparagraph (H) of Rule .0276(i)(8), the owner or operator must address the following objectives and indicate how they will be achieved

(I) control of the migration of hazardous waste and hazardous waste constituents from the treated area into the ground water;

(II) control of the release of contaminated run off from the facility into surface water.

(III) control of the release of airborne particulate contaminants caused by wind erosion; and

(IV) compliance with subparagraph (D) of Rule .0276(i)(14), concerning the growth of food chain crops.

(ii) The owner or operator must consider at least the following factors in addressing the closure and postclosure care objectives of clause (i) above:

(I) type and amount of hazardous waste and hazardous waste constituents applied to the land treatment facility;

(II) the mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(III) site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to ground water, surface water, and drinking water sources;

(IV) climate, including amount, frequency, and pH of precipitation.

(V) geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(VI) unsaturated zone monitoring information obtained under subparagraph (E) of Rule .0276(i)(14), and

(VII) type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations

(iii) The owner or operator must consider at least the following methods in addressing the closure and postclosure care objectives of clause (i) above:

(I) removal of contaminated soils;

(II) 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;

(III) collection and treatment of run off;

(IV) diversion structures to prevent surface water run on from entering the treated area; and

(V) monitoring of soil, soil pore water, and ground water.

(iii) In addition to the requirements of subparagraph (G) of Rule .027(j)(8), during the postclosure care period, the owner or operator of a land treatment facility must:

(I) maintain an unsaturated zone monitoring system, and collect and analyze samples from this system in a manner and frequency specified in the postclosure plan;

(II) restrict access to the facility as appropriate for its postclosure use; and

(III) assure that growth of food chain crops complies with subparagraph (D) of Rule .027(j)(14).

(H) Special requirements for ignitable or reactive wastes. Ignitable or reactive wastes must not be land treated, unless the waste is immediately incorporated into the soil so that:

(i) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under 40 Code of Federal Regulations Parts 261.21 or 261.23 (see Table .030); and

(ii) subparagraph (F) of Rule .027(j)(3) is complied with.

(I) Special requirements for incompatible wastes. Incompatible wastes, or incompatible wastes and materials (see Table .032 for examples), must not be placed in the same land treatment area, unless subparagraph (F) of Rule .027(j)(3) is complied with.

(15) Landfills.

(A) Applicability. These requirements apply to owners and operators of municipal solid waste facilities that dispose of hazardous waste in landfills. A waste pile used as a disposal facility is a landfill and is also governed by these requirements.

(B) General operating requirements.

(i) Run on must be diverted away from the active portions of a landfill.

(ii) Run off from active portions of a landfill must be collected.

(iii) Owners or operators must be in compliance with clauses (i) and (ii) above, by November 19, 1981.

(iv) The owner or operator of a landfill containing hazardous waste which is subject to dispersal by wind must cover or otherwise manage a landfill so that wind dispersal of the hazardous waste is controlled.

(Note: As required by subparagraph (B) of Rule .027(j)(3), the waste analysis plan must include analyses needed to comply with subparagraphs (E) and (F) following. As required by subparagraph (C) of Rule .027(j)(6), the owner or operator must place the results of these analyses in the operating record of the facility.)

(C) Surveying and record keeping. The owner or operator of a landfill must maintain the following items in the operating record required by subparagraph (C) of Rule .027(j)(6).

(i) On a map, the exact location and dimensions, including depth of each cell with respect to permanently surveyed benchmarks; and

(ii) The contents of each cell and the approximate location of each hazardous waste type within each cell.

(D) Closure and postclosure.

(i) The owner or operator must place a final cover over the landfill and the closure plan under subparagraph (C) of Rule .027(j)(8), must specify the function and design of the cover. In the postclosure plan under subparagraph (H) of Rule .027(j)(8), the owner or operator must include the postclosure care requirements of clause (iii) following.

(ii) In the closure and postclosure plans, the owner or operator must address the following objectives and indicate how they will be achieved:

(I) control of pollutant migration from the facility via ground water, surface water, and air;

(II) control of surface water infiltration, including prevention of pooling; and

(III) prevention of erosion.

(iii) The owner or operator must consider at least the following factors in addressing the closure and postclosure care objectives of clause (ii), above:

(I) type and amount of hazardous waste and hazardous waste constituents in the landfill;

(II) the mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(III) site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to ground water, surface water, and drinking water sources);

(IV) climate, including amount, frequency, and pH of precipitation;

(V) 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; and

(VI) geological and soil profiles and surface and subsurface hydrology of the site.

(iv) In addition to the requirements of subparagraph (G) of Rule .027(j)(8), during the postclosure care period, the owner or operator of a hazardous waste landfill must:

(I) maintain the function and integrity of the final cover as specified in the approved closure plan;

(II) maintain and monitor the leachate collection, removal, and treatment system (if there is one present in the landfill) to prevent excess accumulation of leachate in the system;

(III) maintain and monitor the gas collection and control system (if there is one present in the landfill) to control the vertical and horizontal escape of gases;

(IV) protect and maintain surveyed bench marks; and

(V) restrict access to the landfill as appropriate for its postclosure use.

(E) Special requirements for ignitable or reactive waste. Ignitable or reactive waste must not be placed in a landfill, unless the waste is treated, rendered, or mixed before or immediately after placement in the landfill so that:

(i) the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reac-

tive waste under 40 Code of Federal Regulations Parts 261.21 or 261.23 (see Table .030); and

(iii) subparagraph (F) of Rule .027(i)(3) is complied with.

(F) Special requirements for incompatible wastes. Incompatible wastes or incompatible wastes and materials (see Table .032 for examples), must not be placed in the same landfill cell, unless subparagraph (F) of Rule .027(i)(3) is complied with.

(G) Special requirements for liquid waste.

(i) Bulk or noncontainerized liquid waste or waste containing free liquids must not be placed in a landfill, unless 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.

(ii) A container holding liquid waste or waste containing free liquids must not be placed in a landfill; unless:

(I) the container is designed to hold liquids or free liquids for a use other than storage, such as a battery or capacitor; or

(II) the container is very small, such as an ampule.

(iii) Owners or operators must be in compliance with the foregoing requirements by November 19, 1981.

(H) Special requirements for containers.

(i) An empty container must be crushed flat, shredded, or similarly reduced in volume before it is buried beneath the surface of a landfill.

(ii) Owners or operators must be in compliance with the foregoing requirement by November 19, 1981.

(16) Incinerators.

(A) Applicability. These requirements apply to owners and operators of municipal solid waste facilities that process hazardous waste in incinerators.

(B) General operating requirements. Before adding hazardous waste, the owner or operator must bring his incinerator to steady state (normal) conditions of operations, including steady state operating temperature and air flow, using auxiliary fuel or other means.

(C) Waste analysis. In addition to the waste analyses required by subparagraph (B) of Rule .027(i)(3), the owner or operator must sufficiently analyze any waste which he has not previously burned in his incinerator to enable him to establish steady state (normal) operating conditions (including waste and auxiliary fuel feed and air flow) and to determine the type of pollutants which might be emitted. At a minimum, the analysis must determine:

(i) heating value of the waste;

(ii) halogen content and sulfur content in the waste; and

(iii) concentrations in the waste of lead and mercury, unless the owner or operator has written, documented data that show that the element is not present.

(Note: As required by subparagraph (C) of Rule .027(i)(6) the owner or operator must place the results from each waste analysis, or the documented information, in the operating record of the facility.)

(D) Monitoring and inspections.

(i) The owner or operator must conduct, as a minimum, the following monitoring and inspections when incinerating hazardous wastes:

(I) Existing instruments which relate to combustion and emission control must be monitored at least every 15 minutes. Appropriate corrections to maintain steady state combustion conditions must be made immediately either automatically or by the operator. Instruments which relate to combustion and emission control would normally include those measuring waste feed, auxiliary fuel feed, air flow, incinerator temperature, scrubber flow, scrubber pH, and relevant level controls.

(II) The stack plume (emissions) must be observed visually at least hourly for normal appearance (color and opacity). The operator must immediately make any indicated operating corrections necessary to return visible emissions to their normal appearance.

(III) The complete incinerator and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

(E) Closure. At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including but not limited to ash, scrubber waters, and scrubber sludges) from the incinerator.

(Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate that any solid waste removed from his incinerator is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Rule .027(g).)

(17) Thermal processing.

(A) Applicability. These requirements apply to owners and operators of municipal solid waste facilities that thermally process hazardous waste in devices other than incinerators.

(B) General operating requirements. Before adding hazardous waste, the owner or operator must bring his thermal processing system to steady state (normal) conditions of operation, including steady state operating temperature, using auxiliary fuel or other means, unless the system is a noncontinuous (batch) thermal processing system which requires a complete thermal cycle to process a discrete quantity of hazardous waste.

(C) Waste analyses. In addition to the waste analyses required by subparagraph (B) of Rule .027(i)(3), the owner or operator must sufficiently analyze any waste which he has not previously processed in his thermal system to enable him to establish steady state (normal) or other appropriate (for a noncontinuous process) operating conditions (including waste and auxiliary fuel feed) and to determine the type of pollutants which might be emitted. At a minimum, the analysis must determine:

(i) heating value of the waste;

(ii) halogen content and sulfur content in the waste; and

(iii) concentrations in the waste of lead and mercury; unless the owner or operator has written, documented data that show that the element is not present.

(Note: As required by subparagraph (C) of Rule .027(i)(6), the owner or operator must place the results from each waste analysis, or the documented information, in the operating record of the facility.)

(D) Monitoring and inspections. The owner or operator must conduct, as a minimum, the following monitor

ing and inspections when thermally processing hazardous waste:

(i) Existing instruments which relate to temperature and emission control (if an emission control device is present) must be monitored at least every 15 minutes. Appropriate corrections to maintain steady state or other appropriate thermal processing conditions must be made immediately either automatically or by the operator. Instruments which relate to temperature and emission control would normally include those measuring waste feed, auxiliary fuel feed, process temperature, and relevant process flow and level controls.

(ii) The stack plume (emissions), where present, must be observed visually at least hourly for appearance (color and opacity). The operator must immediately make any indicated operating corrections necessary to return any visible emissions to their normal appearance.

(iii) The complete thermal processing system and associated equipment (pumps, valves, conveyors, pipes, etc.) must be inspected at least daily for leaks, spills, and fugitive emissions, and all emergency shutdown controls and system alarms must be checked to assure proper operation.

(E) Closure. At closure, the owner or operator must remove all hazardous waste and hazardous waste residues (including but not limited to ash) from the thermal processing system or equipment.

(Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate that any solid waste removed from his thermal processing system or equipment is not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Rule .0273(g).)

(F) Open burning; waste explosives. Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives. Waste explosives include waste which has the potential to detonate and bulk military propellants which cannot safely be disposed of through other modes of processing. Detonation is an explosion in which chemical transformation passes through the material faster than the speed of sound (0.33 kilometers/second at sea level). Owners or operators choosing to open burn or detonate waste explosives must do so in accordance with the following table and in a manner that does not threaten human health or the environment.

Pounds of Waste Explosives or propellants	Minimum Distances from Open Burning or Detonation to the Property of Others
0 to 100	204 meters (670 feet)
101 to 1,000	380 meters (1,250 feet)
1,001 to 10,000	530 meters (1,730 feet)

(18) Chemical, physical, and biological processing.

(A) Applicability. These requirements apply to owners and operators of municipal solid waste facilities which process hazardous wastes by chemical, physical, or biological methods in other than tanks, surface impoundments, and land treatment facilities.

(B) General operating requirements.

(i) Chemical, physical, or biological processing of hazardous waste must comply with subparagraph (F) of Rule .0273(g)(3).

(ii) Hazardous waste or processing reagents must not be placed in the processing system or equipment if they could cause the processing system or equipment to rupture, leak, corrode, or otherwise fail before the end of its intended life.

(iii) Where hazardous waste is continuously fed into a processing system or equipment, the system or equipment must be equipped with a means to stop this inflow (e.g., a waste feed cut off system or bypass system to a stand-by containment device).

(Note: These systems are intended to be used in the event of a malfunction in the treatment process or equipment.)

(C) Waste analysis and trial tests. In addition to the waste analysis required by subparagraph (B) of Rule .0273(g)(3), whenever

(i) a hazardous waste which is substantially different from waste previously processed in a processing system or equipment at the facility is to be processed in that system or equipment, or

(ii) a substantially different system than any previously used at the facility is to be used to chemically process hazardous waste, the owner or operator must, before processing the different waste or using the different system or equipment

(I) conduct waste analyses and trial processing tests (e.g., bench scale or pilot plant scale tests), or

(II) obtain written, documented information on similar processing of similar waste under similar operating conditions, to show that this proposed processing will meet all applicable requirements of subparagraphs (B)(i) and (ii) preceding.

(Note: As required by subparagraph (B) of Rule .0273(g)(3), the waste analysis plan must include analyses needed to comply with subparagraphs (F) and (G) following. As required by subparagraph (C) of Rule .0273(g)(6), the owner or operator must place the results from each waste analysis and trial test, or the documented information, in the operating record of the facility.)

(D) Inspections. The owner or operator of a processing facility must inspect, where present:

(i) discharge control and safety equipment (e.g., waste feed cut off system, bypass systems, drainage systems, and pressure relief systems) at least once each operating day, to ensure that it is in good working order;

(ii) data gathered from monitoring equipment (e.g., pressure and temperature gauges), at least once each operating day to ensure that the processing system or equipment is being operated according to its design;

(iii) the construction materials of the processing system or equipment at least weekly to detect corrosion or leaking of fixtures or seams; and

(iv) the construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

(Note: As required by subparagraph (D)(iii) of Rule .0273(g)(3), the owner or operator must remedy any deterioration or malfunction he finds.)

(E) Closure. At closure, all hazardous waste and hazardous waste residues must be removed from processing systems or equipment, discharge control equipment, and discharge confinement structures.

(Note: At closure, as throughout the operating period, unless the owner or operator can demonstrate that any solid waste removed from his processing system or equipment is

not a hazardous waste, the owner or operator becomes a generator of hazardous waste and must manage it in accordance with all applicable requirements of Rule .027(g).)

(F) Special requirements for ignitable or reactive waste. Ignitable or reactive waste must not be placed in a processing system or equipment unless:

(i) the waste is processed, rendered, or mixed before or immediately after placement in the processing system or equipment so that:

(I) the resulting waste, mixture, or disolution of material no longer meets the definition of ignitable or reactive waste under 40 Code of Federal Regulations Parts 261.21 or 261.23; (see Table .030); and

(II) subparagraph (F) of Rule .027(j)(3), is complied with; or

(ii) the waste is processed in such a way that it is protected from any material or conditions which may cause the waste to ignite or react.

(G) Special requirements for incompatible wastes.

(i) Incompatible wastes, or incompatible wastes and materials (see Table .032 for examples) must not be placed in the same processing system or equipment, unless subparagraph (F) of Rule .027(j)(3) is complied with.

(ii) Hazardous waste must not be placed in unwashed processing equipment which previously held an incompatible waste or material, unless subparagraph (F) of Rule .027(j)(3) is complied with.

.028. Lists of Hazardous Wastes.

LISTS OF HAZARDOUS WASTES
(Reference: 40 CFR Part 261, Subpart D)

Section 261.30-EPA HAZARD CODES

Ignitable Waste ..... (I)
Corrosive Waste ..... (C)
Reactive Waste ..... (R)
EP Toxic Waste ..... (E)
Acute Hazardous Waste ... (H)
Toxic Waste ..... (T)

Section 261.31 - HAZARDOUS WASTE FROM NONSPECIFIC SOURCES

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
Generic:		
F001	The spent halogenated solvents used in degreasing, tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and the chlorinated fluorocarbons; and sludges from the recovery of these solvents in degreasing operations.	(T)
F002	The spent halogenated solvents, tetrachloroethylene, methylene chloride trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, o-dichlorobenzene, trichlorofluoromethane and the still bottoms from the recovery of these solvents.	(T)
F003	The spent nonhalogenated solvents, xylene, acetone, ethyl acetate, ethyl ether, n-butyl alcohol, cyclohexanone, and the still bottoms from the recovery of these solvents.	(I)
F004	The spent nonhalogenated solvents, cresols and cresylic acid, nitrobenzene, and the still bottoms from the recovery of these solvents.	(T)
F005	The spent nonhalogenated solvents, methanol, toluene, methyl ethyl ketone, methyl isobutyl ketone, carbon disulfide, isobutanol, pyridine, and the still bottoms from the recovery of these solvents.	(I, T)
F006	Wastewater treatment sludges from electroplating operations.	(T)
F007	Spent plating bath solutions from electroplating operations	(R, T)
F008	Plating bath sludges from the bottom of plating baths from electroplating operations.	(R, T)
F009	Spent stripping and cleaning bath solutions from electroplating operations.	(R, T)
F010	Quenching bath sludge from oil baths from metal heat treating operations.	(R, T)
F011	Spent solutions from salt bath pot cleaning from metal heat treating operations	(R, T)
F012	Quenching wastewater treatment sludges from metal heat treating operations	(T)
F013	Flotation tailings from selective flotation from mineral metals recovery operations.	(T)
F014	Cyanidation wastewater treatment tailing pond sediment from mineral metals recovery operations.	(T)
F015	Spent cyanide bath solutions from mineral metals recovery operations.	(R, T)
F016	Dewatered air pollution control scrubber sludges from coke ovens and blast furnaces.	(T)
F017	Paint residues or sludges from industrial painting in the mechanical and electrical products industry.	(T)
F018	Wastewater treatment sludge from industrial painting in the mechanical and electrical products industry.	(T)

Section 261.31 - HAZARDOUS WASTE FROM SPECIFIC SOURCES

Industry and EPA Hazardous Waste No.	Hazardous Waste	Hazard Code
Wood Preservation:		
K001	Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
Inorganic Pigments:		
K002	Wastewater treatment sludge from the production of chrome yellow and orange pigments.	(T)
K003	Wastewater treatment sludge from the production of molybdate orange pigments.	(T)
K004	Wastewater treatment sludge from the production of zinc yellow pigments.	(T)
K005	Wastewater treatment sludge from the production of chrome green pigments.	(T)
K006	Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated)	(T)
K007	Wastewater treatment sludge from the production of iron blue pigments.	(T)
K008	Oven residue from the production of chrome oxide green pigments.	(T)
Organic Chemicals:		
K009	Distillation bottoms from the production of acetaldehyde from ethylene.	(T)
K010	Distillation side cuts from the production of acetaldehyde from ethylene	(T)
K011	Bottom stream from the wastewater stripper in the production of acrylonitrile.	(R, T)
K012	Still bottoms from the final purification of acrylonitrile in the production of acrylonitrile.	(T)
K013	Bottom stream from the acetonitrile column in the production of acrylonitrile.	(R, T)
K014	Bottoms from the acetronitrile purification column in the production of acryionitrile.	(R, T)
K015	Still bottoms from the distillation of benzyle chloride.	(T)
K016	Heavy ends or distillation residues from the production of carbon tetrachloride.	(T)
K017	Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.	(T)
K018	Heavy ends from fractionation in ethyl chloride production.	(T)
K019	Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production.	(T)
K020	Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.	(T)
K021	Aqueous spent antimony catalyst waste from fluoromethanes production.	(T)
K022	Distillation bottom tars from the production of phenol/aceone from cumene.	(T)
K023	Distillation light ends from the production of phtalic anhydride from naphthalene.	(T)
K024	Distillation bottoms from the production of phthalic anhydride from naphthalene.	(T)
K025	Distillation bottoms from the production of nitrobenzene by the nitration of benzene.	(T)
K026	Stripping still tails from the production of methyl ethyl pyridines.	(T)
K027	Centrifuge residue from toluene disocyanate production.	(R, T)
K028	Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane.	(T)
K029	Waste from the product stream stripper in the production of 1,1,1-trichloroethane.	(T)
K030	Column bottoms or heavy ends from the combined production of trichloroethylene and perchiornethylene.	(T)
Pesticides:		
K031	By-products salts generated in the production of MSMA and cacodylic acid.	(T)
K032	Wastewater treatment sludge from the production of chlordane.	(T)
K033	Wastewater and scrub water from the chlorination of cyclopentadiene in the of chlordane.	(T)
K034	Filter solids from the filtration of hexachlorocyclopentadiene in the production of chlordane.	(T)
K035	Wastewater treatment sludges generated in the production of creosote.	(T)
K036	Still bottoms from toluene reclamation distillation in the production of disulfoton.	(T)
K037	Wastewater treatment sludges from the production of disulfoton.	(T)
K038	Wastewater from the washing and stripping of phorate production.	(T)
K039	Filter cake from the filtration of diethylphosphorodithoric acid in the production of phorate.	(T)
K040	Wastewater treatment sludge from the production of phorate.	(T)
K041	Wastewater treatment sludge from the production of toxaphene.	(T)
K042	Heavy ends or distillation residues from the distillation of tetrachlorobenzene in the production of 2,4,5-T	(T)
K043	2,6-Dichlorophenol waste from the production of 2,4-D.	(T)
Explosives:		
K044	Wastewater treatment sludges from the manufacturing and processing of explosives.	(R)
K045	Spent carbon from the treatment of wastewater containing explosives.	(R)
K046	Wastewater treatment sludges from the manufacturing, formulation and loading of lead-based initiating compounds.	(T)
K047	Pink/red water from TNT operations.	(R)
Petroleum Refining:		
K048	Dissolved air flotation (DAF) float from the petroleum refining industry.	(T)
K049	Stop oil emulsion solids from the petroleum refining industry.	(T)
K050	Heat exchanger bundle cleaning sludge from the petroleum refining industry.	(T)

K051.....	API separator sludge from the petroleum refining industry.	(T)
K052.....	Tank bottoms (leaded) from the petroleum refining industry.	(T)
Leather Tanning Fininshing:		
K053.....	Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/ chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.	(T)
K054.....	Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/ chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.	(T)
K055.....	Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/ chrome tan/ retan/wet finish; retan/wet finish; no beamhouse; and through-the-blue.	(T)
K056.....	Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/ retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.	(T)
K057.....	Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/ chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-th . . e and shearling.	(T)
K058.....	Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/ chrome tan/retan/wet finish; and through-the-blue.	(R, T)
K059.....	Wastewater treatment sludges generated by the following subcategory of the tanning and finishing industry: hair save/nonchrome tan/retan/wet finish.	(R)
Iron and Steel:		
K060.....	Ammonia still lime sludge from coking operations.	(T)
K061.....	Emission control dust/sludge from the electric furnace production of steel.	(T)
K062.....	Spent pickle liquor from steel finishing operations.	(C, T)
K063.....	Sludge from lime treatment of spent pickle liquor from steel finishing operations.	(T)
Primary Copper:		
K064.....	Acid plant blowdown slurry/sludge resulting from the thickening of blowdown slurry from primary copper production.	(T)
Primary Lead:		
K065.....	Surface impoundment solids co ntained in and dredged from surface impoundments at primary lead smelting facilities.	(T)
Primary Zinc:		
K066.....	Sludge from treatment of process wastewater and/or acid plant blowdown from primary zinc production.	(T)
K067.....	Electrolytic anode slimes/sludges from primary zinc production.	(T)
K068.....	Cadmium plant leach residue (iron oxide) from primary zinc production.	(T)
Secondary Lead:		
K069.....	Emission control dust/sludge from secondary lead smelting.	(T)
Inorganic Chemicals:		
K071.....	Brine purification muds from the mercury cell process in chlorine production, where separately prepurified brine is not used.	(T)
K073.....	Chlorinated hydrocarbon wastes from the purification step of the diaphragm cell process using graphite anodes in chlorine production.	(T)
K074.....	Wastewater treatment sludges from the production of TiO_2 pigment using chromium bearing ores by the chloride process.	(T)
Paint Manufacturing:		
K078.....	Solvent cleaning wastes from equipment and tank cleaning from paint manufacturing.	(I, T)
K079.....	Water or caustic cleaning wastes from equipment and tank cleaning from paint manufacturing.	(T)
K081.....	Wastewater treatment sludges from paint manufacturing.	(T)
K082.....	Emission control dust or sludge from paint manufacturing.	(T)
Organic Chemicals:		
K083.....	Distillation bottoms from aniline production.	(T)
K085.....	Distillation or fractionating column bottoms from the production of chlorobenzenes.	(T)
Ink Formulation:		
K086.....	Solvent washes and sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead.	(T)
Veterinary Pharmaceuticals:		
K084.....	Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.	(T)
Coking:		
K087.....	Decanter tank tar sludge from coking operations.	(T)
Primary Aluminum:		
K088.....	Spent potliners from primary aluminum reduction.	(T)
Ferroalloys:		
K090.....	Emission control dust or sludge from ferrochromium-silicon production.	(T)
K091.....	Emission control dust or sludge from ferrochromium production.	(T)
K092.....	Emission control dust or sludge from ferromanganese production.	(T)

Section 261.33(f) - TOXIC HAZARDOUS WASTES - EPA HAZARD CODE T

Hazardous Waste No.	Substance
	AAF see U005
U001	Acetaldehyde
U002	Acetone (I)
U003	Acetonitrile (I, T)
U004	Acetophenone
U005	2-Acetylaminoflourene
U006	Acetyl chloride (C, T)
U007	Acrylamide
	Acetylene tetrachloride see U209
	Acetylene trichloride see U228
U008	Acrylic acid (I)
U009	Acrylonitrile
	AEROTHENE TT see U226
	3-Amino-5-(p-acetamidophenyl)-1H-1,2,4-triazole, hydrate see U011
U010	6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxymethyl) 8-methoxy-5-methylcarbamate azirino (2',3',3,4) pyrrolo (1,2-a) indole-4,7-dione (ester)
U011	Amitrole
U012	Aniline (I)
U013	Asbestos
U014	Auramine
U015	Azaserine
U016	Benz(c)acridine
U017	Benzal chloride
U018	Benz(a)anthracene
U019	Benzene
U020	Benzenesulfonyl chloride (C,R)
U021	Benzidine
	1,2-Benzisothiazolin-3-one, 1,1-dioxide see U202
	Benzo(a)anthracene see U018
U022	Benzo(a)pyrene
U023	Benzotrichloride (C,R,T)
U024	Bis(2-chloroethoxy)methane
U025	Bis(2-chloroethyl) ether
U026	N,N-Bis(2-chlorethyl)-2-naphthylamine
U027	Bis(2-chloroisopropyl) ether
U028	Bis(2-ethylhexyl) phthalate
U029	Bromomethane
U030	4-Bromophenyl phenyl ether
U031	n-Butyl alcohol (I)
U032	Calcium chromate
	Carbolic acid see U188
	Carbon tetrachloride see U211
U033	Carbonyl fluoride
U034	Chloral
U035	Chlorambucil
U036	Chlordane
U037	Chlorobenzene
U038	Chlorobenzilate
U039	p-Chloro-m-cresol
U040	Chlorodibromomethane

Hazardous Waste No.	Substance
U041	1-Chloro-2,3-epoxypropane
	CHLOROETHENE NU see U226
U042	Chloroethyl vinyl ether
U043	Chloroethene
U044	Chloroform (I,T)
U045	Chloromethane (I,T)
U046	Chloromethyl methyl ether
U047	2-chloronaphthalene
U048	2-Chlorophenol
U049	4-Chloro-o-toluidine hydrochloride
U050	Chrysene
	C.I.23060 see U073
U051	Cresote
U052	Cresols
U053	Crotonaldehyde
U054	Cresylic acid
U055	Cumene
	Cyanomethane see U003
U056	Cyclohexane (I)
U057	Cyclohexanone (I)
U058	Cyclophosphamide
U059	Daunomycin
U060	DDD
U061	DDT
U062	Diallate
U063	Dibenz(a,h)anthracene
	Dibenzo(a,h)anthracene see U063
U064	Dibenzo(a,i)pyrene
U065	Dibromochloromethane
U066	1,2-Dibromo-3-chloropropane
U067	1,2-Dibromoethane
U068	Dibromomethane
U069	Di-n-butyl phthalate
U070	1,2-Dichlorobenzene
U071	1,3-Dichlorobenzene
U072	1,4-Dichlorobenzene
U073	3,3'-Dichlorobenzidine
U074	1,4-Dichloro-2-butene
	3,3'-Dichloro-4,4'-diaminobiphenyl see U07
U075	Dichlorodifluoromethane
U076	1,1-Dichloroethane
U077	1,2-Dichloroethane
U078	1,1-Dichloroethylene
U079	1,2-trans-dichloroethylene
U080	Dichloromethane
	Dichloromethylbenzene see U017
U081	2,4-Dichlorophenol
U082	2,6-Dichlorophenol
U083	1,2-Dichloropropane
U084	1,3-Dichloropropene
U085	Diepoxybutane (I,T)

Hazardous Waste No.	Substance
U086	1,2-Diethylhydrazine
U087	O,O-Diethyl-S-methyl ester of phosphorodithioic acid
U088	Diethyl phthalate
U089	Diethylstilbestrol
U090	Dihydrosafrole
U091	3,3'-Dimethoxybenzidine
U092	Dimethylamine (I)
U093	p-Dimethylaminoazobenzene
U094	7,12-Dimethylbenz(a)anthracene
U095	3,3'-Dimethylbenzidine
U096	alpha,alpha-Dimethylbenzylhydroperoxide (R)
U097	Dimethylcarbamoyl chloride
U098	1,1-Dimethylhydrazine
U099	1,2-Dimethylhydrazine
U100	Dimethylnitrosoamine
U101	2,4-Dimethylphenol
U102	Dimethyl phthalate
U103	Dimethyl sulfate
U104	2,4-Dinitrophenol
U105	2,4-Dinitrotoluene
U106	2,6-Dinitrotoluene
U107	Di-n-octyl phthalate
U108	1,4-Dioxane
U109	1,2-Diphenylhydrazine
U110	Dipropylamine (I)
U111	Di-n-propylnitrosamine
	EBDC see U114
	1,4-Epoxybutane see U213
U112	Ethyl acetate (I)
U113	Ethyl acrylate (I)
U114	[Ethylenebisdithiocarbamate
U115	Ethylene oxide (I,T)
U116	Ethylene thiourea
U117	Ethyl ether (I,T)
U118	Ethylmethacrylate
U119	Ethyl methanesulfonate
	Ethylnitrile see U003
	Firemaster T23P see U235
U120	Fluoranthene
U121	Fluorotrichloromethane
U122	Formaldehyde
U123	Formic acid (C,T)
U124	Furan (I)
U125	Furfural (I)
U126	Glycidylaldehyde
U127	Hexachlorobenzene
U128	Hexachlorobutadiene
U129	Hexachlorocyclohexane
U130	Hexachlorocyclopentadiene
U131	Hexachloroethane
U132	Hexachlorophene
U133	Hydrazine (R,T)
U134	Hydrofluoric acid (C,T)

Hazardous Waste No.	Substance
U135	Hydrogen sulfide
	Hydroxybenzene see U188
U136	Hydroxydimethyl arsine oxide
	4,4'-(Imidocarbonyl)bis(N,N-dimethyl)aniline see U014
U137	Indeno(1,2,3-cd)pyrene
U138	Iodomethane
U139	Iron Dextran
U140	Isobutyl alcohol
U141	Isosafrole
U142	Kepone
U143	Lasiocarpine
U144	Lead Acetate
U145	Lead phosphate
U146	Lead subacetate
U147	Maleic anhydride
U148	Maleic hydrazide
U149	Malononitrile
	MEK Peroxide see U160
U150	Melphalan
U151	Mercury
U152	Methacrylonitrile
U153	Methanethiol
U154	Methanol
U155	Methapyrilene
	Methyl alcohol see U154
U156	Methyl chlorocarbonate
	Methyl chloroform see U226
U157	3-Methylcholanthrene
	Methyl chloroformate see U156
U158	4,4'-Methylene-bis-(2-chloroaniline)
U159	Methyl ethyl ketone (MEK) (I,T)
U160	Methyl ethyl ketone peroxide (R)
	Methyl iodide see U138
U161	Methyl isobutyl ketone
U162	Methyl methacrylate (R,T)
U163	N-Methyl-N'-nitro-N-nitrosoguanidine
U164	Methylthiouracil
	Mitomycin C see U010
U165	Naphthalene
U166	1,4-Naphthoquinone
U167	1-Naphthylamine
U168	2-Naphthylamine
U169	Nitrobenzene (I,T)
	Nitrobenzol see U169
U170	4-Nitrophenol
U171	2-Nitropropane (I)
U172	N-Nitrosodi-n-butylamine
U173	N-Nitrosodiethanolamine
U174	N-Nitrosodiethylamine
U175	N-Nitrosodi-n-propylamine
U176	N-Nitroso-n-ethylurea
U177	N-Nitroso-n-methylurea
U178	N-Nitroso-n-methylurethane

Hazardous Waste No.	Substance
U179	N-Nitrosopiperidine
U180	N-Nitrosopyrrolidine
U181	5-Nitro-toluidine
U182	Paraldehyde
	PCNB see U185
U183	Pentachlorobenzene
U184	Pentachloroethane
U185	Pentachloronitrobenzene
U186	1,3-Pentadiene (I)
	Perc see U210
	Perchlorethylene see U210
U187	Phenacetin
U188	Penol
U189	Phosphorous sulfide (R)
U190	Phthalic anhydride
U191	2-Picoline
U192	Pronamide
U193	1,3-Propane sultone
U194	N-Propylamine (I)
U196	Pyridine
U197	Quinones
U200	Reserpine
U201	Resorcinol
U202	Saccharin
U203	Safrole
U204	Selenious acid
U205	Selenium sulfide (R,T)
	Silvex see U233
U206	Streptozotocin
	2,4,5-T see U232
U207	1,2,4,5-Tetrachlorobenzene
U208	1,1,1,2-Tetrachloroethane
U209	1,1,2,2-Tetrachloroethane
U210	Tetrachloroethene
	Tetrachloroethylene see U210
U211	Tetrachloromethane
U212	2,3,4,6-Tetrachlorophenol
U213	Tetrahydrofuran (I)
U214	Thallium (I) acetate
U215	Thallium (I) carbonate
U216	Thallium (I) chloride
U217	Thallium (I) nitrate
U218	Thioacetamide
U219	Thiourea
U220	Toluene
U221	Toluenediamine
U222	o-Toluidine hydrochloride
U223	Toluene diisocyanate
U224	Toxaphene
	2,4,5-TP see U233
U225	Tribomomethane
U226	1,1,1-Trichloroethane
U227	1,1,2-Trichloroethane
U228	Trichloroethene
	Trichloroethylene see U228
U229	Trichlorofluoromethane
U230	2,4,5-Trichlorophenol
U231	2,4,6-Trichlorophenol
U232	2,4,5-Trichlorophenoxyacetic acid
U233	2,4,5-Trichlorophenoxypropionic acid alpha, alpha, alpha-Trichlorotoluene see U023
	TRI-CLENE see U228
U234	Trinitrobenzene (R,T)
U235	Tris(2,3-dibromopropyl) phosphate
U236	Trypan blue
U237	Uracil mustard
U238	Urethane
	Vinyl chloride see U043
	Vinylidene chloride see U078
U239	Xylene

NOTE: EPA included those trade names of which it was aware; an omission of a trade name in the foregoing lists does not impl, that the omitted material is not hazardous. The material is hazardous if it is listed under its generic name. The foregoing list of hazardous wastes is subject to change at a future date.

.029. *Acute Hazardous Wastes—EPA Hazard Code H.*

ACCUTE HAZARDOUS WASTES - EPA HAZARD CODE H
Reference: Section 261.33(e) of 40 CFR Part 261, Subpart D)

Hazardous Waste No.	Substance
	1080 see P058
	1081 see P057
	(Acetato)phenylmercury see P092
	Acetone cyanohydrin see P069
P001	3-(alpha-Acetony'benzyl)-4-hydroxycoumarin and salts
P002	1-Acetyl-2-thiourea
P003	Acrolein
	Agarin see P007
	Agrosan GN 5 see P092
	Aldicarb see P069
	Aldifen see P048
P004	Aldrin
	Algimycin see P092
P005	Allyl alcohol
P006	Aluminum phosphide (R)
	ALVIT see P037
	Aminoethylene see P054
P007	5-(Aminomethyl)-3-isoxazolol
P008	4-Aminopyridine
	Ammonium metavanadate see P119
P009	Ammonium picrate (R)
	ANTIMUCIN WDR see P092
	ANTURAT see P073
	AQUATHOL see P088
	ARETIT see P020
P010	Arsenic Acid
P011	Arsenic pentoxide
P012	Arsenic trioxide
	Athrombin see P001
	AVITROL see P008
	Aziridene see P054
	AZOFOS see P061
	Azophos see P061
	BANTU see P072
P013	Barium cyanide
	BASENITE see P020
	BCME see P016
P014	Benzenethiol
	Benzoepin see P050
P015	Beryllium dust
P016	Bis(chloromethyl)ether
	BLADAN-M see P071
P017	Bromoacetone
P018	Brucine
P019	2-Butanone peroxide
	BUFEN see P092
	Butaphene see P020
P020	2-sec-Butyl-4,6-dinitrophe ol
P021	Calcium cyanide
	CALDON see P020

Hazardous Waste No.	Substance
P022	Carbon disulfide
	CERESAN see P092
	CERESAN UNIVERSAL see P092
	CHEMOX GENERAL see P020
	CHEMOX P.E. see P020
	CHEM-TOL see P090
P023	Chloroacetaldehyde
P024	p-Chloroaniline
P025	1-(p-Chlorobenzoyl)-5 methoxy-2-methylindole-3-acetic acid
P026	1-(o-Chlorophenyl)thiourea
P027	3-Chloropropionitrile
P028	alpha-Chlorotoluene
P029	Copper cyanide
	CRETOX see P108
	Coumadin see P001
	Coumafen see P001
P030	Cyanides
P031	Cyanogen
P032	Cyanogen bromide
P033	Cyanogen chloride
	Cyclodan see P050
P034	2-Cyclohexyl-4,6-dinitrophenol
	D-CON see P001
	DETHMOR see P001
	DETHNEL see P001
	DFP see P043
P035	2,4-Dichlorophenoxyacetic acid (2,4-D)
P036	Dichlorophenylarsine
	Dicyanogen see P031
P037	Dieldrin
	DIELDREX see P037
P038	Diethylarsine
P039	O,O-Diethyl-S-(2-(ethylthio)ethyl)ester of phosphorothioic acid
P040	O,O-Diethyl-O-(2-pyrazinyl)phosphorothioate
P041	O,O-Diethyl phosphoric acid, O p-nitrophenyl ester
P042	3,4-Dihydroxy-alpha-(methylamino)-methyl benzyl alcohol
P043	Di-isopropylfluorophosphate
	DIMETATE see P044
	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro endo, endo see P060
P044	Dimethoate
P045	3,3-Dimethyl-1-(methylthio)-2-butanone-O-[(methylamino)carbonyl)] oxime
P046	alpha,alpha-Dimethylphenethylamine
	Dinitrocyclohexylphenol see P034
P047	4,6-Dinitro-o-cresol and salts

Hazardous Waste No.	Substance
P048.....	2,4-Dinitrophenol
	DINOSEB see P020
	DINOSEBE see P020
	Disulfoton see P039
P049.....	2,4-Dithiobiuret
	DNBP see P020
	DOLCO MOUSE CEREAL see P108
	DOW GENERAL see P020
	DOW GENERAL WEED KILLER see P020
	DOW SELECTIVE WEED KILLER see P020
	DOWICIDE G see P090
	DYANACIDE see P092
	EASTERN STATES DUOCIDE see P001
	ELGETOL see P020
P050.....	Endosulfan
P051.....	Endrin
	Epinephrine see P042
P052.....	Ethylcyanide
P053.....	Ethylenediamine
P054.....	Ethyleneimine
	FASCO FASCRAT POWDER see P001
	FEMMA see P091
P055.....	Ferric cyanide
P056.....	Fluorine
P057.....	2-Fluoroacetamide
P058.....	Fluoroacetic acid, sodium salt
	FOLODOL-80 see P071
	FOLODOL M see P071
	FOSFERNO M 50 see P071
	FRATOL see P058
	Fulminate of mercury see P065
	FUNGITOX OR see P092
	FUSSOF see P057
	GALLOTOX see P092
	GEARPHOS see P071
	GERUTOX see P020
P059.....	Heptachlor
P060.....	1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo, endo-dimethanonaphthalene
	1,4,5,6,7,7-Hexachloro-cyclic-5-norbornene-2,3-dimethanol sulfite see P050
P061.....	Hexachloropropene
P062.....	Hexaethyl tetraphosphate
	HOSTAQUICK see P092
	HOSTAQUIK see P092
	Hydrazomethane see P068
P063.....	Hydrocyanic acid
	ILLOXOL see P037
	INDOCI see P025
	Indomethacin see P025
	INSECTOPHENE see P050
	Isodrin see P060

Hazardous Waste No.	Substance
P064.....	Isocyanic acid, methyl ester
	KILOSEB see P020
	KOP-THIODA see P050
	KWIK-KIL see P108
	KWIKSAN see P052
	KUMADER see P001
	KYPFARIN see P001
	LEYTOSAN see P092
	LIQUIPHENE see P092
	MALIK see P050
	MAREVAN see P001
	MAR-FRIN see P001
	MARTIN'D MAR-FRIN see P001
	MAVERAN see P001
	MEGATOX see P005
P065.....	Mercury fulminate
	MERSOLITE see P092
	METACID 50 see P071
	METAFOS see P071
	METAPHOR see P071
	METAPHOS see P071
	METASOL 30 see P092
P066.....	Methomyl
P067.....	2-Methylaziridine
	METHYL-E 605 see P071
P068.....	Methyl hydrazine
	Methyl isocyanate see P064
P069.....	2-Methyllactonitrile
P070.....	2-Methyl-2-(methylthio)propionaldehyde-o-(methylcarbonyl) oxime
	METHYL NIRON see P042
P071.....	Methyl parathion
	METRON see P071
	MOLE DEATH see P108
	MOUSE-NOTS see P108
	MOUSE-RID see P108
	MOUSE-TOX see P108
	MUSCIMOL see P007
P072.....	1-Napthyl-2-thiourea
P073.....	Nickel carbonyl
P074.....	Nickel cyanide
P075.....	Nicotine and salts
P076.....	Nitric oxide
P077.....	p-Nitroaniline
P078.....	Nitrogen dioxide
P079.....	Nitrogen peroxide
P080.....	Nitrogen tetroxide
P081.....	Nitroglycerine(R)
P082.....	N-Nirosodimethylamine
P083.....	N-Nitrosodiphenylamine
P084.....	N-Nitrosomethylvinylamine
	NYLMERATE see P092
	OCTALOX see P037

Hazardous Waste No.	Substance
P085	Octamethylpyrophosphoramide
	OCTAN see P092
P086	Oleyl alcohol condensed with 2 moles ethylene oxide
	OMPA see P085
	OMPACIDE see P085
	OMPAX see P085
P087	Osmium tetroxide
P088	7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid
	PANIVARFIN see P001
	PANORAM D-31 see P037
	PANTHERINE see P007
	PANWARFIN see P001
P089	Parathion
	PCP see P090
	PENNCAP-M see P071
	PENOXYL CARBON N see P048
P090	Pentachlorophenol
	Pentachlorophenate see P090
	PENTA-KILL see P090
	PENTASOL see P090
	PENWAR see P090
	PERMICIDE see P090
	PERMAGUARD see P090
	PERMATOX see P090
	PERMITE see P090
	PERTOX see P090
	PESTOX III see P085
	PHENMAD see P092
	PHENOTAN see P020
P091	Phenyl dichloroarsine
	Phenyl mercaptan see P014
P092	Phenylmercury acetate
P093	N-Phenylthiourea
	PHILIPS 1861 see P008
	PHIX see P092
P094	Phorate
P095	Phosgene
P096	Phosphine
P097	Phosphorothioic acid, O,O-dimethyl ester, O-ester with N,N-dimethyl benzene sulfonamide
	Phosphorothioic acid O,O-dimethyl-O-(p-nitrophenyl) ester see P071
	PIED PIPER MOUSE SEED see P108
P096	Potassium cyanide
P099	Potassium silver cyanide
	PREMERGE see P020
P100	1,2-Propanediol
	Propargyl alcohol see P102

Hazardous Waste No.	Substance
P101	Propionitrile
P102	2-Propyn-1-ol
	PROTHROMADIN see P001
	QUICKSAM see P092
	QUINTOX see P037
	RAT AND MICE BAIT see P001
	RAT-A-WAY see P001
	RAT-B-GON see P001
	RAT-O-CIDE #2 see P001
	RAT-GUARD see P001
	RAT-KILL see P001
	RAT-MIX see P001
	RATS-NO-MORE see P001
	RAT-OLA see P001
	RATOREX see P001
	RATTUNAL see P001
	RAT-TROL see P001
	RO-DETH see P001
	RO-DEX see P108
	ROSEX see P001
	ROUGH & READY MOUSE MIX see P001
	SANASEED see P108
	SANTOBRITE see P090
	SANTOPHEN see P090
	SANTOPHEN 20 see P090
	SCHRADAN see P085
P103	Selenourea
P104	Silver Cyanide
	SMITE see P105
	SPARIC see P020
	SPOR-KIL see P092
	SPRAY-TROL BRAND RODEN-TROL see P001
	SPURGE see P020
P105	Sodium azide
	Sodium coumadin see P001
P106	Sodium cyanide
	Sodium fluoroacetate see P056
	SODIUM WARFARIN see P001
	SOLFARIN see P001
	SOLFOBLACK BB see P048
	SOLFOBLACK SB see P048
P107	Strontium sulfide
P108	Strychnine and salts
	SUBTEX see P020
	SYSTAM see P085
	TAG FUNGICIDE see P092
	TEKWAISA see P071
	TEMIC see P070
	TEMIK see P070
	TERM-I-TROL see P090
P109	Tetraethyldithiopyrophosphate

Hazardous Waste No.	Substance
P110	Tetraethyl lead
P111	Tetraethylpyrophosphate
P112	Tetranitromethane
	Tetraphosphoric acid, hexaethyl ester see P062
	TETROSULFUR BLACK PB see P048
	TETROSULPHUR PBR see P048
P113	Thallic oxide
	Thallium peroxide see P113
P114	Thallium selenite
P115	Thallium(I) sulfate
	THIFOR see P092
	THIMUL see P092
	THIODAN see P050
	THIOFOR see P050
	THIOMUL see P050
	THIONEX see P050
	THIOPHENIT see P071
P116	Thiosemicarbazide
	Thiosulfan tionel see P050
P117	Thiuram
	THOMPSON'S WOOD FIX see P090
	TIOVEL see P050
P118	Trichloromethanethiol
	TWIN LIGHT RAT AWAY see P001
	USAF RH-8 see P069
	USAF EK-4890 see P002
P119	Vanadic acid, ammonium salt
P120	Vanadium pentoxide
	VOFATOX see P071
	WANADU see P120
	WARCOUMIN see P001
	WARFARIN SODIUM see P001
	WARFICIDE see P001
	WOFOTOX see P072
	YANOCK see P057
	YASOKNOCK see P058
	ZIARNIK see P092
P121	Zinc cyanide
P122	Zinc phosphide (R,T)
	ZOOCOUMARIN see P001

Note: EPA included those trade names of which it was aware; an omission of a trade name does not imply that the omitted material is not hazardous. The material is hazardous if it is listed under its generic name. The foregoing list of Acute Hazardous Wastes is subject to change at a future date.

CHARACTERISTICS OF HAZARDOUS WASTES
(Reference: 40 CFR Part 261, Subpart C)

A solid waste which is not excluded from regulation as a hazardous waste, or is not specifically listed as a hazardous waste in 40 CFR Part 261, Subpart D, is classified as a hazardous waste if it exhibits any of the following characteristics:

Characteristics of Ignitability

(a) A solid waste exhibits the characteristics of ignitability if a representative sample of the waste has any of the following properties:

(1) It is a liquid other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60°C (140°F), as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, or as determined by an equivalent test method approved by the Administrator (EPA) under the procedures set forth in Sections 260.20 and 260.21. (Note: ASTM Standards are available from ASTM, 1916 Race Street, Philadelphia, PA 19103.)

(2) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(3) It is an ignitable compressed gas as defined in 49 CFR 173.300 and as determined by the test methods described in that regulation or equivalent test methods approved by the Administrator (EPA) under Sections 260.20 and 260.21.

(4) It is an oxidizer as defined in 49 CFR 173.151.

(b) A solid waste that exhibits the characteristic of ignitability, but is not listed as a hazardous waste in Subpart D, has the EPA Hazardous Waste Number D001.

Characteristic of Corrosivity

(a) A solid waste exhibits the characteristic or corrosivity if a representative sample of the waste has either of the following properties:

(1) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using either the test method specified in the "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (available from Solid Waste Information, U.S. Environmental Protection Agency, 26 W. St. Clair Street, Cincinnati, Ohio 45268) (also described in "Methods for Analysis of Water and Wastes" EPA 600/4-79-020, March, 1979), or an equivalent test method approved by the Administrator (EPA) under the procedures set forth in Sections 260.20 and 260.21.

(2) It is a liquid and corrodes steel (SAE 1020) at a rate greater than 6.35 mm (0.250 inch) per year at a test temperature of 55°C (130°F) as determined by the test method specified in NACE (National Association of Corrosion Engineers) Standard TM-01-69 (the NACE Standard is available from the National Association of Corrosion Engineers, P.O. Box 986, Katy, Texas 77450) as standardized in "Test Method for the Evaluation of Solid Waste, Physical/Chemical Methods," or an equivalent test method approved by the Administrator (EPA) under the procedures set forth in Sections 260.20 and 260.21.

(b) A solid waste that exhibits the characteristic of corrosivity, but is not listed as a hazardous waste in Subpart D, has the EPA Hazardous Waste Number of D002.

Characteristic of Reactivity

(a) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties;

(1) It is normally unstable and readily undergoes violent change without detonating.

(2) It reacts violently with water.

(3) It forms potentially explosive mixtures with water.

(4) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(5) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(6) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(7) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(8) It is a forbidden explosive as defined in 49 CFR 173.51, or a Class A explosive as defined in 49 CFR 173.53, or a Class B explosive as defined in 49 CFR 173.88.

(b) A solid waste that exhibits the characteristics of reactivity, but is not listed as a hazardous waste in Subpart D, has the EPA Hazardous Waste Number of D003.

Characteristics of EP Toxicity

(a) A solid waste exhibits the characteristic of EP toxicity if, using the test methods described in Appendix II or equivalent methods approved by the Administrator under the procedures set forth in Sections 260.20 and 260.21, the extract from a representative sample of the waste contains any of the contaminants listed in Table I at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering, is considered to be the extract for the purposes of this section.

(b) A solid waste that exhibits the characteristic of EP toxicity, but is not listed as a hazardous waste in Subpart D, has the EPA Hazardous Waste Number specified in Table I, below, corresponds to the toxic contaminant causing it to be hazardous.

Table I. - Maximum Concentration of Contaminants for Characteristic of EP Toxicity - Continued

EPA hazardous waste number	Contaminant	Maximum concentration (milligrams per liter)
D004	Arsenic	5.0
D005	Barium	100.0
D006	Cadmium	1.0
D007	Chromium	5.0
D008	Lead	5.0
D009	Mercury	0.2
D010	Selenium	1.0
D011	Silver	5.0
D012	Endrin (1,2,3,4,10,10-hexachloro-1,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-1,4-endo, endo-5,8-dimethano naphthalene.	0.02
D013	Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer.	0.4
D014	Methoxychlor (1,1,1-Trichloro-2,2-bis [p-methoxyphenyl]ethane).	10.0
D015	Toxaphene ($C_{10}H_{10}Cl_8$, Technical chlorinated camphene, 67-69 percent chlorine).	0.5
D016	2,4-D, (2,4-Dichlorophenoxyacetic acid).	10.0
D017	2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid).	1.0

.031. Instructions for Facility Operating Records.

INSTRUCTIONS FOR FACILITY OPERATING RECORDS

a. The recordkeeping provisions, in paragraph (C) of Subsection .027(1)(6) of these regulations, require that an owner or operator of a municipal solid waste facility accepting hazardous waste must maintain a written operating record at the facility which provides a description and the quantity of each hazardous waste, and the method and date of its treatment, storage, or disposal at the facility.

b. The following information must be recorded, as it becomes available, and maintained in the facility operating record until closure of the facility:

(1) A description by its common name and the EPA Hazardous Waste Number (see Tables .028 and .029) which apply to the waste. The description also must include physical form of the waste; e.g., liquid, sludge, solid, or contained gas. If the waste is not listed in Tables .028 or .029 the description also must include the process that produced it (for example, solid waste filter cake from production of ____, EPA Hazardous Waste Number W051).

(Note: Each hazardous waste listed in Tables .028 and .029 and each hazardous waste characteristic defined in Table .030 has a four-digit EPA Hazardous Waste Number assigned to it. This number must be used for recordkeeping and annual or monthly reporting purposes. Where a hazardous waste contains more than one listed hazardous waste, or where more than one hazardous waste characteristic applies to the waste the waste description must include all applicable EPA Hazardous Waste Numbers.)

(2) The estimated or manifest-reported weight, or volume and density, where applicable, in one of the units of measure specified in Table .031(a), following.

Table .031(a)

Unit of Measure	Symbol	Density
Pounds	P	
Short tons (2000 lbs)	T	
Gallons (U.S.)	G	P/G
Cubic yards	Y	T/Y
Kilograms	K	
Tonnes (1000 kg)	M	
Liters	L	K/L
Cubic meters	C	M/C

(3) Handling Codes. Record the handling codes from Table .031(b), following which most closely represents the method used at the facility for treatment, storage, or disposal of each quantity of hazardous waste received.

HANDLING CODES

1. Storage
- S01 Container (barrel, drum, etc.)
- S02 Tank
- S03 Waste pile
- S04 Surface impoundment
- S05 Other (specify)

2. Treatment
(a) Thermal Treatment
- T06 Liquid injection incinerator
- T07 Rotary kiln incinerator
- T08 Fluidized bed incinerator
- T09 Multiple hearth incinerator
- T10 Infrared furnace incinerator
- T11 Molten salt destructor
- T12 Pyrolysis
- T13 Wet air oxidation
- T14 Calcination
- T15 Microwave discharge
- T16 Cement kiln
- T17 Lime kiln
- T18 Other (specify)

(b) Chemical/Physical Treatment
- T19 Absorption mound
- T20 Absorption field
- T21 Chemical fixation
- T22 Chemical oxidation
- T23 Chemical precipitation
- T24 Chemical reduction
- T25 Chlorination
- T26 Chlorinolysis
- T27 Cyanide destruction
- T28 Degradation
- T29 Detoxification
- T30 Ion exchange
- T31 Neutralization
- T32 Ozonation
- T33 Photolysis
- T34 Other (specify)

(c) Physical Treatment
(1) Separation of components
- T35 Centrifugation
- T36 Clarification
- T37 Coagulation
- T38 Decanting
- T39 Encapsulation
- T40 Filtration
- T41 Flocculation
- T42 Flotation
- T43 Foaming
- T44 Sedimentation
- T45 Thickening
- T46 Ultrafiltration
- T47 Other (specify)

(2) Removal of Specific Components
- T48 Absorption-molecular sieve
- T49 Activated carbon
- T50 Blending
- T51 Catalysis
- T52 Crystallization
- T53 Dialysis
- T54 Distillation
- T55 Electrodialysis
- T56 Electrolysis
- T57 Evaporation
- T58 High gradient magnetic separation
- T59 Leaching
- T60 Liquid ion exchange
- T61 Liquid-liquid extraction
- T62 Reverse osmosis
- T63 Solvent recovery
- T64 Stripping
- T65 Sand filter
- T66 Other (specify)

(d) Biological Treatment
- T67 Activated sludge
- T68 Aerobic lagoon
- T69 Aerobic tank
- T70 Anaerobic lagoon
- T71 Composting
- T72 Septic tank
- T73 Spray irrigation
- T74 Thickening filter
- T75 Trickling filter
- T76 Waste stabilization pond
- T77 Other (specify)
- T78-79 [Reserved]

3. Disposal
- D80 Underground injection
- D81 Landfill
- D82 Land treatment
- D83 Ocean disposal
- D84 Surface impoundment (to be closed as a landfill)
- D85 Other (specify)

032 Examples of Potentially Incompatible Waste

EXAMPLES OF POTENTIALLY INCOMPATIBLE WASTE

Many hazardous wastes, when mixed with other waste or materials at a hazardous waste facility, can produce effects which are harmful to human health and the environment such as (1) heat or pressure, (2) fire or explosion, (3) violent reaction, (4) toxic dusts, mists, fumes, or gases, or (5) flammable fumes or gases.

This table lists examples of potentially incompatible wastes, waste components, and materials, along with the harmful consequences which result from mixing materials in one group with materials in another group. The list is intended as a guide to owners or operators of treatment, storage, and disposal facilities, to indicate the need for special precautions when managing these potentially incompatible waste materials or components.

The list is not intended to be exhaustive. An owner or operator must, as the regulations require, adequately analyze his wastes so that he can avoid creating uncontrolled substances or reactions of the type listed below, whether they are listed below or not.

It is possible for potentially incompatible wastes to be mixed in a way that precludes a reaction (e.g., adding acid to water rather than water to acid) or that neutralizes them (e.g., a strong acid mixed with a strong base), or that controls substances produced (e.g., by generating flammable gases in a closed tank equipped so that ignition cannot occur, and burning the gases in an incinerator).

In the lists below, the mixing of a Group A materials with a Group B material may have the potential consequences as noted:

1. Potential consequences: heat generation; violent reaction.

Group 1-A	Group 1-B
Acetylene sludge	Acid sludge
Alkaline caustic liquids	Acid and water
Alkaline cleaner	Battery acid
Alkaline corrosive liquids	Chemical cleaners
Alkaline corrosive battery fluid	Electrolyte, acid
Caustic wastewater	Etching acid liquid or solvent
Lime sludge and other corrosive alkalies	Pickling liquor and other corrosive acids
Lime wastewater	Spent acid
Lime and water	Spent mixed acid
Spent caustic	Spent sulfuric acid

2. Potential consequences: Fire or explosion; generation of flammable hydrogen gas.

Group 2-A	Group 2-B
Aluminum	Any waste in Group 1-A or Group 1-B
Beryllium	
Calcium	
Lithium	
Magnesium	
Potassium	
Sodium	
Zinc powder	
Other reactive metals and metal hydrides	

3. Potential consequences: Fire, explosion, or heat generation; generation of flammable or toxic gases.

Group 3-A	Group 3-B
Alcohols	Any concentrated waste in Groups 1-A or 1-B
Water	Calcium
	Lithium
	Metal hydrides
	Potassium
	SO_2Cl_2, $SOCl_2$, PCl_3
	CH_3SiCl_3
	Other water-reactive waste

4. Potential consequences: Fire, explosion, or violent reaction.

Group 4-A	Group 4-B
Alcohols	Concentrated Group 1-A or 1-B wastes
Aldehydes	Group 2-A wastes
Halogenated hydrocarbons	
Nitrated hydrocarbons	
Other reactive organic compounds and solvents	

5. Potential consequences: Generation of toxic hydrogen cyanide or hydrogen sulfide gas.

Group 5-A	Group 5-B
Spent cyanide and sulfide solutions	Group 1-B wastes

6. Potential consequences: Fire, explosion, or violent reaction.

Group 6-A	Group 6-B
Chlorates	Acetic acid and other organic acids
Chlorine	Concentrated mineral acides
Chlorites	Group 2-A wastes
Chromic acid	Group 4-A wastes
Hyphochlorites	Other flammable and combustible wastes
Nitrates	
Nitric acid, fuming	
Perchlorates	
Permanganates	
Peroxides	
Other strong oxidizers	

033 Application for a Permit To Operate a Municipal Solid Waste Site Part A – General Data

TEXAS DEPARTMENT OF HEALTH
1100 West 49th Street
Austin, Texas 78756

APPLICATION FOR A PERMIT TO OPERATE A
MUNICIPAL SOLID WASTE SITE

PART A - GENERAL DATA

This form must be submitted in eleven copies unless otherwise authorized by the Department. See supporting documents as noted. The applicant is encouraged to read this Department's "Municipal Solid Waste Management Regulations", Nov., 1980 Edition, thoroughly before filling out this form. Failure to complete all entries and provide all necessary attachments will delay processing the application. Notes 1 and 2 at the end of Part A should be read before proceeding to complete Part B. PLEASE TYPE OR PRINT IN BLACK INK.

PERMIT APPLICATION NO. _____ (Applicant Leave Blank)

Name of Applicant _____
(City, County, individual or company)

TYPE OF FACILITY (*)

Landfill	Processing Site	Experimental Site
____Type I	Type V	____Type VI
____Type II	____Incinerator	Land Application Site
____Type III	____Transfer Station	____Type VII
____Type IV	____Other	

(*) See Section .019 of "Municipal Solid Waste Management Regulations", November, 1980.

Facility is: Existing _____ : Proposed _____ (Check One)
(Date Established)

Facility is: _____ feet to the nearest road _____;
(Name of Road)

_____ miles to nearest airport/airfield _____; _____ feet (miles) to nearest occupied structure.

Street Address or Location of the Site: (Distance and direction from city, roads, intersections, etc.)

_____

_____

Geographic coordinates: _____

MUNICIPAL SOLID WASTE PERMIT APPLICATION (SWA-A)
TDH (Nov., 1980)

Name of Applicant _____

Site is located in: (fill in appropriate blanks)

County of _____ City Limits of City of _____

Extraterritorial jurisdiction (ETJ) of City of _____

Nearest town _____
(Applicable only if site is outside the city limits or ETJ of any city)

Application is for amendment or renewal of Permit No. _____

List any other existing permits or licenses issued by this or any other government agency, whether local, state, or federal which pertain to this facility.

_____

_____

_____

SUBMIT ELEVEN COPIES OF AN AREA MAP WITH THE COMPLETED PART "A" WHICH CLEARLY SHOWS:

1. Date and scale of map.
2. Site boundaries.
3. Prevailing wind direction and north arrow.
4. Location of drainage structures, streams, waterways and lakes.
5. Water wells within 500 feet of the site.
   (If there are no wells in the vicinity, please add a note to that effect.)
6. Residences and other significant structures within one (1) mile of the site.
7. Cemeteries within one (1) mile of the site.
8. Designated recreational areas within one (1) mile of the site.
9. Land use (i.e. farm or ranch land, commercial, residential, wooded areas, etc.) within one (1) mile of the site (1/2 mile for processing plants). (Annotate as needed)
10. Political boundaries, including municipal extraterritorial jurisdictional limits.
11. Names or designations of main public roadways within one (1) mile of the site. Indicate type of surfacing of roads providing access to the site.
12. Boundaries and names of all airports within four (4) miles of the site.
13. Drainage and utility easements on or adjacent to the site.
14. Latitudes and longitudes.

For all types of applications other than for Type I and IV sites serving 5,000 or more persons, the map shall be all or a portion of half-scale State Department of Highways and Public Transportation County Map or a United States Geological Survey 7 1/2-Minute Quadrangle Sheet. For applications for Type I and IV sites serving 5,000 or more persons, both types of maps shall be submitted. Equivalent maps may be submitted with any application provided they meet the prior approval of this Department.

The facility will service approximately_____ persons and it is estimated that it will receive an average of approximately_____tons per day of municipal solid waste. The estimated life of the facility is_____years. Open burning of solid waste_____(is) (is not) contemplated.

It is requested that the permit be issued for a site of_____acres. The name, address, and telephone number of the owner of the site is as follows:

_____

_____

The name, address, and telephone number of the governmental entity or firm responsible for the operation of the facility is as follows:

_____

_____

When the applicant is not the owner of the owner of the land on which the site is located, there shall be submitted with the application two copies of a statement in the general format provided in Append .036 of the "Municipal Solid Waste Management Regulations", November , 1980, signed by the owner of the land acknowledgeing that he is aware that his land as described in the legal description submitted is to be used for the disposal or processing of solid waste and, that the owner recognizes that notwithstanding and without prejudice to any contractual or other obligations between owner and operator, the Department may regard owner and operator as jointly and severally responsible to maintain the site after termination of the permit if after reasonable notice to both owner and operator, and reasonable efforts by the Department to compel operator's performance and to forfeit operator's performance bond, if any, the operator fails to take the necessary steps to assure proper site maintenance and payment is not made on the operator's performance bond.

MUNICIPAL SOLID WASTE PERMIT APPLICATION (SWA - A)
TDH (November, 1980)

Name of Applicant_ _____

Note: 1: If the applicant is sure of the type classification of the facility and operation for which a permit is desired, he may proceed to complete Part B of the application which pertains to more detailed information and technical data required for evaluation of the particular type of facility and operation. Before proceeding to Part B, the applicant is advised to read Section 020 of the "Municipal Solid Waste Management Regulations", November , 1980, for guidance in providing the necessary detail required for each item in Part B. Additionally, the applicant should consult with the Department to determine the amount of soil data required for the site. Applicants for Type I and IV sites serving 5,000 or more persons and for Types V and VI will not use Part B.

Note 2: If the applicant is not sure of the type classification of the facility and operation for which a permit is desired, only Part A should be completed, signed, and submitted to the Department. Upon receipt of Part A, the Department will evaluate it and advise the applicant of the appropriate classification for the operation and facility so that unnecessary expenditures for the preparation of Part B can be avoided when a detailed technical report may be required in lieu of Part B.

_____
(Signature of Applicant or Authorized Agent)

_____
(Typed or Printed Name and Title)

_____
(Street or P.O. Box)

_____
(City) (State) (Zip Code)

_____
(Area Code) (Telephone)

MUNICIPAL SOLID WASTE PERMIT APPLICATION (SWA - A)
TDH (November, 1980)

034. Application for a Permit To Operate a Municipal Solid Waste Site: Part B—Technical Data.

TEXAS DEPARTMENT OF HEALTH
1100 West 49th Street
Austin, Texas 78756

APPLICATION FOR A PERMIT TO OPERATE A
MUNICIPAL SOLID WASTE SITE

Part B - Technical Data

Please read notes 1 and 2 at the end of Part A before starting to complete Part B. This form and supporting documents must be submitted in three copies unless otherwise noted. The applicant is encouraged to read this Department's "Municipal Solid Waste Management Regulations", Nov. 1980 edition, thoroughly before filling out this form. Failure to complete all entries and provide all necessary attachments will delay processing the application. PLEASE TYPE OR PRINT IN BLACK INK.

I. SITE DATA (Complete this section only if Part B is submitted separately from Part A.)

A. Site Location: _____

_____

B. Name of Applicant: _____

Mailing Address: _____ Telephone _____

_____ Zip Code _____

C. Type of Operation:

Type I___/Type II___/Type III___/Type IV___/Type V___/Type VI___

D. Type of Facility:

Landfill____/Incinerator____/Transfer Station____/Other (Specify)_____

_____/

II. AGENTS FOR THE APPLICANT

Name, address, telephone number and title of persons authorized to act for the applicant. If a registered engineer has been employed to act for the applicant, a letter of appointment, as required by Sec. .020 of the "Municipal Solid Waste Management Regulations", Nov. 1980, shall be submitted.

_____

_____

_____

MUNICIPAL SOLID WASTE PERMIT APPLICATION (SWA-B)
TDH (Nov. 1980)

Name of Applicant _____

III. LAND USE

A. Describe general land use within a one (1) mile radius of the site: (for example: residential, commercial, industrial, agricultural, etc.)

_____

_____

(Submission of an aerial photograph, though not required, is recommended as it may clarify land use, topography, vegetation, etc., within vicinity of the site.)

B. Will the operation of this solid waste facility conform with existing zoning ordinances? (yes)____(no)_____ If no, give status of any proposed zoning change which will apply to this site.

C. Growth trends of the area within a one (1) mile radius of the site during the preceding five (5) years, if known.

_____

D. Provisions by the applicant for inspection and maintenance of site during first year after closure: (If applicant plans to utilize site on a phased sequence, explain phase schedule.)

_____

_____

_____

E. Has use of the site after closing been determined? Yes_____ No____
If yes, specify type of use.

_____

_____

F. List the names of any endangered or threatened species in the site area or vicinity (see Subsection .020(b)(3)(E)vii, "Municipal Solid Waste Management Regulations", Nov. 1980)

_____

_____

MUNICIPAL SOLID WASTE PERMIT APPLICATION (SWA-B)
TDH (Nov. 1980)

Name of Applicant ___ _____

IV. TWO COPIES SHALL BE SUBMITTED (IF NOT ALREADY PROVIDED SEPARATELY WITH PART A) OF A LEGAL DESCRIPTION OF TRACT OR TRACTS OF LAND UPON WHICH THE FACILITY IS LOCATED. The term "Legal Description" means either a metes and bounds description, a plat showing the block and lot number of a recorded subdivision with a reference to the volume and page numbers of the latest conveyance as recorded in the Deed Records of the county in which the tract of land is located, or any other description which would be suitable to effectuate the transfer of title to real property. The legal description should include a copy of the latest conveyance to the owner. Where only a portion of the tract is to be used for the landfill, a metes and bounds description of that portion of land is required.

V. PLANS AND MAPS:

A. Eleven copies shall be submitted of an area map (if not previously submitted separately with Part A) showing all information required by Section.020(b)(1) of the "Municipal Solid Waste Management Regulations", Nov. 1980.

B. Three copies of a large-scale plan of the site shall be submitted, prepared in accordance with the design criteria contained in Section.020(b)(3)(E) and (F),"Municipal Solid Waste Management Regulations", Nov. 1980, and supported by a narrative statement when necessary. The plan should show all of the information required below:

1. Site location. (Show boundaries and dimensions of tract of land on which site is to be developed.)

2. Location of structures, any utility easements, and distance to nearest residences. (Identify pipelines by type and ownership)

3. Streets and roads providing ingress and egress to site.

4. Locations of fences and gates.

5. Provisions to be made for controlling windblown solid waste.

6. Provisions for handling large items.

7. The landfill method proposed, e.g., trench, area fill, or combination.

8. The depth of existing groundwater.

9. The maximum depth of excavation or fill.

10. Manner and sequence of site development as they pertain to disposal activities.

11. The amount of land actually available for landfill.

12. Provisions for wet-weather operations.

13. Drainage provisions for controlling surface water on or near the site. Show locations of any proposed dikes, berms, or levees to be located along or near streams, rivers, etc.

MUNICIPAL SOLID WASTE PERMIT APPLICATION (SWA-B)
TDH (Nov. 1980)

Name of Applicant _____

14. Fire control facilities, e.g., fire hydrants, fire breaks, earth stockpiles, water tanks.

15. If an existing pit is to be used, or if sufficient suitable cover material is not available on site, indicate source and soil characteristics of cover material.

VI. STATEMENT OF APPLICANT

I, _____,

state that I have knowledge of the facts herein set forth and that these facts are true and correct, to the best of my knowledge and belief. I further state that, to the best of my knowledge and belief, the project for which application is made will not in any way violate any law, rule, ordinance, or decree of any duly authorized governmental entity having jurisdiction. I further state that I am the applicant or am authorized to act for the city/county/applicant.

_____
(Signature)

_____
(Title)

_____
(Date)

VII. NOTARY PUBLIC'S CERTIFICATE

Subscribed and sworn to before me, by the said _____

_____, this _____ day of _____, 19___,

to certify which witness my hand and seal of office.

_____

Notary Public in and for _____
County, Texas.

(seal)

MUNICIPAL SOLID WASTE PERMIT APPLICATION (SWA-B)
TDH (Nov. 1980)

Name of Applicant _____

VIII. ENGINEER'S SEAL (NOT REQUIRED UNLESS APPLICANT UTILIZES SERVICES OF AN ENGINEER)

If the application and supporting data for a permit are prepared under the direction of a registered professional engineer authorized to practice in the State of Texas, place the signature and seal of the engineer in the spaces below.

Engineer's Signature _____

_____
Seal

MUNICIPAL SOLID WASTE PERMIT APPLICATION (SWA-B)
TDH (Nov. 1980)

.035. Notice of Appointment.

NOTICE OF APPOINTMENT

Robert Bernstein, M.D.
Commissioner of Health
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756

Dear Doctor **Bernstein:**

This is to advise you that the officials of _____,
Texas, at a regular or called meeting on _____,
have duly appointed _____
as consulting and designing engineer for the purpose of submitting engineering reports, planning material, plans and specifications, and for supervision of construction of _____.
Mr. _____ is a registered professional engineer in good standing in accordance with State statutes and has had experience in the design and construction of similar facilities at the following locations:

_____

_____

We herewith authorize you to review and comment on such reports, planning material, data, and plans and specifications on this proposed project as he may submit to you.

ATTEST:

_____
Secretary's Signature

_____
Secretary's Typed Name

_____
Official's Signature

_____
Official's Typed Name & Title

_____
Official Mailing Address

DATE: _____

.036. *Affidavit to the Public.*

(The following is a suggested format for the "Affidavit to the Public" mentioned in Section.021(b)(16)(E)of these regulations. The same general form may be used when preparing, as applicable, the sworn statement also referred to in that Section.)

STATE OF TEXAS

AFFIDAVIT TO THE PUBLIC

COUNTY OF_____

Before me, the undersigned authority, on this day personally appeared _____ who, after being by me duly sworn, upon oath states that he is the record owner of that certain tract or parcel of land lying and being situated in_____County, Texas, and being more particularly described as follows:

The undersigned further states that from the year_____to the year _____there was operated on the aforesaid tract of land a Solid Waste Disposal Site. Specifically, such operation was conducted on that portion of the aforesaid tract described as follows:

Further, the undersigned,_____was the operator of such Solid Waste Disposal Site.

WITNESS MY/OUR HAND(s) on this the_____day of_____, 19___.

_____
Owner

_____
Operator

SWORN TO AND SUBSCRIBED before me on this the_____day of_____, 19___.

_____
Notary Public in and for
_____County, Texas

Issued in Austin, Texas, on October 27, 1980.

Doc. No. 808169

A. M. Donnell, Jr., M.D.
Deputy Commissioner
Texas Department of Health

Effective Date: November 18, 1980
Proposal Publication Date: August 12, 1980
For further information, please call (512) 458-7271.

Texas Department of Human Resources

Medicaid Eligibility

The Department of Human Resources adopts the repeal, amendments, and new rules regarding program changes resulting from the extension of Intermediate Care II level of care as proposed in the August 1, 1980, issue of the *Texas Register* (5 TexReg 3015). The rule changes affect individuals residing in nursing facilities on March 1, 1980.

One comment was received on the proposed rule changes. The commentor suggested that the department's rules regarding different treatment of eligible couples based on whether or not they share a room in the nursing facility are not always in the best interest of the couple, and should therefore be changed. The referenced rules reflect eligibility policies of the Supplemental Security Income (SSI) Program administered by the Social Security Administration (SSA). Since the department has chosen to use SSI eligibility policy in determining eligibility for adult Medicaid recipients, the department does not have the authority to change eligibility rules which have been established by the SSI Program.

Eligible Recipients for Title XIX (Medicaid) 326.25.21

The following amendments are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.001. Categorically Needy. The Medical Assistance Program, under the provision of Title XIX (Medicaid) of the Social Security Act, provides certain benefits to all individuals who meet the department's definition of categorically needy. The categorically needy are defined as:

(1)-(8) (No change.)

(9) Under Rider 49 provisions, individuals who were receiving Level II intermediate care in a Title XIX nursing facility on March 1, 1980, continue to be eligible for Title XIX medical benefits upon discharge from the facility, provided they:

(A) continue to meet the categorical and financial eligibility criteria last used to determine eligibility in the nursing facility, and

(B) continue to meet the criteria for Level II intermediate care, as determined by the long-term care units of the Texas Department of Health.

This provision is also available to individuals who were Medicaid eligible and receiving Level III immediate care or skilled nursing care in a Title XIX nursing facility on March 1, 1980, and are subsequently determined to need Level II intermediate care.

Individuals qualifying for Medicaid benefits under these provisions are referred to as Rider 49 recipients. Department staff determine continuing eligibility using the criteria for Type Program 02, 03, 14, or 51 depending upon which criteria applied when the recipient last resided in a Title XIX nursing facility.

Doc. No. 808446

Individuals for Whom SSI Eligibility Criteria Are Used 326.25.31

The following amendments are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.001. Types of Applicants. The eligibility criteria of the federal Supplemental Security Income (SSI) Program are used in determining Medicaid eligibility for the following categories of assistance:

(1) SSI-related MAO (Type Program 14). Individuals residing in approved Title XIX long-term care facilities, who would be eligible for SSI except for income, may qualify for assistance under Type Program 14. Countable income must fall in a range between the appropriate SSI payment amount and a maximum established by the department. Eligibility under this type program may also be extended to Rider 49 recipients discharged from a Title XIX facility to the community.

(2) Rider 51 MAO (Type Program 51). Individuals in long-term care facilities who became ineligible for SSI-related MAO on July 1, 1979, due solely to the July 1979 cost-of-living increase in RSDI benefits may continue eligibility for assistance under the provisions of Rider 51 of the Texas Department of Human Resources appropriation in the General Appropriations Act, 66th Legislature, Regular Session. To qualify, these individuals must continue to meet all SSI-related MAO eligibility requirements with an additional exclusion from income equal to the amount of the July 1979 RSDI cost-of living increase. Eligibility under this type program may also be extended to Rider 49 recipients discharged from a Title XIX facility to the community.

(3) (4) (No change.)

Doc. No. 808447

Resources for Individuals Related to the SSI Program 326.25.33

The following amendment is adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.004. Deeming of Resources.

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

(f) Deeming does not apply to Rider 49 recipients discharged to the community whose eligibility is determined under the Medical Assistance Only Program criteria which applied when the individual was residing in a nursing facility. In this situation, the individual's resources continue to be considered separate from those of the ineligible spouse as they were when the individual was institutionalized.

Doc. No. 808448

Income for Individuals Related to the SSI Program 326.25.34

The following amendments are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.003 Procedures for Deeming Income.

(a) (No change.)

(b) An individual's income includes all of his or her own income in cash or in kind, both earned and unearned. It also includes all of the income of his or her eligible spouse. In addition, an individual's income is deemed to include:

(1) Certain income of his or her ineligible spouse who lives in the same household during any part of a calendar month (if the ineligible spouse is not a member of an AFDC group). In determining the amount of the ineligible spouse's income available to the individual, the following procedures apply.

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

(H) Deeming does not apply to Rider 49 recipients discharged to the community whose eligibility is determined under the medical assistance only criteria which applied when the individual was residing in a nursing facility. In this situation, even though the recipient lives in the same household with the ineligible spouse, the ineligible spouse's own income is completely excluded in determining continued eligibility for the Rider 49 recipient.

(2) (No change.)

.004. Support and Maintenance (Nonvendor Situations Only).

(a)-(d) (No change.)

(e) The 1/3 reduction does not apply in situations which:

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

(5) The individual (or eligible couple) residing in the household of another is a Rider 49 recipient(s) whose eligibility is continued under an institutional medical assistance only type program; that is, one of the institutional income limits is being used to determine eligibility. In this instance, the value of the in-kind support and maintenance must be determined as in paragraph (2) above, and considered as unearned income of the eligible individual(s).

Doc. No. 808449

Budgeting for Individuals Related to the SSI Program 326.25.35.004, .010

The following amendments are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.004. Definitions of Budgeting in Nonvendor Living Arrangements.

(a) (No change.)

(b) An individual budget is constructed when the client is a single person, that is, never married, widowed, or divorced, or is a married individual who is living apart from his or her spouse. Living apart means physically living in separate places of residency and is not necessarily a legal separation. An individual and spouse are considered to be living apart when:

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

(4) one member of an eligible couple enters and is eligible for vendor payment in a Title XIX nursing facility, or

(5) when one member of an eligible couple is living as husband or wife with a person other than the legal spouse.

In an individual budget, only the needs and income of the individual are considered.

(c)-(d) (No change.)

(e) A couple budget is also constructed when an individual is no longer residing with his or her eligible spouse if:

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

In a couple budget, the needs and income of both spouses are included. If only one member of an eligible couple enters a Title XIX nursing facility and is entitled to vendor payment, the case may no longer be budgeted as a couple case. In this situation, eligibility for each member of the couple must be redetermined on an individual basis.

.010. Definitions of Budgeting in Vendor Living Arrangements.

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

(d) A couple budget is constructed when an individual and his or her eligible spouse are both MAO applicants/recipients with the same type program and reside in the same room in a Title XIX nursing care facility. If one member of an eligible couple moves into a different room or a different Title XIX facility, they continue to be budgeted as a couple until they have been separated for six months. In this situation, the needs and income of both individuals are included. If one member of an eligible couple is discharged from the nursing care facility (other than for hospitalization or a therapeutic home visit) and the spouse remains in the facility, the case may no longer be budgeted as a couple case. Eligibility must immediately be redetermined on an individual basis for each member of the couple. Applied income for the member of the couple remaining in the facility must also be adjusted to reflect the appropriate individual vendor budget effective with the day of the spouse's discharge from the facility.

(e) (No change.)

Doc. No. 808450

326.25.35.007

The repeal of Rule 326.25.35.007, Couples, One of Whom Is in a Long-Term Care Facility (Type Program 03), is adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

Doc. No. 808451

326.25.35.018

The following new rule is adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.018 Special Provisions for Rider 49 Recipients.

(a) Under Rider 49 provisions, individuals are entitled to continued eligibility under vendor budgeting criteria while residing in a nonvendor living arrangement. In order to qualify for these provisions, the recipient must meet the following criteria:

(1) the individual must have received ICF-II level care in a Title XIX nursing facility on or after March 1, 1980, and

(2) the individual must have maintained continuous Medicaid eligibility since March 1, 1980 (or since the date approved ICF II level care began, if subsequent to March 1, 1980), and

(5) the individual must have never been denied an ICF II level of care by a long-term care unit of the Texas Department of Health since March 1, 1980.

(b) If a recipient who meets the above criteria chooses to leave the nursing facility to reside in a nonvendor living arrangement, a determination should first be made as to whether the recipient would qualify for SSI benefits in the new living arrangement. If so, the recipient is referred to SSI for application services. The medical assistance only case for the recipient is denied when eligibility for SSI is established on the DHR computer files.

(c) If, however, the recipient has income in excess of the appropriate SSI eligibility standard, Medicaid eligibility should be extended in the new living arrangement as long as the recipient continues to meet the budgeting criteria which was last used to determine the recipient's eligibility in the vendor living arrangement. Since the individual is no longer residing in a vendor living arrangement, it will not be necessary to budget applied income in addition to determining eligibility.

(d) As long as the Rider 49 recipient continues to meet the appropriate income eligibility limits, as well as all other categorical requirements, eligibility for Medicaid benefits will be continued in the nonvendor living arrangement. If, at the time of review, the recipient's income exceeds appropriate limits or other categorical requirements are not met, eligibility under these special provisions must be denied. A denial resulting in a break in Medicaid coverage will result in the loss of Rider 49 status and entitlement to this special provision.

Doc. No. 808452

Budgeting for Type Program 02 326.25.45.002-.004

The following amendments are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.002. Definitions.

(a) All individuals certified for Type Program 02 must reside in vendor living arrangements, with the exception of Rider 49 recipients whose eligibility in a nonvendor living arrangement is based on TP02 criteria.

(b) (No change.)

.003. Individual Budget. An individual budget is constructed when the recipient has no spouse, or when the spouse is receiving assistance under another type program (Type Program 01, 03, 12, 13, 14, or 15). In this situation, only the needs and income of the individual are considered.

.004. Companion Budget (Individual with Ineligible Spouse). A companion budget is constructed when the recipient has an ineligible spouse who is not estranged from the recipient. In this situation, only the needs of the individual are included but the income of the spouse must also be considered in determining eligibility.

Doc. No. 808453

326.25.45.010

The following new rule is adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.010. Special Provisions for Rider 49 Recipients.

(a) If a Type Program 02 recipient with Rider 49 status chooses to leave the Title XIX nursing facility to reside in a nonvendor living arrangement, a determination must first be made as to whether the recipient will be entitled to SSI benefits in the new living arrangement. If so, the recipient is referred to SSI for application services. The Type Program 02 case for the recipient is denied when eligibility for SSI is established on the DHR computer files.

(b) If, however, the Rider 49 recipient does not meet the criteria for SSI eligibility, Medicaid eligibility should be extended in the nonvendor living arrangement as long as the individual continues to meet all eligibility criteria for Type Program 02. Since the recipient is no longer residing in a vendor living arrangement, it will not be necessary to budget applied income in addition to determining eligibility.

(c) If, at the time of a review, the recipient fails to meet Type Program 02 eligibility requirements, eligibility must be denied. Since the individual is not residing in a Title XIX nursing facility, eligibility cannot be redetermined under Type Program 14. However, eligibility for Type Program 03 based on the exclusion of the October 1972 RSDI increase and SSI income standards should be explored. Eligibility may be continued under Type Program 03, if appropriate. If denial of Type Program 02 assistance results in a break in Medicaid coverage, the recipient loses Rider 49 status and the entitlement to eligibility under the special Rider 49 provisions.

Doc. No. 808454

Vendor Payments in Title XIX Long-Term Care Facilities 326.25.55

The following amendments are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.002. Evaluation of Alternate Care.

(a)-(d) (No change.)

(e) Nonrecipient procedures.

(1) For an applicant (nonrecipient), the Medicaid eligibility worker requests an application be completed when:

(A) Initial contact is made with the Medicaid eligibility unit by an individual who is not a current Medicaid recipient.

(B) (No change.)

(2) (No change.)

(3) The covering letter for the Medical-Nursing Care Evaluation must indicate that the form must be completed and signed by the client's treating physician and returned to the Medicaid eligibility worker. If the Application for Assistance and the Medical Nursing Care Evaluation are not returned to the worker within 10 days, the worker will contact the applicant to advise him or her of the necessity of returning both forms. When the Medical-Nursing Care Evaluation is received from the attending physician, the eligibility worker will determine that the form contains all

the required items. If it does not, the worker should try to obtain the additional information prior to submitting the form to the LTCU.

(4)-(9) (No change.)

(10) In situations where a level of care is denied by the LTCU, the Medicaid eligibility staff will advise the individual of the denial of the application. The medical assistance denial notice must be annotated to advise the individual that if they are now interested in exploring alternate care services, they should contact the local alternate care staff. The telephone number for such a contact must also be provided on the denial notice.

(11) If the individual advises the Medicaid eligibility staff of their interest in pursuing alternate care services. The eligibility staff will immediately refer the individual to the alternate care staff via Case Information form. If the individual has been previously referred to the alternate care staff, a Case Information form would again be provided to advise of the change in the individual's status.

(f) Recipient procedures.

(1) When preadmission requests for care in a nursing facility are received from an individual who is a current Medicaid recipient, the following circumstances may occur:

(A) (No change.)

(B) A referral from CCABD can occur when a recipient of SSI who is currently receiving CCABD services wishes care in a nursing facility; or when an assessment by the CCABD worker results in such a request.

(C) An initial contact is made with LTCU staff by a recipient who is not currently in a nursing facility. LTCU staff gathers identifying information from the individual and forwards this information to the Medicaid eligibility unit.

(D) In cases where the initial contact is made with a Medicaid eligibility unit by a Medicaid recipient requesting placement in a nursing facility, the following steps are taken:

(i) Within five working days of receipt of a request for care in a nursing facility, a contact is made with the client and or family to determine the functional capacity of the client, as well as the social components surrounding the request for nursing home placement and the possibility of alternative arrangements for care. The alternate care assessment is completed and the worker will inform the recipient and or family of the possible alternatives to nursing facility care. In the process of completing the Social Evaluation of Need for Nursing Facility Care, the worker must also determine whether the recipient currently has Rider 49 status. If so, the notation "Grandfathered ICF-II recipient" must be added to the upper right hand corner of the form. If the recipient continues to pursue nursing home placement, this notation will advise the LTCU that an ICF-II level of care may be considered for this recipient.

(ii)-(iv) (No change.)

(2)-(5) (No change.)

.003. Level of Care.

(a) To qualify for vendor payments in Title XIX nursing facilities and state schools, it must be determined that an individual is in need of ICF II, ICF-III, or skilled nursing care or that an individual would benefit from ICF MR treatment, that is, intermediate care for the mentally retarded. After March 1, 1980, ICF II level nursing care is only available to those individuals who have continued Rider 49 status. As long as Rider 49 status is continued, the recipient has a right to have current ICF II level care sustained and to have ICF-II level care reinstated if he or she no longer qualifies for a higher level of care or if he or she re-enters a nursing facility from the community.

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

Doc. No. 808455

Intrastate Requests for Assistance 326.25.56

The following new rules are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.011. Special Provisions for Rider 49 Recipients. Rider 49 of the 1980 S1 DHR Appropriation Act authorized the discontinuance of the program for level II intermediate care (ICF-II) in Title XIX long-term care facilities effective March 1, 1980. The rider also provided for continued entitlement for ICF-II care for certain individuals who were eligible and residing in Title XIX facilities on March 1, 1980, and who subsequently met or continued to meet ICF II criteria. In addition, special provisions were established to permit these individuals to continue Medicaid coverage after discharge from a long term care facility under the same criteria used to determine eligibility while in the facility.

.012. Definition of a Rider 49 Recipient

(a) In order to qualify for the special provisions established by Rider 49, a recipient must have met and continue to meet the following requirements:

(1) The recipient must have been eligible for Medicaid prior to March 1, 1980, and maintained continuous eligibility after that date. (Individuals who applied for and became eligible after March 1,1980, with an approved ICF-II level of care in effect are considered to have met this requirement initially.)

(2) The recipient must have been residing in an approved Title XIX long-term care facility on and at least one day prior to March 1, 1980. (Individuals who on March 1, 1980, were temporarily absent from the facility due to hospitalization or a therapeutic home visit, and individuals who entered long term care facilities after March 1, 1980, with an approved level of care in effect are considered to have met this requirement.)

(3) The recipient must have been approved for ICF-II level care on or after March 1, 1980, by the Long-Term Care Unit (LTCU) of the Texas Department of Health, and have never received a subsequent denial of ICF-II level care from the LTCU, or the recipient must have been approved for and receiving Title XIX ICF-III or skilled level care on March 1, 1980, and subsequently be granted ICF-II level care. Such individuals may be entitled to ICF II level if they fail to meet the higher level of care criteria, have continuously resided in a Title XIX long term care facility since March 1, 1980, meet the ICF II level of care criteria, and no suitable alternate care is available at the time ICF-III level care is discontinued.

(b) Individuals who initially met and continue to meet these requirements are referred to as Rider 49 recipients. Rider 49 status, and entitlement to the related special provisions, is discontinued if, at any time, eligibility for Medicaid or for an ICF II level of care is denied.

.013. Redetermination for Rider 49 Recipients.

(a) As long as a Rider 49 recipient continues to reside in a long term care facility, eligibility and budgeting are

determined under the criteria of the appropriate type program, following the same procedures which apply to other recipients in long term care.

(b) If, however, the Rider 49 recipient chooses to leave the long term care facility to reside in a nonvendor living arrangement (the recipient's own home, the home of a relative or friend, a room and board arrangement, etc.), continued eligibility under the special Rider 49 provisions must be explored.

(c) As soon as the eligibility worker learns of a Rider 49 recipient's discharge from the long-term care facility, a determination must be made as to whether the recipient is potentially eligible for supplemental security income (SSI) benefits in the new living arrangement. If so, the individual is referred to the Social Security Administration for application services. The recipient's medical assistance only (MAO) case is sustained until the recipient's eligibility for SSI is reflected on the DHR computer files. When this occurs, the MAO case is denied and the recipient's continued eligibility for Medicaid and Rider 49 status will be dependent upon his or her continued eligibility for SSI benefits.

(d) If the Rider 49 recipient is not entitled to SSI benefits in the new living arrangement, continued eligibility for MAO will be determined using the eligibility criteria and budgeting steps last used to determine eligibility for the individual while in the long-term care facility. As long as the Rider 49 recipient continues to meet these criteria, the MAO case is sustained under the appropriate type program. However, the base plan and budget entries on input document are changed to reflect the new nonvendor living arrangement.

(e) One of the requirements for eligibility for this special Rider 49 provision is the recipient's continuous eligibility for Medicaid since March 1980. Therefore, new applications should never be processed for eligibility under these special provisions. The only time an input document may be processed indicating eligibility under these special provisions is when an active Rider 49 recipient has been denied in error.

Doc. No. 808456

The Department of Human Resources adopts rules and amendments to the nursing home agency rules concerning the continuation of eligibility for nursing home care for ICF-III and skilled recipients whose conditions improve to the extent that they no longer meet the criteria for ICF care. This revised policy permits payment for all Medicaid services (vendor drugs, hospital care, physician services, ICF-II nursing home care, etc.) from state funds for persons who had an ICF-II or skilled level of care on March 1, 1980, who meet ICF-II criteria but not ICF criteria, and for whom no alternate care arrangements are available. The rules and amendments were proposed in the August 1, 1980, issue of the *Texas Register* (5 TexReg 3020).

No comments were received. The rules and amendments are adopted without changes to the proposed text.

Intermediate Care II Facility

Admission Policies 326.30.04

The following amendments are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.009. Level of Care.

(a) ICF-II level of care determinations are limited to Title XIX recipient/patients who had an ICF-II, ICF-III or skilled level of care determination on March 1, 1980.

(b) ICF-II level of care determinations are also available to persons who have filed an application for long-term care benefits with the department, and are residing in a long-term care facility on March 1, 1980.

(c) ICF-II level of care determinations will remain available to persons who had an ICF-II, ICF-III, or skilled level of care on March 1, 1980, and who leave a nursing home for a hospital stay, therapeutic home visit, or other Title XIX or XX service, without a break in Medicaid eligibility, and then return to the same or another nursing home.

Doc. No. 808457

Intermediate Care III Facility

Admission Policies 326.31.04

The following new rule is adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.007. Level of Care.

(a) ICF-II level of care determinations are limited to Title XIX recipient/patients who had an ICF-II, ICF-III, or skilled level of care determination on March 1, 1980.

(b) ICF-II level of care determinations are also available to persons who have filed an application for long-term care benefits with the department, and are residing in a long-term care facility on March 1, 1980.

(c) ICF-II level of care determinations will remain available to persons who had an ICF-II, ICF-III, or skilled level of care on March 1, 1980, and leave the nursing facility for a hospital stay, therapeutic home visit, or other Title XIX or XX service, without a break in Medicaid eligibility, and then return to the same or another nursing facility.

(d) An ICF or skilled Title XIX recipient/patient who qualifies under (a), (b), or (c) above for an ICF-II level of care determination after March 1, 1980, will be referred to the regional alternate care staff for emergency search for alternate care. Efforts will be made to locate a foster home or other living arrangements suitable to the individual if there are no relatives or no other home possibilities.

Doc. No. 808458

Skilled Nursing Facility

Admission Policies 326.32.04

The following new rule is adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.011. *Level of Care.*

(a) ICF-II level of care determinations are limited to Title XIX recipient/patients who had an ICF-II, ICF-III, or skilled level of care determination on March 1, 1980.

(b) ICF-II level of care determinations are also available to persons who have filed an application for long-term care benefits with the department, and are residing in a long-term care facility on March 1, 1980.

(c) ICF-II level of care determinations will remain available to persons who had an ICF-II, ICF-III, or skilled level of care on March 1, 1980, and who leave the nursing facility for a hospital stay, therapeutic home visit, or other Title XIX or XX service, without a break in Medicaid eligibility, and then return to the same or another nursing facility.

(d) An ICF or skilled Title XIX recipient/patient who qualifies under (a), (b), or (c) above for an ICF-II level of care determination after March 1, 1980, will be referred to the regional alternate care staff for emergency search for alternate care. Efforts will be made to locate a foster home or other living arrangements suitable to the individual if there are no relatives or no other home possibilities.

Doc. No. 808459

Utilization Review

Long-Term Care Unit Procedures 326.44.08

The following amendments are adopted under the authority of the Human Resources Code, Title II, with the approval of the Texas Board of Human Resources.

.001. *Preadmissions.*

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

(f) Appeals procedure:

(1)-(11) (No change.)

(12) ICF-II level of care determinations are limited to Title XIX recipient/patients who had an ICF-II, ICF-III, or SNF level of care determination on March 1, 1980.

(A) (No change.)

(B) ICF-II level of care determinations will remain available to persons who had an ICF-II, ICF-III, or skilled level of care on March 1, 1980, and leave the nursing home for a hospital stay, therapeutic home visit, or other Title XIX or XX service, without a break in Medicaid eligibility, and then return to the same or another nursing home.

(C) An ICF or skilled Title XIX recipient/patient who qualifies under (12)(A) or (B) above for an ICF-II level of care determination after March 1, 1980, will be referred to the regional alternate care staff for emergency search for alternate care. Efforts will be made to locate a foster home or other living arrangements suitable to the individual if there are no relatives or no other home possibilities.

Issued in Austin, Texas, on November 6, 1980.

Doc. No. 808460 Marlin W. Johnston
Acting Commissioner
Texas Department of Human Resources

Effective Date: November 27, 1980
Proposal Publication Date: August 1, 1980
For further information, please call (512) 441-3355.

Child Welfare Services

The Department of Human Resources adopts the following new rules and repeals of its rules concerning the department's adoption subsidy programs as published in the July 15, 1980, issue of the *Texas Register* (5 TexReg 2832). Adoption of these rules serves to expand the department's adoption subsidy program to include all special needs children in the department's managing conservatorship at the time of adoptive placement. Special needs children are defined as children who are: six years of age or older; or two years of age or older and of minority or racially mixed backgrounds; or professionally diagnosed as having a physical, mental, or emotional handicap; or siblings being placed together.

Following publication, comments were directed at expanding the program to cover special needs children not in the department's managing conservatorship. The adoption subsidy program enabling legislation specifies that the department's subsidy program is for children who are in the department's managing conservatorship and therefore precludes further consideration of the comments without legislative change. One comment requested additional clarification of internal procedures. Such clarification has been included in the adopted rules. Other comments expressed support for the rules.

Adoption Services 326.50.75.060-.067

The repeal of Rules 326.50.75.060-.067 concerning adoption services has been approved by the Texas Board of Human Resources and is adopted under the authority of the Human Resources Code, Title II.

Doc. No. 808485

326.50.75.081-.088

These new rules have been approved by the Texas Board of Human Resources and are adopted under the authority of the Human Resources Code, Title II.

.081. *Adoption Subsidy Program.*

(a) The adoption subsidy program promotes adoption of children with special needs through the provision of financial assistance to adoptive families who need the assistance to be able to adopt children with special needs. A child with special needs is a child who due to age, handicaps, race, ethnicity, or sibling status is difficult to place with appropriate adoptive parents without providing financial assistance to the family.

(b) Adoption subsidies are considered only for children who are in the department's managing conservatorship at the time of adoptive placement and who qualify as children with special needs at the time of adoptive placement. To qualify as a child with special needs, the child must meet at least one of the following criteria:

(1) be six years of age or over;

(2) be two years of age or over and a member of a racial or ethnic minority;

(3) have a professionally diagnosed physical, mental, or emotional handicap;

(4) belong to a sibling group of children placed in the same home.

(c) Families who can be considered for adoption subsidies must meet the same standards and criteria that are applied to all adoptive applicants. The only difference in approving a family for a subsidized adoptive placement is the family's need for financial help in order to provide for the special needs of the child. Adoptive parents do not have to be Texas residents in order to receive adoption subsidies.

.082. Type of Subsidy and Amount of Limitations. Three types of subsidies are available. The type(s) of subsidy received by the family on the child's behalf is dependent upon the individual circumstances of the placement. The three types of subsidies are:

(1) Placement subsidies. Placement subsidies are for the purpose of assisting the adoptive family to meet the financial costs of integrating the child into the home. Included in this category of subsidy are travel expenses incurred to participate in the placement, legal fees related to the adoption, clothing, and equipment for the child. The subsidy amount recommended on the subsidy application must be based on the actual expenses the family incurred or will incur which are related to the placement. These expenses must be documented and included on the subsidy application. Placement subsidies are one-time expenditures and should be paid in a lump sum as the expenditure is incurred. Placement subsidies used for travel expenses of the family to participate in the placement process may be applied for, approved, and paid regardless of whether the placement occurs, if there are no other resources available to the family or the region to reimburse the family for these expenditures.

(2) Special services subsidies. Special services subsidies are for the purpose of assisting families to meet the following kinds of special needs of the child:

(A) therapy or counseling;
(B) special educational services;
(C) extensive dental care;
(D) medical care, equipment, and supplies.

Special services subsidies for medical care and equipment cannot include costs which are covered by the family's health insurance. Medical care and equipment must be related to medical conditions which existed prior to the child's placement. The subsidy may be used by the family to purchase health insurance for the child. The subsidy amount recommended on the subsidy request must be based on the actual costs of the services needed for the child. These expenses must be documented and specified on the subsidy application. Special services subsidies are paid either in lump sums or prorated over a specified period of time depending on the frequency of the expenditure.

(3) Maintenance subsidies. Maintenance subsidies are available to families whose incomes and resources are limited, either temporarily or permanently, who adopt school-age children and sibling groups. Maintenance subsidies are planned for and provided either on a short-term basis or long-term basis depending upon the placement circumstances. Time-limited maintenance subsidies are for the purpose of providing temporary assistance not to exceed 18 months to the adoptive family in order to assist them to assume full financial responsibility for the child. Ongoing maintenance subsidies are for the purpose of assisting families who must have ongoing help in order to provide for the child's ongoing support and maintenance. Subject to annual review, ongoing maintenance subsidies may be requested and approved until the child is age 18, or age 21, if he or she is still in school. Both the need for the subsidy and the amount may vary from year to year depending upon the child's needs and the family's available resources each year. The amount of all maintenance subsidies must be based on the actual and realistic needs of the child and family and must be the minimum amount needed to support the child. Maintenance subsidies should not exceed a monthly amount specified by the department. In some instances, families may require a combination of subsidies such as placement and special service or placement and time-limited maintenance. Continuous receipt of the subsidy is not required for the child to retain his or her subsidy eligibility.

.083. Amount and Duration of Subsidies.

(a) The maximum amount of subsidy a family may receive for the child during a 12-month period cannot exceed the total amount for foster care maintenance that the department would have expended for the child in a foster family home during the same 12-month period.

(b) Subsidies can be approved and contracted for a period not to exceed 12 months. When a review of the family's and child's circumstances indicate a continuing need for subsidy, the contract can be renegotiated at the end of the 12-month period. If a change occurs in the child's and family's circumstances during the period the subsidy contract is in effect, the subsidy may be increased or decreased after a review of the changed circumstances.

(c) Special services and ongoing maintenance subsidies are available as the need arises until the child is age 18, or age 21 if he or she is still in school.

.084. Application and Approval Procedures.

(a) The Adoption Subsidy Request form is used to apply for adoption subsidies. The initial application may be made prior to the child's actual placement and must be made prior to consummation of the adoption.

(b) Before a child is placed with a family needing adoption subsidy assistance, the child's worker must:

(1) Register the child on the Texas Adoption Resource Exchange. If the child is to be adopted by his foster parents or other persons known to him, he does not have to be registered on the ARE.

(2) Document in the child's record the child's need for subsidy and the worker's efforts to place the child without a subsidy.

(3) Explore all other possible resources for meeting the child's needs. These resources include the family's income and insurance, social security, SSI, and Veterans Administration benefits. Services available through Crippled Children's Services, the Blind Commission, MH/MR, the public education system, and other resources in the community must also be considered and used when available and appropriate.

(4) Document in the child's record the resources available, in the community and to the family and child, to meet all or part of the child's care.

(c) The worker must discuss with the family the type of subsidies available and the purpose of each. The worker must also explain to the family the need to review the subsidy annually. Jointly, the worker and family must decide which type of subsidy will meet the needs of the placement.

.085. Regional Adoption Subsidy Committee.

(a) The regional adoption subsidy committee is responsible for reviewing all requests for subsidy to decide ap-

propriateness, to verify the child's eligibility, and to recommend the type of subsidy, amount, and duration.

(b) The region may appoint a representative from the licensed private adoption sector to serve on the regional committee. Representatives from children's advocacy groups may also serve on the committee.

(c) When the department places a child from one region with a DHR studied and approved family in another region, the subsidy request is submitted from the region where the family resides. The worker holding managing conservatorship must concur with the need for subsidy before the request can be approved.

.086. State Adoption Subsidy Committee.

(a) The State Adoption Subsidy Committee must review all adoption subsidy requests submitted by regional adoption subsidy committees. The adoption program specialist is the chairperson for the state committee. The chairperson receives, compiles, and maintains all data for statistical purposes.

(b) The state committee consists of the chairperson and the following members.

(1) Foster Care Program specialist.

(2) Designated staff from the Protective Services for Children Branch.

(3) Program director or supervisor of the Austin adoption unit for the purpose of field representation on the state committee. When the state committee considers requests from the Austin region, this committee member will not vote.

(4) Adoption supervisors from regions other than Austin as designated.

(5) A representative of a private licensed adoption agency.

.087. Payment Procedures.

(a) The adoption worker must discuss and clarify the terms and limitations of the subsidy with the family and secure their signatures on the Adoption Subsidy Agreement. When distance precludes the worker from doing this in person, a statement about the purpose of the subsidy and its time frames along with the forms must be sent to the family. This same information must also be supplied to the family's agency if the family was studied and approved by an agency other than the department.

(b) The subsidy agreement is an official contract between the family and DHR and must be signed before payment is made. The Application for Vendor Indentification Number must also be completed when the contract is signed, if the adoptive family does not already have a comptroller vendor identification number. Assignment of a number by the comptroller's office must be made before payment can be made by Fiscal Division.

(c) The purchase voucher is used to initiate subsidy payments. The form must be signed by the family and appropriate staff in the region who have been designated by the regional administrator as having signatory authority.

(d) The DHR adoption worker is responsible for monitoring the subsidy service and initiating payments in accordance with the subsidy agreement. While casework services usually end upon consummation of the adoption, the case remains open as long as subsidy payments are being made.

(e) The Disposition of Subsidized Adoption Placement form must be completed by the worker whenever either of the following occur:

(1) the adoption is consummated;

(2) the child is removed from the home.

.088. Renewal and Review Procedures.

(a) When an approved subsidy expires and the adoptive family requests a renewal of the subsidy, the worker must carefully review with the family the need for continuing the subsidy.

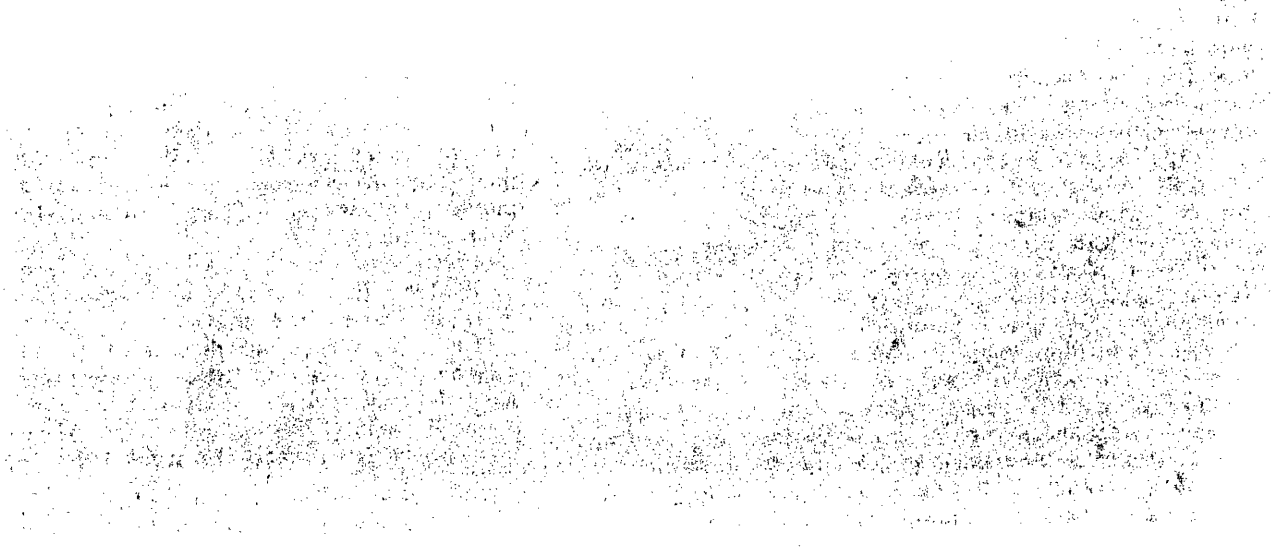
(b) If the child's or family's circumstances change during the period that a subsidy is in effect which may require an increase or decrease in the amount of subsidy, the worker must submit this information to the regional subsidy committee. The procedures for reviewing a subsidy are the same as for applications and renewals.

Issued in Austin, Texas, on November 7, 1980.

Doc. No. 808486

Marlin W. Johnston
Acting Commissioner
Texas Department of Human Resources

Effective Date: November 28, 1980
Proposal Publication Date: July 15, 1980
For further information, please call (512) 441-3355.



OPEN MEETINGS

The Open Meetings Act (Article 6252-17, Texas Civil Statutes) requires that an agency with statewide jurisdiction have notice posted for at least seven days before the day of a meeting. A political subdivision covering all or part of four or more counties, or an institution of higher education, must have notice posted for at least 72 hours before the scheduled meeting time. Notice of an emergency meeting or an emergency addition or amendment to an agenda must be posted for at least two hours before the meeting is convened. Although some notices may be received and filed too late for publication before the meetings are held, all filed notices will be published in the *Register*. Each notice published includes an agenda or a summary of the agenda as furnished for publication by the agency and the date and time of filing. Notices are posted on the bulletin board outside the offices of the secretary of state on the first floor in the East Wing of the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

Texas Adult Probation Commission

Friday, November 14, 1980, 9 a.m. The Texas Adult Probation Commission will meet in the Ramada Inn, Highway 69 at Loop 323, Tyler. According to the agenda summary, the commission will consider Probation Department budget adjustments; supplemental funding request; special program funding request; Audit Committee report; statistical report; legislative issues; and application for waiver to standard.

Information may be obtained from Sharon Schunn, 812 San Antonio, Suite 400, Austin, Texas 78701, (512) 475-1374.

Filed: November 6, 1980, 4:01 p.m.
Doc. No. 808476

Texas Air Control Board

Wednesday, November 19, 1980, 1:30 p.m. The Ad Hoc Committee for Harris County Vehicle Emissions Testing Pilot Program of the Texas Air Control Board will meet in the City of Houston Health Department Auditorium, 1115 North MacGregor, Houston. According to the agenda summary, the board will make welcoming remarks; introductions; film presentation; City of Houston Vehicle Emissions Testing Program; comments on the pilot program; report from Texas Air Control Board data analysis contractor; review and consider the draft Texas Air Control Board report to the Legislature; and general discussion and public comment concerning pilot program.

Information may be obtained from Ramon Dasch, 6330 Highway 290 East, Austin, Texas 78711, (512) 451-5711, ext. 354.

Filed: November 10, 1980, 9:57 a.m.
Doc. No. 808570

Friday, November 21, 1980, 8:30 a.m. The Ad Hoc Committee for Harris County Vehicle Emissions Testing Pilot Program of the Texas Air Control Board will meet in Room 332, 6330 Highway 290 East, Austin. According to the agenda summary, the committee will consider the recommendations to the Texas Air Control Board concerning the Texas Air Control Board report to the Legislature on the Harris County Pilot Vehicle Emission Testing Program.

Information may be obtained from Ramon Dasch, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354

Filed: November 10, 1980, 9:57 a.m.
Doc. No. 808571

Friday, November 21, 1980, 9:30 a.m. The Texas Air Control Board will meet in the Texas Air Control Board Auditorium, 6330 Highway 290 East, Austin. According to the agenda summary, the board will approve minutes of September 26, 1980, meeting; present reports; present 10-year service awards; consider report and recommendations of the Ad Hoc Committee for Harris County Vehicle Emissions Testing Pilot Program; consider status report on delegation of PSD permit review authority; and discuss new business.

Information may be obtained from Ramon Dasch, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, ext. 354.

Filed: November 10, 1980, 9:57 p.m.
Doc. No. 808572

Friday, November 21, 1980, 9:30 a.m. The Budget and Finance Committee of the Texas Air Control Board will meet in Room 209, 6330 Highway 290 East, Austin. According to the agenda summary, the committee will review proposed contract projects.

Information may be obtained from Ramon Dasch, 6330 Highway 290 East, Austin, Texas, (512) 451-5711, ext. 354.

Filed: November 10, 1980, 9:57 a.m.
Doc. No. 808573

Texas Department of Corrections

Monday, November 10, 1980, 8 a.m. The board of the Texas Department of Corrections made an emergency addition to the agenda of a meeting held in Room 103, 815 Eleventh Street, Huntsville. The emergency addition to the agenda was under Windham School System, Revision of the five-year plan for special education. The emergency addition was made on less than seven days' notice in order to comply with Texas Education Agency policy, and to meet the Education Service Center, Region VI, November 15 deadline.

Information may be obtained from Robert E. DeLong, Jr., P.O. Box 99, Huntsville, Texas 77340, (713) 295-6371, ext. 141.

Filed November 7, 1980, 2:56 p.m.
Doc. No. 808542

State Board of Dental Examiners

Friday and Saturday, November 14 and 15, 1980, 9 a.m. daily. The State Board of Dental Examiners has submitted a revised agenda for a meeting to be held in the Sheraton Dallas Hotel, Dallas. According to the new agenda summary, the board will discuss cases with assistant attorney general, set registration fees for 1981; accept dental license; discuss

three opinions from the attorney general; hold investigative conferences; discuss requests from dentists regarding dental offices and employment of dentists and dental brochures; discuss letter regarding applicant that failed; hear dentist regarding a complaint; discuss board finances, compensatory time, and other routine business.

Information may be obtained from Carl C. Hardin, Jr., 7th and Brazos, 718 Southwest Tower, Austin, Texas 78701, (512) 475-2443.

Filed: November 6, 1980, 4:56 p.m.
Doc. No. 808480

Friday and Saturday, November 14 and 15, 1980, 9 a.m. The Texas State Board of Dental Examiners is making an emergency addition to the agenda of a meeting to be held in the Sheraton-Dallas Hotel, Dallas. The emergency addition concerns the discussion of Dr. Patterson's request that a survey card be included in the 1981 registration notices and was made because it was just received in the board office from the Secretary of the Board and was not available for inclusion in the previously published agenda.

Information may be obtained from Carl C. Hardin, Jr., 718 Southwest Tower, 7th and Brazos, Austin, Texas 78701.

Filed: November 7, 1980, 2:20 p.m.
Doc. No. 808552

Texas Education Agency

Saturday, November 8, 1980, 8:30 a.m. The State Board of Education made an emergency addition to the agenda of a meeting held in the board room, 150 East Riverside Drive, Austin. The emergency addition considered the appointments recommended to the President of the University of Texas to become members of the University Interscholastic League State Executive Committee. This addition was done on an emergency basis because information on this item was not available at the time the original notice was posted.

Information may be obtained from Alton O. Bowen, 201 East 11th Street, Austin, Texas, (512) 475-3271.

Filed: November 7, 1980, 2:50 p.m.
Doc. No. 808550

Employees Retirement System of Texas

Tuesday, November 18, 1980, 9 a.m. The Group Insurance Advisory Commission of the Employees Retirement System of Texas will meet in the fourth floor board room of the Employees Retirement System Building, 18th and Brazos, Austin. According to the agenda, the commission will elect chairperson and vice chairperson; review group insurance experience 1979 and 1980; discuss enrollment data; and any other subject that may be introduced.

Information may be obtained from Clayton T. Garrison, Box 13207, Austin, Texas 78711, (512) 476-6431.

Filed: November 7, 1980, 3:35 p.m.
Doc. No. 808553

General Land Office

Tuesday, November 18, 1980, 2 p.m. The Veterans Land Board of the General Land Office will meet in the Stephen F. Austin Building, Austin. According to the agenda, the board will consider the approval of the minutes of the October 21, 1980, meeting of the Veterans Land Board; report of executive secretary; and discussion of board policy.

Information may be obtained from Richard Keahey, Stephen F. Austin Building, Room 738, Austin, Texas, (512) 475-3766.

Filed: November 7, 1980, 4:26 p.m.
Doc. No. 808562

Texas Health Facilities Commission

Friday, November 21, 1980, 9:30 a.m. The Texas Health Facilities Commission will meet in Suite 305 of the Jefferson Building, 1600 West 38th Street, Austin, to consider the following applications:

Certificate of Need
- Timberlawn Psychiatric Hospital, Dallas
  AH80-0620-016
- Doctors Hospital, Groves
  AH80-0228-030
- Park Place Hospital, Port Arthur
  AH80-0304-007
- St. Mary Hospital of Port Arthur, Port Arthur
  AH80-0303-040
- Shriner's Hospital for Crippled Children, Houston
  AH80-0523-033
- Brookhaven Medical Center, Farmers Branch
  AH80-0627-031
- Woods Nursing Home of Wichita Falls, Wichita Falls
  AN80-0313-027
- Wadley Hospital, Texarkana
  AH80-0721-011
- Beaumont Community Health Clinic, Beaumont
  AS80-0630-046
- University of Texas Medical Branch, Galveston
  AH80-0617-007
- Comfort Gardens Home, Comfort
  AN80-0530-082
- Hillside Lodge Nursing Center, Beeville
  AN80-0707-019
- Providence Hospital, Waco
  AH80-0701-009
- Prairie View A&M University/Owens-Franklin Health Center, Prairie View, AO80-0604-044

Exemption Certificate
- Upjohn Health Care Services, Midland
  AS80-0926-015
- Texas College of Osteopathic Medicine, Fort Worth
  AO80-1001-011
- Longview Regional Hospital, Inc., Longview
  AH80-0922-035
- Hood General Hospital, Grandbury
  AH80-0922-02[illegible]

Declaratory Ruling
- Scott and White Memorial Hospital, Temple
  AH80-0730-007

Amendment of Certificate of Need Order
Panhandle Area Cancer Council, Inc., Amarillo
AO78-1010-020A (060280)

Amendment of Exemption Certificate
Kerrville State School, Kerrville
AA80-0116-006A(092580)

Motions for Reconsideration/Rehearing
Great Southwest Convalescent Center, Grand Prairie
AN80-0222-020
Grand Prairie Learning and Development Center, Grand Prairie, AN80-0222-001

A routine business meeting will follow the open meeting.

Information may be obtained from Linda E. Zatopek, P.O. Box 15023, Austin, Texas 78761, (512) 475-6940.

Filed: November 7, 1980, 9:34 a.m.
Doc. No. 808482

Texas Industrial Commission

Wednesday, November 19, 1980, 9 a.m. The Metric System Advisory Council of the Texas Industrial Commission will meet in the Texas Industrial Commission Offices, 410 East 5th Street, Austin. According to the agenda, the council meeting will be called to order by Chairman, William Nicol; approve minutes of previous meeting by chairman; staff presentation of updates, FTC resolution and media style guide; gas pump conversion update by Charles Forester; report on state metric coordinators meeting by chairman; comments by staff of annual report to legislature; and work session regarding state metric plan.

Information may be obtained from Chuck Newell, P.O. Box 12728, Austin, Texas 78711, (512) 472-5059.

Filed: November 10, 1980, 9:38 a.m.
Doc. No. 808564

State Board of Insurance

Wednesday, November 19, 1980, 2 p.m. The State Board of Insurance will conduct a public hearing in Room 408, 1110 San Jacinto, Austin, to consider the appeal of Bankers Multiple Line Insurance Company from a ruling of the commissioner of insurance.

Information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, (512) 475-2950.

Filed: November 10, 1980, 9:28 a.m.
Doc. No. 808565

Tuesday, November 25, 1980, 9 a.m. The State Board of Insurance will conduct a hearing in Room 408, 1110 San Jacinto, Austin, to consider the appeal of Prairie States Insurance Company from action of the commissioner of insurance.

Information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, (512) 475-2950.

Filed: November 7, 1980, 9:18 a.m.
Doc. No. 808530

Texas Department of Mental Health and Mental Retardation

Friday, November 14, 1980, 9:30 a.m.-3:30 p.m. The Texas Board of MH/MR's Medical Advisory Committee of the Texas Department of Mental Health and Mental Retardation will meet at the central offices, 909 West 45th Street, Austin. According to the agenda summary, the committee will hold the new member orientation and discuss Texas Department of MH/MR pharmacy services, Senate Resolution 67 final report, and community MH/MR centers mission and physicians role.

Information may be obtained from John D. Kavanagh, M.D., P.O. Box 12668, Austin, Texas 78711, (512) 465-4588.

Filed: November 6, 1980, 4:45 p.m.
Doc. No. 808748

State Board of Morticians

Tuesday and Wednesday, November 18 and 19, 1980, 9 a.m., daily. The State Board of Morticians will conduct formal hearings at 1513 South IH 35, Austin, regarding the actions of licensees. Items on the agenda for a general meeting include: use of national conference examination; attendance of board members at the Conference of Funeral Services Examining Boards; rules concerning the filing of charges and reciprocity with legal counsel; printing of new annuals and the elimination of office machinery; reinstatement application on funeral directors and embalmers license; financial statements and lists of licenses canceled due to nonpayments of renewal fees; letters concerning apprenticeships; reports of subcommittees; and complaints.

Information may be obtained from John W. Shocklee, 1513 South IH 35, Austin, Texas 78741, (512) 442-6721.

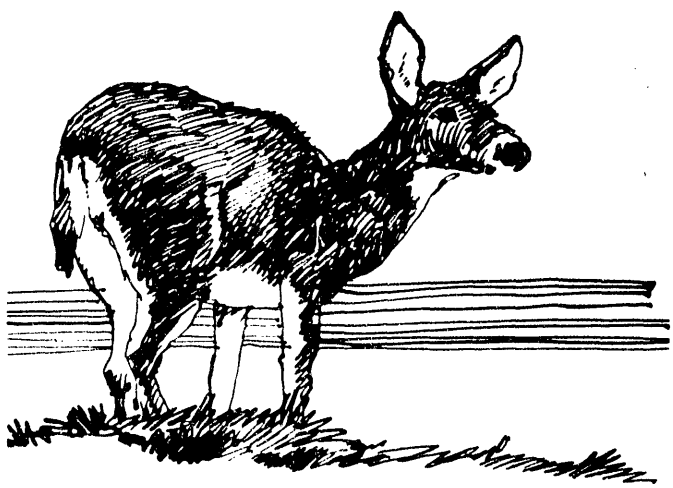
Filed: November 6, 1980, 3:52 p.m.
Doc. No. 808477

Texas Parks and Wildlife Department

Thursday, November 6, 1980, 4:30 p.m. The commission of the Texas Parks and Wildlife Department held an emergency meeting in Building "B" of the Texas Parks and Wildlife Department Headquarters complex, 4200 Smith School Road, Austin. According to the agenda, the commission discussed the deletion of Tyler County from the four-day designated special either sex white-tailed deer hunting season as it appears in departmental Rules 127.70.01.326(a) and (f) and .332(a)(1)(P). The meeting was held on less than seven days' notice because citizens and elected representatives from Tyler County requested the deletion be made before the beginning of the upcoming season to prevent depletion of the wildlife resource.

Information may be obtained from Maurine Ray, 4200 Smith School Road, Austin, Texas 78744, (512) 475-4954.

Filed: November 6, 1980, 1:56 p.m.
Doc. No. 808470



Polygraph Examiners Board

Thursday-Saturday, January 15-17, 1981, 9 a.m. to 4 p.m., daily. The Polygraph Examiners Board will meet in the La Quinta Motor Inn, 13685 North Central Expressway, Dallas. According to the agenda, the board will act upon applications for internship and reciprocity; discuss proposed rule changes, accept or reject; discuss proposed new Polygraph Examiners Act from Sunset Committee; hold any administrative hearings scheduled; consider and act on any complaints received; interview interns who failed last state examination and their sponsors and consider any additional polygraph related business deemed appropriate by the chairman.

Information may be obtained from Ryerson D. Gates, 111 West Laurel, Suite 115, San Antonio, Texas 78212, (512) 227-6100.

Filed: November 7, 1980, 9:17 a.m.
Doc. No. 808531

State Property Tax Board

Wednesday, November 19, 1980, 8:30 a.m. The State Property Tax Board will conduct hearings in the agency's conference room, 9501 North IH 35, Austin, on protest appeals in assignment of market and index values of school district properties pursuant to Section 11.86 of the Texas Education Code.

Information may be obtained from Kenneth E. Graeber, 9501 North IH 35, Austin, Texas, (512) 837-8622.

Filed: November 6, 1980, 3:03 p.m.
Doc. No. 808473

Thursday, November 20, 1980, 8:30 a.m. The State Property Tax Board will meet in the conference room, 9501 North IH 35, Austin, to conduct hearings of protest appeals in assignment of market and index value of school district properties pursuant to Section 11.86 of the Texas Education Code.

Information may be obtained from Kenneth E. Graeber, 9501 North IH 35, Austin, Texas, (512) 837-8622.

Filed: November 7, 1980, 2:51 p.m.
Doc. No. 808551

Public Utility Commission of Texas

Friday, November 14, 1980, 9 a.m. The Hearings Division of the Public Utility Commission of Texas has rescheduled a hearing to be held in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3412—application of B&B Water System, Inc., for a rate increase within Orange County. The hearing originally set for November 12, 1980, was rescheduled at the request of the parties to accommodate their schedule conflicts. No other hearing dates were available in the near future.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: November 6, 1980, 3:46 p.m.
Doc. No. 808474

Tuesday, November 18, 1980, 9 a.m. The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will consider final orders and hear oral argument in the following Dockets: 3200, 3218, 3315, 3136, 3298 and 3429, 3481, 3233, 3293, 3314, 3447, 3148, 3240, 3464, 2616, 3231, 2875, 3301, 2|RCH-1|, 3376, 3386, 3247, 3287, 3299, 3326, 3367, 3400, 3428, 3433, 3443, 3444, 3451, 3462, 3463, 3472, 3482, 3489, and 3507.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: November 7, 1980, 2:49 p.m.
Doc. No. 808543

Wednesday, November 19, 1980, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3505—application of Utility Development and Research, Inc., for a water rate increase within Kleberg County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: November 10, 1980, 9:27 a.m.
Doc. No. 808566

Thursday, November 20, 1980, 1:30 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3512—application of Riverside Service Company, Inc., for a water rate increase within Bastrop County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: November 10, 1980, 9:27 a.m.
Doc. No. 808567

Tuesday, November 25, 1980, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3493—application of Grande Casa Water System for a water rate increase within Ellis County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: November 10, 1980, 9:27 a.m.
Doc. No. 808568

Monday, December 1, 1980, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3355—application of North County Water Corporation for a CCN within McLennan County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: November 10, 1980, 9:28 a.m.
Doc. No. 808569

Monday, December 15, 1980, 9:30 a.m. The Hearings Division of the Public Utility Commission of Texas is rescheduling a hearing to be held in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 2944– inquiry by the Public Utility Commission of Texas into certain cost studies of Southwestern Bell Telephone Company previously scheduled for November 17, 1980.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, (512) 458-0100.

Filed: November 6, 1980, 3:46 p.m.
Doc. No. 808475

Railroad Commission of Texas

Monday, November 17, 1980, 9 a.m. The Railroad Commission of Texas will meet in the third floor conference room, 1124 South IH 35, Austin. Following the regular agenda, the commission will go into executive session to discuss personnel actions for all divisions and to consult with its legal staff on prospective and pending litigation pursuant to sections 2g and 2e of the Act, respectively.

Information may be obtained from Carla S. Doyne, 1124 South IH 35, Austin, Texas 78704, (512) 445-1186.

Filed: November 7, 1980, 11 a.m.
Doc. No. 808532

Monday, November 17, 1980, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas will meet in Room 107, 1124 South IH 35, Austin. According to the agenda summary, the division will consider gas utilities dockets 2640, 2673, 2783, 2794, 2795, 2798, 2799, 2803, 2725 and the director's report.

Information may be obtained from Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1146.

Filed: November 7, 1980, 1:58 p.m.
Doc. No. 808541

Monday, November 17, 1980, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas will meet in Room 107, 1124 South IH 35, Austin, Texas. According to the agenda, the division will consider Gas Utilities Docket 2778—statement of intent filed by Southwestern Gas Pipeline, Inc., to change rates to Texas Utilities Fuel Company.

Information may be obtained from Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas, (512) 445-1126.

Filed: November 7, 1980, 3:50 p.m.
Doc. No. 808554

Monday, November 17, 1980, 9 a.m. The Liquefied Petroleum Gas Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 South IH 35, Austin. According to the agenda, the division will consider the director's report.

Information may be obtained from Guy G. Mathews, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1189.

Filed: November 7, 1980, 11:01 a.m.
Doc. No. 808533

Monday, November 17, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas will meet at 1124 South IH 35, Austin. According to the agenda summary, the division will consider various matters falling within the Railroad Commission's oil and gas regulatory jurisdiction.

Information may be obtained from Jan Burris, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1307.

Filed: November 7, 1980, 10:59 a.m.
Doc. No. 808534

Monday, November 17, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas makes an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 South IH 35, Austin. The addition concerns consideration of category determinations under Sections 102(c)(1)(C), and 103 of the Natural Gas Policy Act of 1978: F-03-017676.

Information may be obtained from Madalyn J. Girvin, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1273.

Filed: November 7, 1980, 10:58 a.m.
Doc. No. 808535

Monday, November 17, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas has made an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 South IH 35, Austin. The addition concerns consideration of category determinations under Sections 102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Information may be obtained from Madalyn J. Girvin, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1273.

Filed: November 7, 1980, 10:59 a.m.
Doc. No. 808536

Monday, November 17, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas has made an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 South IH 35, Austin. The addition concerns consideration of Docket 86,276—Baker and Taylor Drilling Company, Rule 37, 38, 38(a)(5), and 40(a), Hansford (Morrow, Lower) Field, Hutchinson County.

Information may be obtained from Sandra B. Buch, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1282.

Filed: November 7, 1980, 11 a.m.
Doc. No. 808537

Monday, November 17, 1980, 9 a.m. The Surface Mining Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 South IH 35, Austin. According to the agenda, the division will consider Docket 0051D—application for revision to Texas Utilities Generating Company's Permit 005, to authorize construction of a ditch within 100 feet of an unnamed Titus County road located just north of Winfield; and director's report.

Information may be obtained from J. Randel (Jerry) Hill, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1176.

Filed: November 7, 1980, 11 a.m.
Doc. No. 808538

Monday, November 17, 1980, 9 a.m. The Transportation Division of the Railroad Commission of Texas will meet in Room 107, 1124 South IH 35, Austin. According to the agenda summary, the division will consider various matters falling within the Railroad Commission's transportation regulatory jurisdiction.

Information may be obtained from Owen T. Kinney, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1330.

Filed: November 7, 1980, 11:01 a.m.
Doc. No. 808539

State Securities Board

Tuesday, November 18, 1980, 10 a.m. The Securities Commissioner of the State Securities Board will conduct a hearing at 1800 San Jacinto Street, Austin, for the purpose of determining whether a cease and desist order should be issued prohibiting the sale of securities issued by Major United Steel Siding Corporation.

Information may be obtained from Lee Polson, 1800 San Jacinto Street, Austin, Texas, (512) 474-2233.

Filed: November 7, 1980, 4:51 p.m.
Doc. No. 808563

Tax Assessor Examiners Board

Monday, November 17, 1980, 2 p.m. The Tax Assessor Examiners Board will meet in the Ramada Inn-Capitol, 300 East 11th and San Jacinto, Austin. According to the agenda summary, the board will discuss the intergovernmental affairs meeting and the Legislative Budget Board decision.

Information may be obtained from Ben Tow, 9501 North IH 35, Austin, Texas.

Filed: November 6, 1980, 3:03 p.m.
Doc. No. 808472

Texas Water Commission

Monday, November 17, 1980, 10 a.m. The Texas Water Commission will meet in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider an application for district bond issue; use of surplus funds; release from escrow; petitions for creation— setting of hearing date; water quality permits; amendments and renewals; adjudication matter; final decision on water rights applications; approval of construction plans and specifications levee projects; motion for rehearing; amend certificate of adjudications; and setting of hearing dates.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: November 7, 1980, 2:39 p.m.
Doc. No. 808544

Monday, November 17, 1980, 2 p.m. The Texas Water Commission will conduct a hearing in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, regarding a temporary order to be issued to San Antonio Municipal Utility District 1 concerning disposal of treated effluent from an interim sewage treatment plant located west of State Highway 16, approximately 1.7 miles north of Helotes in Bexar County.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: November 7, 1980, 2:39 p.m.
Doc. No. 808545

Tuesday, December 16, 1980, 1 p.m. The Texas Water Commission will conduct hearings in the Commissioners Courtroom of the Potter County Courthouse annex, 511 South Taylor, Amarillo. According to the agenda summary, the commission will consider the following:

Application by Southwestern Public Service Company for an amendment to Permit 01990 to authorize additional facilities to maintain a "no discharge of waste water"

capability. The existing permit currently specifies no discharge of waste waters and sets forth specific conditions for the disposal by irrigation of an average waste water volume of 3 million gallons per day. The applicant proposes to add a new coal-fired power generation unit 3 at the Nichols-Harrington Steam Electric Station which will increase the waste water volume to 4,250,000 gallons per day in Potter County.

Application by the State Department of Highways and Public Transportation (Potter County Rest Area-Westbound), for a permit to authorize the disposal of 3,500 gallons per day of treated domestic sewage effluent to a playa lake. The applicant proposes to construct waste water treatment facilities to serve the domestic needs of travelers along IH 40 in Potter County.

Application by the State Department of Highways and Public Transportation (Potter Rest Area-Eastbound), for a permit to authorize the disposal of 4,500 gallons per day of treated domestic sewage effluect to a playa lake. The application proposes to construct waste water treatment facilities to serve the domestic needs of travelers along IH 40 in Potter County.

Information may be obtained from John Sutton, P.O. Box 13087, Austin, Texas 78711, (512) 475-1468.

Filed: November 7, 1980, 2:40 p.m.
Doc. Nos. 808546-808548

Wednesday, December 17, 1980, 10 a.m. The Texas Water Commission will conduct a hearing in the Commissioners Courtroom of the Potter County Courthouse Annex, 511 South Taylor, Amarillo. According to the agenda summary, the commission will consider an application by Tom Hills, 1821 Monte Vista, Dalhart, for a permit to authorize the disposal of agricultural waste from a confined feeding operation. The applicant proposes to construct wastewater retention facilities to collect process wastewater and rainfall runoff from a confined feeding operation for cattle in Hartley County.

Information may be obtained from John Sutton, P.O. Box 13087, Austin, Texas 78711, (512) 475-1468.

Filed: November 7, 1980, 2:41 p.m.
Doc. No. 808549

Regional Agencies

Meetings Filed November 6, 1980

The Brazos Valley Development Council, Executive Committee, met at the Brazos Center, 3232 Briarcrest Drive, Bryan, on November 13, 1980, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77801, (713) 822-7421.

The Copano Bay Soil Conservation District 329 will meet at the Shay Plaza, 106 South Alamo, Refugio, on November 17, 1980, at 7 p.m. Information may be obtained from Jim Wales, Drawer 340, Refugio, Texas 78377, (512) 526-2334.

The Deep East Texas Council of Governments, Regional Services Division, met in the Commissioner's Courtroom, Jasper County Courthouse, Jasper, on November 10, 1980, at 1 p.m. Information may be obtained from Ronald J. Willis, P.O. Drawer 1170, Jasper, Texas 75951, (713) 384-5704.

The Deep East Texas Council of Governments, Area Agency on Aging, will meet in the auditorium, Room 209, Science Building, Angelina College, Lufkin, on November 14, 1980, at 1:30 p.m. Information may be obtained from Martha Jones, P.O. Drawer 1170, Jasper, Texas 75951, (713) 384-5704.

Doc. No. 808469

Meetings Filed November 7, 1980

The Education Service Center, Region VIII, Board of Directors, will meet at the Alps Restaurant, Interstate 30, Mount Pleasant, on November 20, 1980, at 11:30 a.m. Information may be obtained from Scott Ferguson, 100 North Riddle Street, Mount Pleasant, Texas 75455, (214) 572-6676.

The Edwards Underground Water District, Board of Directors, will meet in the McAnnelly Room, First State Bank, Uvalde, on November 18, 1980, at 1:30 p.m. Information may be obtained from Thomas P. Fox, 1200 Tower Life Building, San Antonio, Texas, (512) 222-2204.

The Texas Municipal Power Agency, Audit and Budget Committee, met at the Agency Offices, 2225 East Randol Mill Road, Arlington, on November 12, 1980, at 5:30 p.m. Information may be obtained from Joel T. Rodgers, 2225 East Randol Mill Road, Arlington, Texas 76011, (817) 461-4400.

The Texas Municipal Power Agency, Board of Directors, met at the Agency Offices, 2225 East Randol Mill Road, Arlington, on November 13, 1980, at 9 a.m. Information may be obtained from Joel T. Rodgers, 2225 East Randol Mill Road, Arlington, Texas 76011, (817) 461-4400.

The South Plains Association of Governments, Executive Committee, met at 1709 26th Street, Lubbock, on November 13, 1980, at 9 a.m. Information may be obtained from Glenda Robinson, 1709 26th Street, Lubbock, Texas 79411, (806) 762-8721.

The South Plains Association of Governments, Board of Directors, met in the South Plains Association of Governments Conference Room, 1709 26th Street, Lubbock, on November 13, 1980, at 10 a.m. Information may be obtained from Glenda Robinson, 1709 26th Street, Lubbock, Texas 79411, (806) 762-8721.

Doc. No. 808481

Meetings Filed November 10, 1980

The Brazos Valley Region MH/MR Center, Board of Trustees, will meet in Suite 102, 707 Texas Avenue South, College Station, on November 20, 1980, at 3 p.m. Information may be obtained from Charles Thompson, P.O. Box 4588, Bryan, Texas 77801, (713) 696-8585.

The Capital Area Planning Council, Executive Committee, will meet in Suite 400, 611 South Congress, Austin, on November 18, 1980, at 10 a.m. Information may be obtained from Richard Bean, 611 South Congress, Suite 400, Austin, Texas, 78704, (512) 443-7653.

The Concho Valley Council of Governments, Executive Committee, met at 5002 Knickerbocker Road, San Angelo, on November 12, 1980, at 8 p.m. Information may be obtained from James F. Ridge, 5002 Knickerbocker Road, San Angelo, Texas, (915) 944-9666.

The Deep East Texas Regional MH/MR Services, Board of Trustees, will meet in the Ward R. Burke Community Room-Day Treatment, Administration Facility, 4101 South Medford Drive, Lufkin, on November 18, 1980, at 5:30 p.m. Information may be obtained from Wayne Lawrence, 4101 South Medford Drive, Lufkin, Texas 75901, (713) 639-1141.

The Education Service Center, Region XIV, Board of Directors, will meet at 2501 South Willis Street, Abilene, on November 14, 1980, at noon. Information may be obtained from Thomas Lawrence, P.O. Box 3258, Abilene, Texas 79604, (915) 677-2911.

The Golden Crescent Council of Governments, Executive Committee, met in an emergency session at First Victoria National Bank, Town Hall, 101 South Main, Victoria, on November 13, 1980, at 2 p.m. Information may be obtained from Robert W. Burr, P.O. Box 2028, Victoria, Texas 77901, (512) 278-1587.

The Greater East Texas Health Systems Agency, Executive Committee, will meet at Dogwood Country Club, Woodville, on November 20, 1980, at 7:30 p.m. Information may be obtained from Larry D. Lacy, 2900 North, Suite 303, Beaumont, Texas 77702, (713) 892-6962.

The Nortex Regional Planning Commission, Executive Committee, will meet at the McBride Land and Cattle Company, 501 Scott Street, Wichita Falls, on November 20, 1980, at noon. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas 76309, (817) 322-5281.

The Palo Pinto Appraisal District met at 603 South Oak, Mineral Wells, on November 13, 1980, at 7 p.m. Information may be obtained from Harold H. Quillen, 100 Southeast Fifth Street, Mineral Wells, Texas 76067, (817) 325-6871.

Pecan Valley MH/MR Region, Board of Trustees, will meet at the First United Methodist Church, 204 East Pearl, Granbury, on November 18, 1980, at 8 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806.

The Permian Basin Health Systems Agency, governing body, will meet in the conference room, Permian Basin Regional Planning Commission, Midland Air Terminal, Midland, on November 17, 1980, at 7:30 p.m. Information may be obtaind from Harley Reeves, P.O. Box 6391, Midland, Texas, (915) 563-1061.

The Rusk County Appraisal District, Board of Directors, has been rescheduled from October 30, 1980, to meet in the County Courtroom, Rusk County Courthouse, Henderson, on November 20, 1980, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, Box 7, Henderson, Texas 75652, (214) 657-2555.

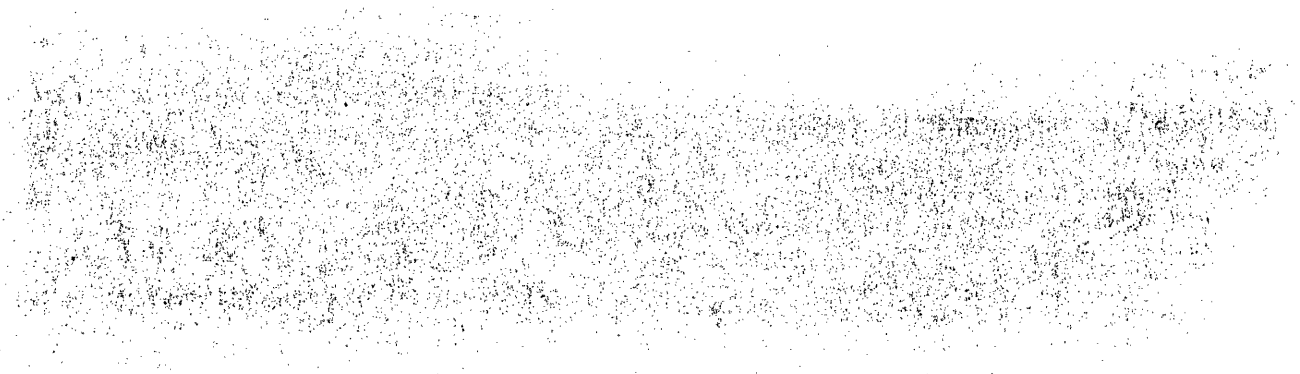
The South Texas Health Systems Agency, Board of Directors, will meet at the Round Table Restaurant, 1418 South 14th Street, Kingsville, on November 15, 1980, at 1 p.m. Information may be obtained from Mario L. Vasquez, Station 1, Box 2378, Kingsville, Texas 78363, (512) 595-5545.

The South Texas Health Systems Agency, Nominating Committee of the Coastal Bend Subarea Health Advisory Council, will meet at the Greenwood Senior Community Center, 4040 Greenwood Road, Corpus Christi, on November 19, 1980, at 6:15 p.m. Information may be obtained from Helen Fisher, Station 1, Box 2378, Kingsville, Texas 78363, (512) 595-5545.

The South Texas Health Systems Agency, Coastal Bend Subarea Health Advisory Council, will meet at the Greenwood Senior Community Center, 4040 Greenwood Road, Corpus Christi, on November 19, 180, at 7 p.m. Information may be obtained from Helen Fisher, Station 1, Box 2378, Kingsville, Texas 78363, (512) 595-5545.

The West Texas Health Systems Agency, governing body, will meet in the Monterrey Room, Granada Royale Hometel, 6100 Gateway East, El Paso, on November 20, 1980, at 7:30 p.m. Information may be obtained from Cory Vaughan, 303 North Oregon, Suite 700, El Paso, Texas 79901, (915) 532-2910.

Doc. No. 808574



Texas Air Control Board

Consultant Proposal Request

Data Coding into TACB Computer Data Base

Notice of Invitation for Proposals. The Texas Air Control Board (TACB) invites all interested parties to submit technical proposals to provide professional engineering services to the agency. The last day for receipt of offers shall be November 28, 1980. The contract shall become effective after being signed by the executive director of the TACB and the selected firm. It shall terminate on October 1, 1981. Funds expended under this contract for these services will not exceed $290,000.

Description of Services. The purpose of this contract is to code emissions and other relevant data for entry into the agency's computerized control and prevention system (CAPS) data file. The data to be coded will be from construction permits issued between August 7, 1977, and November 1, 1980. Permit data for major sources (as defined by PSD rules) that began construction after January 6, 1975, will also be coded. Confidential data will not be included.

Approximately 3,500 permits containing approximately 8,500 emission points and relevant data will be coded. The TACB will enter the data into CAPS and provide data entry edit checks on the data. It will be the contractor's responsibility to check the data entered against the entry forms to ensure the data entered corresponds to that coded. The contractor shall provide a quality assurance plan which will ensure that only the most technically correct data is coded for entry into CAPS and that this data is entered correctly.

A copy of a detailed statement of work to be performed is available from the TACB.

Procedure for Selecting Consultant. Criteria for evaluation of the proposal will include:

(1) technical competence of the contractor based on previous endeavors;

(2) availability, competence, and related experience of key personnel who would be responsible for contract performance;

(3) avoidance of personal or organizational conflicts of interest; and

(4) utilization of small and minority businesses, where practicable.

This contract is to be funded by a grant from the EPA and execution will be dependent on timely receipt of funds by the TACB from that agency.

Contact Person. Any private consultant interested in providing the described services should contact Dr. Joe Pennington, Permits and Source Evaluation Division, TACB, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711, for a copy of the statement of work.

Issued in Austin, Texas, on November 6, 1980.

Doc. No. 808492 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Filed: November 7, 1980, 9:51 a.m.
For further information, please call (512) 451-5711, ext. 354.

Correction of Error

Proposed amendments to sections concerning surface-coating processes in Bexar, Brazoria, Dallas, El Paso, Galveston, Gregg, Harris, Jefferson, Nueces, Orange, Tarrant, and Victoria Counties submitted by the Texas Air Control Board for publication in the November 11, 1980, issue of the *Texas Register* (5 TexReg 4485) contained an error as published in that issue. Section 115.192 (131.07.60.102), Compliance Schedule and Counties, and §115.194 (131.07.60.104), Exemptions, should have been published as §115.194 (131.07.60.102) and §115.193 (131.07.60.104), respectively. The order of the sections and respective texts should also be reversed.

Banking Department of Texas

Applications to Purchase Control of State Banks

Article 342-401a, Vernon's Texas Civil Statutes, 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 November 6, 1980, the banking commissioner received an application to acquire control of Benbrook State Bank in Benbrook by I. B. Chapman II of Fort Worth. Additional information may be obtained from Robert E. Stewart, 2601 North Lamar, Austin, Texas 78705, telephone (512) 475-4451.

Issued in Austin, Texas, on November 6, 1980.

Doc. No. 808484 Robert E. Stewart
Banking Commissioner

Filed: November 7, 1980, 9:19 a.m.
For further information, please call (512) 475-4451.

Texas Court Reporters Committee

Public Meeting

The Texas Court Reporters Committee will hold a public meeting on November 15, 1980, at 8:30 a.m. at the Sheraton Crest Inn, 111 East First Street at Congress, Austin. Agenda items include a report on staff activities; a status report on applications received; a status report on certification renewals for 1980; and consideration of proposed legislation.

For further information concerning the meeting, contact C. Raymond Judice, executive director, Texas Law Center, 1414 Colorado, Suite 600, Austin, Texas, (512) 475-2421.

Issued in Austin, Texas, on November 6, 1980.

Doc. No. 808487 Jim Hutcheson
Chief Counsel
Office of Court Administration

Filed: November 7, 1980, 9:18 a.m.
For further information, please call (512) 475-2421.

Texas Health Facilities Commission

Applications for Declaratory Ruling, Exemption Certificate, and Transfer and Amendment of Certificate

Notice is hereby given by the Texas Health Facilities Commission of application (including a general project description) for declaratory ruling, exemption certificate, transfer of certificate, and amendment of certificate accepted November 5, 1980.

Should any person wish to become a formal party to any of the above-stated applications, that person must file a request to become a party to the application with the chairman of the commission within 25 days after the application is accepted. The first day for calculating this 25-day period is the first calendar day following the date of acceptance of the application. The 25th day will expire at 5 p.m. on the 25th consecutive day after the date said application is accepted. If the 25th day is a Saturday, Sunday, or state holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday or state holiday. A request to become a party should be mailed to the chairman of the commission, P.O. Box 15023, Austin, Texas 78761, and must be received at the commission no later than 5 p.m. of the last day allowed for filing of a request to become a party.

The contents and form of a request to become a party to an application for a declaratory ruling, exemption certificate, transfer of certificate, or amendment of certificate must meet the minimum criteria set out in Rule 315.20.01.050. Failure of a party to supply the minimum necessary information in the correct form will result in a defective request to become a party and such application will be considered uncontested.

The fact that an application is uncontested will not mean that it will be approved. The application will be approved only if the commission determines that it qualifies under the criteria of Sections 3.02 or 3.03 of Article 4418(h), Texas Revised Civil Statutes, and Rules 315.17.04.010-.030, Rules 315.17.05.010-.030, Rules 315.18.04.010-.030, and Rules 315.18.05.010-.030.

In the following list, the applicant and date of acceptance are listed first, the file number second, the relief sought third, and description of the project fourth. EC indicates exemption certificate, DR indicates declaratory ruling, TR indicates transfer of ownership of certificate, AMD indicates amendment of certificate, and CN indicates certificate of need.

St. Luke's Episcopal Hospital, Houston (11/5/80)
AH80-1103-039
EC—To acquire a Model 9300 electrocardiovalidator and a Model 655 electrocardioscanner for use in the cardiology department to interface with existing cardioscanner equipment

Anderson County Memorial Hospital, Palestine (11/5/80)
AH80-1103-053
EC—To construct an addition adjacent to the existing emergency room in order to expand the emergency area from 750 square feet to 2,000 square feet

Knapp Memorial Methodist Hospital, Weslaco (11/5/80)
AH80-1103-017
EC—To acquire a DuPont automatic clinical analyzer

Welcome Home for the Blind and Aged, San Antonio (11/5/80)
AN80-1103-023
EC—To remodel and also construct an addition containing 2,153 square feet in order to upgrade the existing 23-bed nursing home from ICF II to ICF-III standards (no additional beds will be added)

Texas Children's Hospital, Houston (11/5/80)
AH80-1103-033
EC—To acquire two centrifugal analyzers for the pathology department

Issued in Austin, Texas, on November 7, 1980.

Doc. No. 808483

John R. Neel
General Counsel
Texas Health Facilities Commission

Filed: November 7, 1980, 9:34 a.m.
For further information, please call (512) 475-6940.

Correction of Error

The list of applications for declaratory ruling, exemption certificate, and transfer and amendment of certificate submitted by the Texas Health Facilities Commission for publication in the November 4, 1980, issue of the *Texas Register* (5 TexReg 4362) contained an error as published in that issue. The notice for the 10th applicant listed should read as follows:

Hospital Corporation of America, doing business as Highland Park Hospital, El Paso (10/24/80)
AH79-1219-016T (102280)
T/CN—Hospital Corporation of America requests the transfer of Certificate of Need AH79-1219-016, issued to St. Joseph Hospital of El Paso, to Highland Park Hospital of El Paso (the certificate of need authorized the expansion of the hospital kitchen and purchase of new kitchen equipment)

Savings and Loan Department of Texas

Notice of Interest Rate

The following information is made available at this time for the benefit of the public and the financial institutions of Texas.

Pursuant to the provisions of House Bill 409, 66th Legislature of Texas, Regular Session, 1979, the savings and loan commissioner of Texas has ascertained the average per annum market rate adjusted to constant maturities on 10-year U.S. Treasury notes for the calendar month of October 1980 to be 11.75%. An additional 2.0% per annum translates to the maximum 12% as provided for by state law.

This rate shall govern applicable loans made on or after December 1, 1980, and extending through December 31, 1980.

Issued in Austin, Texas, on November 6, 1980.

Doc. No. 808471 L. Alvis Vandygriff
Commissioner
Savings and Loan Department of Texas

Filed: November 6, 1980, 2:34 p.m.
For further information, please call (512) 475-7991.

Office of the Secretary of State

Texas Register Division

Notice to State Agencies

Pursuant to the provisions of Section 9(d), Article 6252-13a, Texas Civil Statutes (the Administrative Procedure and Texas Register Act), and §91.12 (004.65.02.002) of the rules of the Texas Register Division concerning appointment of an agency liaison, all state agencies are reminded that each new appointment and each change in appointment of a liaison is required to be reported in writing to the Texas Register Division, Office of the Secretary of State. The Texas Register Division requests the cooperation of each state agency in this division's endeavor to update its present list of agency liaisons. Please direct any inquiries regarding this matter to Gail Myrick at (512) 475-7886.

Texas Department of Water Resources

Consultant Proposal Request

Description. The Texas Department of Water Resources announces that it wishes to retain the services of a consultant to analyze the impacts of nonnuclear energy-producing technologies on water resources in the Texas Gulf Region and the Texas portion of the Red River Basin. This project is being conducted by the Department of Water Resources through a memorandum of agreement with the U.S. Water Resources Council under the provision of Section 13(a) of the Federal Nonnuclear Energy Research and Development Act of 1974.

Background. The U.S. Department of Energy, in cooperation with the U.S. Water Resources Council, is assessing the impacts emerging nonnuclear energy-producing technologies will have on water use, water availability, water quality, and other water-related factors including the economic, legal, environmental, and social implications of the use of water by these energy technologies. The Texas Department of Water Resources, at the request of the U.S. Water Resources Council, is conducting the assessment for the Texas Gulf Region and the Texas part of the Red River Basin.

Assessment. The assessment will use water resources data and information from files and reports of the Texas Department of Water Resources including those presented in the May 1977 "Continuing Water Resources Planning and Development for Texas." Three potential levels of future energy development, two specified by the U.S. Department of Energy and one specified by the Texas Department of Water Resources, will be used in the assessment.

Additional data will be supplied by the Texas Department of Water Resources as needed. An energy-producing technology is defined to include:

- extraction, processing, and transportation of base energy resources
- conversion of energy resources
- transportation of end products
- supporting services (e.g., electric energy)
- induced development (secondary industries, population growth)

The energy-producing technologies to be assessed will include the following:

- coal gasification and liquefaction
- geothermal electric
- small scale hydro (25 MW or less)
- enhanced recovery of oil and gas
- others (as may be identified by WRC or the Texas Department of Water Resources during review of energy research and development programs, and the course of work plan preparation)

The consultant will, with the guidance of the Texas Department of Water Resources, prepare energy technology projections and energy production for each river basin and planning zone as defined in the May 1977 "Continuing Water Resources Planning and Development for Texas" draft report prepared by the Texas Water Development Board. The time frame will be from 1980 to the year 2030 but special emphasis will be placed on the period 1980 to 2000.

In conducting the study, the consultant will perform the following activities:

Activity 1. Develop a water resources data base at the planning zone level of detail (zones as specified by the Texas Department of Water Resources—reference 1977 planning document) containing determinations of present and future water use, present and future surface and ground water supplies, and the availability of these supplies for development of each of hydrologic and other uncertainties) using published Texas Department of Water Resources' reports and planning documents.

Activity II. Develop an energy-producing technology reference base (developed from existing literature and publications) containing projections of water use and consumption, waste-water discharge volumes, and other supporting resource and energy requirements. Pertinent information describing alternate processes, generalized locational factors for siting major energy-producing facilities, and environmental control technologies will also be developed.

Activity III. Delineate (with the assistance of the Texas Department of Water Resources) at the basin and zone level of detail, energy-producing deployment patterns which are to be addressed for each alternative energy producing technology. These patterns will be based on comparisons of water availability, water requirements for each technology, and other general siting considerations.

Activity IV. Identification of possible means for supplying water for use in producing energy using each of the alternative technologies, where sufficient conflict-free water supplies are not available, either through the transfer of water from existing water uses or through preclusion of uses of water by other uses involved. Also, legal constraints which impede or inhibit changes in water use will be identified.

Conflict free water supplies are defined as those amounts of water which, taking into account hydrologic and other uncertainties, are legally available for use without requiring changes from present or planned future offstream or instream flow uses.

Activity V. Identification of alternative means of supplying water for energy production using each of the alternative technologies, where sufficient conflict-free water supplies are not available, either through the modification of authorized plans and projects or implementation of various measures to develop new supplies such as new storage or conservation practices applied to existing uses. Sets of alternatives will be formed, as required, in order to illustrate the range of impacts and costs associated with supplying water for energy production and disposing of waste water.

Activity VI. Evaluation of the water-related environmental, economic, and social impacts and monetary costs of commitment and provision of water supplies for producing energy and disposal of waste waters for each of the cases specified in Activities III, IV, and V.

Results of the regional water assessment for each of the energy producing technologies will be presented in a final report. Where applicable, major findings will be presented separately for each technology and collectively for the technologies considered. The findings will relate to a future (2000) mid-term and to a reasonable long level (2030) of development.

The regional assessment will be conducted on the basis of existing data and information (i.e., there will not be substantial work in the collection of original data). The compilation of data and supporting information will be performed under the direction of the Texas Department of Water Resources except with respect to information to be provided by the U.S. Water Resources Council.

Program Schedule.

(1) The contract will be awarded no later than December 31, 1980.

(2) The contractor will provide a work plan by January 25, 1981.

(3) A technical memorandum on the results of Activity I will be delivered by March 15, 1981.

(4) A draft regional assessment report will be delivered by November 15, 1981.

(5) A draft summary of the assessment will be delivered by December 15, 1981.

(6) A final assessment and summary with supporting appendices will be delivered by March 1, 1982.

Proposed Guidelines. Competent persons or firms suitably staffed and equipped to analyze the impact of emerging non-nuclear producing technologies are invited to submit research proposals no later than December 15, 1980. Universities located in Texas are also invited to submit proposals by the same date.

Five copies of the technical proposal and five separate copies of a cost proposal should be submitted. The technical proposal should contain pertinent statements of capabilities, experience, and other qualifications of the proposed staff and its organization.

The cost proposals should include unit and estimated costs, including work hour efforts of named individuals, person-hours or months assigned to each task by labor category, and assurances from freedom from interference with present workloads, and managerial and financial capabilities.

Contract pricing sheets and proposed personnel sheets should be submitted for the following tasks:

(1) administration and project management, and

(2) data analysis.

Proposals must be received at the following address prior to 4 p.m. December 18, 1980: Dr. Herbert W. Grubb, director, Planning and Development Division, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711.

Amendments to this solicitation may be published prior to the due date for proposals. No late proposals will be considered.

Evaluation Procedures. Negotiation of a fixed fee type contract will be conducted with the organization or combination thereof considered best qualified and proposing acceptable costs as determined by the Texas Department of Water Resources. A sequential procedure is used consisting of five distinct steps as follows:

(1) Evaluation for technical acceptability without consideration of total estimated cost. The evaluation factors to be used in these steps are listed under "Evaluation Criteria and Award Factors" and are in descending order of importance.

(2) The cost and price information of all proposals found to be technically acceptable under Step 1 above will be analyzed to establish a competitive range for purposes of negotiation.

(3) If any negotiations are conducted, they will be conducted with all technically acceptable offerors in the competitive range.

(4) Negotiations will be closed simultaneously with all offers in the competitive range, with the same time and date for submission of best and final offers.

(5) Award will normally be made to the technically acceptable offeror which has been determined responsible and offers the most advantageous total estimated cost. However, the department reserves the right to award to other than the lowest final offeror, provided that the offeror to which award is made offers a technical advantage for an overall additional cost.

Evaluation Criteria and Award Factors. Proposals will be evaluated in accordance with factors listed below, which are listed in descending order of relative importance.

(1) qualifications and experience of principal investigator—35 points;

(2) procedures and approaches for management, analysis, and reporting—20 points;

(3) reputation and managerial and financial stability of organization with special attention to past performance of the organization or personnel on similar and/or related programs—15 points; and

(4) availability of personnel and facilities relative workload freedom, and evidence of a commitment to accomplish the required work within the scheduled time frame—10 points.

Eighty percent of the evaluation points awarded by the department will be distributed on the technical factors and 20 on the proposed cost.

Cost proposal evaluation factors (20 points). A cost-reimbursement type contract with a maximum cost ceiling is contemplated. However, the department reserves the right to award other types of contracts.

An evaluation of the offerors cost proposals shall be made to determine the acceptability and general quality thereof. The following subfactors are listed in descending order of importance.

(1) Degree to which the offeror has demonstrated understanding of the research and ability to organize and perform the contract. This evaluation will be made in light of such factors as:

(A) realism of manpower requirement estimates for each item of proposed work;

(B) appropriateness of skills proposed to efficiently accomplish proposed work;

(C) efficiency of the mix of skills (e.g., senior scientists, technicians, administrative) proposed to accomplish work; and

(D) realism and reasonableness of cost estimates.

(2) Degree to which proposed costs:

(A) are trackable to the proposed work statements;

(B) are supported with rationale; and

(C) utilize historical data.

Cost Award Factor. In selecting the contractor for a cost-reimbursement-type contract, estimated costs of contract performance and proposed fees should not be considered as controlling, since in this type of contract advance estimates of cost may not provide valid indicators of final actual costs. There is no requirement that cost reimbursement-type contracts be awarded on the basis of any of the following:

(1) the lowest proposed cost;

(2) the lowest proposed fee; and

(3) the lowest total estimated cost plus proposed fee.

Instructions to Offerors.

(1) Total compensation (salary and fringe benefits) of professional employees under service contracts may, in some cases, be lowered by recomputation. Lowering of compensation can be detrimental in obtaining the necessary quality of professional services needed for adequate performance of service contracts. It is, therefore, in the best interest of the department that professional employees be properly and fairly compensated in these contracts. As a part of their proposals, offerors will submit a "total compensation plan" (salaries and fringe benefits) for these professional employees for evaluation purposes.

(2) The department will evaluate the total compensation plan to ensure that this compensation reflects a sound management approach and an understanding of the requirements to be performed. It will include an assessment of the offerors' ability to provide uninterrupted work of high quality. The total compensation proposed will be evaluated in terms of enhancing recruitment and retention of personnel and its realism and consistency with a total plan for compensation (both salaries and fringe benefits).

(3) Criteria for evaluation, therefore, will include an assessment of the total compensation plan submitted by an offeror.

The cost estimate is important to determine the respective contractor's understanding of the research and the ability to organize and perform the work under the contract. The agreed fee must be within the limits prescribed by agency procedures and appropriate to the work to be performed. Beyond this, however, the primary consideration in determining to whom the award shall be made is which contractor can perform the contract in a manner most advantageous to the government.

Award Decision. Award will be made to that responsible offeror whose offer, conforming substantially to this RFP, is most advantageous to the department, technical and cost proposal evaluation factors, cost, and other factors considered.

Notice is given of the possibility that an award may be made after receipt of proposals without further negotiations or after only limited negotiations. It is, therefore, emphasized that all proposals should be initially on the most favorable terms that the offeror can submit to the department.

Additional information on this solicitation may be obtained by contacting Dr. Herb Grubb at (512) 475-3821, or Bill Hoffman at (512) 475-2978.

Issued in Austin, Texas, on November 7, 1980.

Doc. No. 808529

M. Reginald Arnold II
General Counsel
Texas Department of Water Resources

Filed: November 7, 1980, 9:52 a.m.
For further information, please call (512) 475-3821.

TAC Titles Affected in This Issue

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4 TAC §§23.51-23.54 (176.70.04.001-.004) 4549
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