Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 159. RULES OF PROCEDURE FOR ADMINISTRATIVE LICENSE SUSPENSION HEARINGS

The State Office of Administrative Hearings (SOAH) proposes amendments to the following sections of Texas Administrative Code, Title 1, Part 7, Chapter 159, Rules of Procedure for Administrative License Suspension Hearings:

Subchapter A, General, §159.1, Scope; §159.3, Definitions; and §159.7, Other SOAH Rules of Procedure.

Subchapter B, Representation, which is proposed to be retitled as Case Administration; §159.51 concerning Withdrawal of Counsel, which is proposed to be retitled as Jurisdiction; proposing a new §159.53 concerning Filing Documents; proposing a new §159.55 concerning Service of Documents on Parties; proposing a new §159.57 concerning Representation of the Parties; proposing a new §159.59 concerning Withdrawal and Substitution of Counsel; and proposing a new §159.61 concerning Electronic Case Records Access.

Subchapter C, Witnesses and Subpoenas, §159.101, Subpoenas Generally; §159.103, Issuance and Service of Subpoenas; and proposing a new §159.104, Witness Fees.

Subchapter D, Discovery, §159.151 Prehearing Discovery.

Subchapter E, Hearing and Prehearing, §159.201, Scheduling and Notice of Hearing; §159.203, Waiver or Dismissal of Hearing; §159.207, Continuances; §159.209, Participation by Telephone or Videoconference; proposing a new §159.210 concerning Hearing on Written Submission; §159.211 Hearings; and §159.213 Failure to Attend Hearing and Default.

Subchapter F, Disposition of Case, §159.253, Decision of the Judge; proposing a new §159.254 concerning Correction of Final Decision; §159.255 Appeal of Judge's Decision; and proposing a new §159.257 concerning Disposition of Criminal Charges and Expunction of Records.

Background and Purpose.

The State Office of Administrative Hearings (SOAH) was established in 1991 as an independent and impartial forum for conducting adjudicative hearings in the executive branch of Texas state government. The purpose of SOAH is to separate the adjudicative function from the investigative, prosecutorial, and policymaking functions of state agencies. In fulfillment of this mission, SOAH employs over 50 administrative law judges (judges or ALJs) statewide who conduct an average of 25,000 contested case hearings each year on behalf of over 60 state agencies and other governmental entities. The largest portion of SOAH's caseload is comprised of hearings on the administrative suspension or revocation of a person's driver's license by the Texas Department of Public Safety (DPS or the Department) relating to an arrest for driving under the influence of alcohol or controlled substances, and for violations of the Texas "no-refusal" law. These short hearings are civil administrative proceedings that are separate and independent from any criminal court proceedings relating to the same arrest. The purpose of the proposed rule amendments is to update and modify the procedural rules for these administrative driver's license revocation (ALR) hearings at SOAH.

SOAH's procedural rules for ALR hearings in Title 1, Chapter 159 of the Texas Administrative Code have not been updated since 2017, despite significant changes in case-handling procedures that have occurred as the result of SOAH's 2015 Sunset Advisory Commission Report, the passage of H.B. 2154, 84th R.S. (2015), and SOAH's implementation of various technology improvements in the handling of case records and hearings. The proposed rule amendments relate to the transfer of responsibility for the scheduling of ALR hearings from DPS to SOAH; SOAH's implementation of a modern automated case management system that relies on an all-electronic administrative case record; SOAH's adoption of the Texas judiciary's eFile Texas platform for electronic filing and service; the online availability of ALR case records through the Texas judiciary's re:SearchTX platform; and the predominant use of videoconference technology as an efficient and effective means for conducting ALR hearings.

Many of the proposed new rules relate to electronic filing requirements. The Texas Supreme Court mandated the implementation of electronic filing (e-filing) for all civil cases starting in 2012, and the Texas Court of Criminal Appeals mandated e-filing for criminal cases starting in 2017. Today, nearly all civil and criminal courts in Texas have implemented the use of e-filing services. According to a report by the Legislative Budget Board, the benefits cited from the mandated use of e-filing include quicker court access to electronic documents, reduced storage costs for court clerks, and reduced printing and mailing costs for attorneys and litigants. SOAH recognizes the inherent efficiencies and cost-savings gained through the use of e-filing and has adopted the Texas judiciary's eFile Texas platform in compliance with SOAH's statutory mandate to implement technological solutions to improve the agency's ability to perform its functions.

SOAH adopted the use of the eFile Texas statewide electronic filing system in March of 2020 for general docket cases. E-filing was then later implemented for ALR cases in June of 2022. The docketing and scheduling of ALR cases was also formally transferred from DPS to SOAH beginning in June of 2022, consis-

tent with the requirements section 524.033 of the Texas Transportation Code and the recommendations contained in SOAH's 2015 Sunset Advisory Commission Report. As a result of these changes, it is now necessary to conform SOAH's rules for ALR proceedings to the electronic filing standards required for other SOAH cases and the judicial courts. The proposed amendments reflecting these developments are substantially similar to practices already in use. Other changes in procedure are proposed to promote best practices in the handling of ALR cases, and to conform the rules to standing orders of the Chief Administrative Law Judge and SOAH's current case-handling practices.

Section-by-Section Summary.

Subchapter A

Section 159.1 Scope, is amended to clarify that certain provisions of the Texas Transportation Code apply to ALR proceedings at SOAH. These include §524.002 (relating to conflicts between SOAH's rules of procedure and the Administrative Procedure Act), §524.012(e) (relating to the separate nature of ALR proceedings from the adjudication of a criminal charge arising from the same occurrence). A new subsection (d) is added to identify other authority, including the Texas Rules of Civil Procedure and applicable case law, that may be applied by an ALJ when resolving procedural issues that are not otherwise addressed by the Transportation Code or SOAH rule. This codifies the practice already used by SOAH judges and mirrors a nearly identical provision in 1 Texas Administrative Code §155.3 of SOAH's Rules of Procedure for general docket cases.

Section 159.3 Definitions, is amended to add and modify the definition of certain terms as used in Chapter 159. These include several new defined terms relating to electronic filing, the use of Research Texas (a.k.a. re:SearchTX) as SOAH's online repository for ALR case records, clarification of what constitutes "videoconference" consistent with definition given by the Texas Department of Information Resources given in Title 1, §209.1 of the Texas Administrative Code, and the incorporation by reference of certain additional terms from SOAH's Rules of Procedure for general docket cases in 1 Texas Administrative Code §155.5.

The proposed changes to §159.7, Other SOAH Rules of Procedure, amend the list of SOAH rules incorporated from Title 1 Chapter 155 of the Texas Administrative Code to also incorporate by reference SOAH's general requirements for the filing of documents, confidential information, service of documents, representation of parties, and the withdrawal of counsel. Incorporation of these rules by reference is intended to make the process of filing and serving documents, and the requirements for legal representation and withdrawal of counsel, more consistent with how these issues are handled in SOAH's general docket cases and by the civil judicial courts.

Subchapter B

Subchapter B relating to withdrawal of counsel is amended in its entirety to instead address various topics relating to general ALR case administration.

The proposed changes to §159.51 describe the rules of procedure relating to SOAH's jurisdiction over a particular ALR case. Subsection (a) describes the process by which SOAH acquires jurisdiction upon the successful transmission of case information from DPS to the SOAH Chief Clerk's Office. Subsection (b) describes the effect of SOAH's acquisition of jurisdiction as to certain case events, such as scheduling of the hearing and the commencement of discovery. Subsection (c) provides that time periods under SOAH's rules of procedure do not commence until SOAH initially schedules a hearing. Subsection (d) provides that SOAH's jurisdiction over a particular ALR case ends with the ALJ's final decision, the ALJ's order of dismissal, or when the deadline to file a motion to vacate a default decision has passed. This is required for consistency with section 2003.051 of the Texas Government Code, which states that SOAH's jurisdiction over a case ends when SOAH has issued a decision or otherwise concluded its involvement. Subsection (e) is intended to address a common misunderstanding about the limits of SOAH's authority by clarifying that SOAH has no continuing authority to enforce or correct DPS actions relating to an ALR case once SOAH has lost jurisdiction over the case.

A new §159.53 is proposed to establish the requirements for filing documents.

Subsection (a) of §159.53 incorporates by reference SOAH's general docket filing rules in 1 Texas Administrative Code §155.101 and §155.103.

Subsection (b) of §159.53 describes the methods of filing depending on whether the filer is an attorney or a self-represented defendant. Subsection (b)(1) requires defense counsel and DPS to use eFile Texas or another electronic filing and service provider approved by the Office of Court Administration. Electronic filers are required to ensure that party information, the designation of lead counsel, and service contact information are all correctly entered into the electronic filing manager so that SOAH has complete and accurate contact information for the parties to the case. Documents submitted for electronic filing in ALR cases must be properly titled and filed using the filing codes that are appropriate for the type of document to ensure that SOAH and the parties can reasonably ascertain the content filings.

Subsection (b)(2) of §159.53 encourages but does not require Defendants without an attorney to use electronic filing. Self-represented litigants are permitted to use alternative filing methods of email, fax, regular mail, or hand-delivery.

Subsection (c) of §159.53 establishes certain requirements that apply to all filers: (1) all parties must provide and maintain a current mailing address and email address on file as part of the administrative record; (2) pleadings and motions must be in writing, signed, and filed with the SOAH Chief Clerk's Office; and (3) different types of documents must be submitted separately for filing.

Of particular importance, subsection (c)(4) of §159.53 adopts SOAH's current requirement for filings in ALR proceedings to be filed confidentially to guard against the public disclosure of confidential or personal identifying information that is typically included in ALR case records, such as driver's license numbers and dates of birth. This confidential filing requirement helps to improve the efficiency of ALR proceedings by avoiding the need for the parties to review and redact confidential information from documents prior to filing, and it allows judges and the parties to more readily access the information that is necessary for resolution of the case.

Subsection (c)(5) of §159.53 pertains to the requirements for submission of exhibits, including a requirement that all exhibits should be pre-filed at least two days before the hearing.

A new §159.55, Service of Documents on Parties, is proposed to establish the requirements for service of documents in ALR cases. Subsection (a) provides that documents filed at SOAH

must be sent to each party or the party's lead counsel on the same date using the methods provided by rule. Subsection (b) requires DPS and defense counsel to assume primary responsibility for entering the parties' service contact information into eFile Texas for the purpose of receiving notices, orders, decisions, and other case-related communications. Subsection (c) establishes electronic service as the primary method of service if the email address of the party or attorney to be served is on file with the record of the case. For parties without an email address on file in the electronic filing manager, alternative methods may be used, including mail, fax, and hand-delivery. Additionally, self-represented litigants who choose not to use eFile Texas may use alternative methods of service to provide documents to DPS. Service of audio and visual exhibits may be satisfied if audiovisual evidence was properly filed under §159.53, and access to the exhibits is shared with the party or attorney to be served. Subsection (d) establishes the requirement and format for including a certificate of service with each document filed. Subsection (e) addresses the methods of proof of service depending on the nature of the filing and whether the email address of the party is on file with the record of the case.

A proposed new subsection (f) of §159.55 provides that SOAH-issued orders are considered received upon SOAH's electronic transmission of the order to eFile Texas if the recipient's email address is on file with the record of the case in eFile Texas. This is already SOAH's current practice, tracks the language of Rule 21a(b)(3) of the Texas Rules of Civil Procedure, and is consistent with applicable case law regarding the electronic delivery of documents. Because parties are required by various provisions of the proposed §159.53 to provide and maintain a valid email address on file with the record of the case for the electronic delivery of documents and other case related communications, the proposed §159.55(f) will eliminate any ongoing confusion or concern as to the timing of when SOAH orders are considered to be delivered to and received by the parties.

Section 159.57, Representation of the Parties, is proposed to establish and clarify the process for attorneys to enter an appearance or otherwise designate their representation of a party in an ALR proceeding. The proposed rule is similar to SOAH Rule §155.201 for general docket cases. Subsection (a) provides that a party may employ an attorney, or they may appear on his- or her-own behalf. Reference is made to resources that are available on SOAH's website to assist self-represented defendants. The rule also clarifies that SOAH cannot provide a self-represented litigant with legal advice or appoint an attorney to represent them. Subsection (b) requires defense counsel who have not otherwise entered an appearance on behalf of a party to file a basic notice of representation in the record. This rule is intended to formalize the process for attorneys to enter an appearance in ALR cases and is necessary to avoid situations where SOAH has no notice on the face of the administrative record that a defendant is represented by an attorney. Subsection (c) establishes rules relating to the parties' designation of lead counsel, which is essential for SOAH judges to identify the attorney responsible for the case, ensure that counsel receives appropriate notice of filings and other case-related communications, and to enable the use of eFile Texas and re:SearchTX by DPS attorneys and defense counsel.

Section 159.59, Withdrawal and Substitution of Counsel, replaces the current Rule §159.51 relating to withdrawal of counsel in ALR cases. The amended rule is similar to SOAH Rule §155.203 for general docket cases and Rule 10 of the Texas Rules of Civil Procedure. Subsection (a) sets forth the requirements for defense counsel to file a motion to withdraw and the contents of the motion. This is intended to ensure that sufficient information is provided to SOAH, the defendant, and/or the substituting attorney to provide for the fair and efficient handling of the withdrawal or substitution. Subsection (b) requires the motion to withdraw to be served on all parties and include a certificate of conference. Subsection (c) provides that the withdrawing attorney remains as the defendant's attorney of record until the motion has been granted. Subsection (d) describes the actions that must be taken by the withdrawing attorney once the motion is granted, including notifying the defendant or substituting attorney of any settings or deadlines. Subsection (e) describes the requirements for defense counsel to update the service contact and lead counsel information for the case within eFile Texas upon the withdrawal or substitution of counsel. Subsection (f) establishes the process by which one DPS attorney may be substituted for another, either at the hearing or by notice to the defendant. The process required for substitution of DPS counsel is abbreviated and less formal because DPS is always represented by the Department's counsel, ALR prosecutors are often assigned to cases based on the scheduled hearing date or county of arrest rather than on a case-by-case basis, and the defendant's choice of legal representation is not implicated by a change in DPS counsel.

Section 159.61, Electronic Case Records Access, proposes a new section related to electronic case records access. The records of ALR cases have been made available online to the parties since June of 2022 through Research Texas (re:SearchTX). Re:SearchTX is an electronic court records repository that is connected to eFile Texas and hosted by the State of Texas through a vendor contracted by the Office of Court Administration. It offers a web-based platform that allows registered users to view and download ALR case records for the SOAH cases that they are authorized to access. When a document is electronically filed in an ALR case at SOAH, a copy of the filing is automatically uploaded and retained in re:SearchTX. Online access to locate, view, and download ALR case records at SOAH is publicly available at no cost. This self-service platform allows defendants, defense counsel, and DPS attorneys to easily access the case filings and records for their ALR cases, eliminating the need for parties to submit requests to SOAH under the Texas Public Information Act to obtain copies of case records.

Subsection (a) of §159.61 states that the records of ALR proceedings are available online through re:SearchTX. Subsection (b) describes the accuracy and completeness of the electronic case records available through re:SearchTX, and provides notice of which particular portions of ALR case records may not be included. These include audio recordings of the hearing, exhibits that were not included as part of the administrative record, audio and video exhibits, and the written transcript, if any.

Because ALR case records are filed confidentially as described under the proposed §159.53(c)(4), users of re:SearchTX are only allowed to access records of the ALR cases for which they have an approved security role within eFile Texas. Access to records in re:SearchTX is controlled by the parties, who must take appropriate actions within eFile Texas to establish access to their own case records within re:SearchTX. Subsection (c) of §159.61 explains technical aspects of how re:SearchTX uses role-based access to maintain the security of confidential records, and lists the requirements for how defendants, lead counsel, and members of lead counsel's firm may obtain access to ALR case records through re:SearchTX based on their

assigned role within eFile Texas. Most technical difficulties experienced by users of re:SearchTX are the result of the user's own failure to correctly establish their case role within eFile Texas in accordance with requirements listed in subsection (c).

Subsection (d) of §159.61 establishes SOAH's expectation for attorneys who appear before SOAH in ALR cases to establish access to re:SearchTX and maintain a sufficient level of technical competence to use eFile Texas and re:SearchTX to monitor case activity and obtain copies of case records for the cases to which they are assigned. SOAH's intent with this rule is not only to promote the greater access and efficiency afforded to litigants by the re:SearchTX system, but also to set SOAH's expectations for attorney conduct in ALR proceedings with respect to electronic records administration. Unfortunately, SOAH has often observed substandard records management practices by counsel and their legal support staff in ALR cases, including failure to properly associate lead counsel with the record of the case, failure to establish a law firm profile for electronic records access, failure to monitor the email address of record for electronic service of process, failure to update service lists, failure to download or retain electronic copies of case filings, and an unprofessional over-reliance on SOAH's records staff for document retrieval, case status monitoring, and assistance with hearing preparation. The development of technical competence in using re:SearchTX as a tool for supporting the records management practices of attorneys and law firms can help to promote greater efficiency and professionalism in the handling of ALR cases.

Subchapter C

Subchapter C relates to witnesses and subpoenas. SOAH's proposed amendments to these rules are intended to update certain language to reflect the prevalent use of videoconference technology as a method of appearance for conducting ALR hearings, and to codify certain best practices with respect to subpoenas.

Section 159.101 relates to Subpoenas Generally, is clarified to update language relating to the "appearance" of subpoenaed witnesses at a hearing.

Section 159.103 relates to Issuance and Service of Subpoenas. This section is amended by reorganizing and updating the rule and breaking it into two rules for clarity by adding a new §159.104 relating to witness fees.

Subsection (a) of §159.103 is amended by removing instructions regarding the methods of serving subpoenas and relocating those provisions to a revised subsection (c) relating to methods of service. Information regarding payment of the costs for subpoenaed documents or items is relocated from the current §159.103(f) to §159.103(a).

Subsection (b) of §159.103 is amended to require the service of subpoenas to include a copy of the notice of hearing or other information sufficient notifying the witness of how to appear, including any information required to access a videoconference or join a teleconference call. This is considered a best practice and is intended to avoid situations where a subpoenaed witnesses has not been given sufficient information to comply with the subpoena or participate in the hearing.

Subsection (c) of §159.103 is amended by replacing information about return of service and witness fees with a new subsection relating to the methods of service for subpoenas. The introductory clause of subsection (c) republishes language from the current §159.103(a) requiring the service of subpoenas and discusses who may serve a subpoena.

Subsection (c)(1) of §159.103 provides that subpoenas may be served on a witness's attorney if they are represented by an attorney.

Subsection (c)(2) of §159.103 relates to the service of subpoenas when a witness is a peace officer and amends the current rule to designate the service of peace officers through their law enforcement agency as the primary method of service, rather than as an alternative method of service. This change is necessary to encourage the delivery of subpoenas to the officer at their employing law enforcement agency, rather than at their personal home address. As a matter of public policy, the home address of peace officers is treated as confidential under Texas law in accordance with sections 552.117-.1175 of the Texas Government Code and section 25.025 of the Tax Code. Therefore, the preferred, and often the most effective, method of service is through the peace officer's employing law enforcement agency. If the peace officer's law enforcement agency does not have an accepted method for receipt of service of subpoenas, then the proposed rule would allow the subpoena to be served by delivering a copy to the witness. Information requiring the filing of the return of service is moved to subsection (d), and information regarding the payment of witness fees is relocated to §159.104.

Subsection (d) of §159.103 requires a copy of the subpoena to be filed along with the return of service at least three days prior to the hearing. Filing of a copy of the subpoena with SOAH is necessary for the judge to be able to ascertain whether the subpoena was properly served. Information from the existing subsection (d) regarding the payment of witness fees is relocated to §159.104.

Subsection (e) of §159.103 is amended to codify SOAH's current practice of allowing a subpoenaed witnesses to appear by telephone or videoconference when the witness resides or works more than 150 miles from the designated hearing location. This practice is consistent with Rule 176 of the Texas Rules of Civil Procedure, which states that a person may not be compelled to appear in a county that is more than 150 miles from where the person resides or is served. The current language of §159.103(e) relating to the payment of witness fees in the event of a default is relocated to §159.104 relating to witness fees.

Subsection (f) of §159.103 is amended to eliminate the current requirement for a party seeking the admission of documents or other tangible items to provide any special equipment required to offer the items into evidence. SOAH has not observed any continuing need for the use of special equipment in ALR hearings, and therefore this rule is no longer necessary. Moreover, the proposed rule in §159.53(c)(5)(D) requiring audiovisual evidence to be presented in a common, non-proprietary file format without the need for special equipment or software should eliminate the need for proprietary software or special video players to view dash-cam or body-cam footage for ALR proceedings. Subsection (f) is also amended to clarify that any subpoenaed documents or other evidence must be pre-filed in the same manner as other exhibits.

A proposed new §159.104 relates to witness fees. This new provision relocates information relating to the payment of witness fees and mileage reimbursement from the current §159.103 to its own section so that all witness fee information is together in one place.

Subsection (a) of §159.104 republishes language from the current §159.103(c) regarding the payment of witness fees. The

provision is also amended to recognize that the witness may waive payment of the fee.

Subsection (b) of §159.104 republishes language from the current §159.103(c) regarding the payment of mileage reimbursement if the witness travelled more than 25 miles round-trip to attend the hearing. The website address for the Comptroller of Public Accounts where travel rates can be found is updated.

Subsection (c) of §159.104 clarifies that if the witness is a peace officer, then any amounts for the payment of witness fees and travel expenses should be sent to the attention of the peace officer's employing law enforcement agency. This is consistent with current practice and should resolve any ongoing confusion about the proper method for payment of witness fees when a witness is a peace officer.

Subsection (d) of §159.104 republishes language from the current §159.103(d) relating to procedures for the payment of witness fees when the hearing is conducted by teleconference and updates the rule to also refer to videoconference.

Subsection (e) of §159.104 republishes language from the current §159.103(e) relating to procedures for the payment of witness fees when the party who served the subpoena fails to appear for the hearing.

Subsection (f) of §159.104 provides that the process for the handling of witness fees and mileage reimbursement if a subpoena request is denied or a subpoena is quashed are governed by §159.105.

Subchapter D

Subchapter D relates to discovery, and §159.151 relates to prehearing discovery.

The proposed amendment to subsection (a) of §159.151 is intended to update the prehearing discovery rule for consistency with §159.51(b) of Subchapter B relating to the effect of SOAH's acquisition of jurisdiction over an ALR case. With the proposed amendment, both §159.51 and §159.151 will uniformly state that the parties may initiate discovery only after SOAH acquires jurisdiction and schedules a hearing.

Subsection (c) of §159.151 is amended to clarify that the discovery rules of the Texas Rules of Civil Procedure that require initial disclosures without awaiting a discovery request (TRCP Rules 194 and 195) do not apply to ALR proceedings at SOAH.

The proposed amendment to subsection (f) of §159.151 would update the method of service used by defendants to serve discovery requests to DPS by requiring electronic service to the email addresses on file for the Department with the record of the case. This change is consistent with the proposed changes to §159.55 (relating to Service of Documents on Parties) to facilitate the use of electronic filing and service.

The proposed amendment to subsection (i) of §159.151 would remove the limitation on the number of continuances that may be granted due to the late production of documents through discovery. Removal of this limitation will afford SOAH judges the discretion to grant additional discovery-related continuances if warranted under the circumstances of the case.

The proposed amendment to subsection (j) of §159.151 would require DPS to inform the defendant of the identity of the person or entity from whom the defendant may obtain discovery of records relating to the inspection, maintenance, or repair of an instrument used to test the defendant's breath specimen if the Department does not have actual possession of those records at the time of a discovery request.

The proposed amendment to subsection (k) of §159.151 would clarify that a subpoena for the production of documents from a third party must allow the third party an option to produce the documents in lieu of personal appearance at the hearing, unless they have also been subpoenaed to give testimony at the hearing. The intent of this provision is to avoid undue delay of a hearing or unnecessary inconvenience to third parties that could result from requiring personal appearances in lieu of production of documents, For example, it is unnecessary to require the personal appearance of a 911 operator if the recording of the relevant 911 call can be produced. The proposed language is also consistent with Rule 176.6(c) of the Texas Rules of Civil Procedure.

Subchapter E

Subchapter E relates to hearing and prehearing procedures. The proposed amendments to this section are intended to update the procedural rules to reflect current ALR practice before SOAH, codify best practice for ALR hearings, and improve consistency with other changes to these rules of procedure.

Rule §159.201 relates to the scheduling and notice of hearing. Subsections (a), (b), and (c) of §159.201 are amended to reflect the fact that SOAH has now assumed the primary responsibility from DPS for the scheduling of ALR hearings. This transfer of authority was completed on June 1, 2022, as the result of SOAH's 2015 Sunset Advisory Commission Report, the passage of H.B. 2154, 84th R.S. (2015), and §524.033 of the Transportation Code.

Subsections (a) and (b) of §159.201 are amended to provide that once SOAH acquires jurisdiction over a case, SOAH's current practice is to schedule a hearing at the earliest possible date in a prompt, fair, and cost-effective manner, taking into consideration the feasibility of videoconferencing. Subsection (b) of §159.201 also provides that SOAH will attempt to schedule cases together by geographic region based on the county of arrest.

Subsection (c) of §159.201 is amended to delete the reference to DPS as the entity issuing the notice of hearing for a telephone or videoconference hearing. Under current practice, DPS usually issues the initial notice of hearing, but any subsequent scheduling orders relating to the same case are issued by a SOAH judge as the result of SOAH having assumed responsibility for the scheduling of hearings from DPS. Amendments to this section would also apply the current requirement for videoconference and teleconference hearings to be rescheduled only by the filing of a continuance or agreement of the parties to all scheduled hearings without regard to the method of appearance.

Subsection (d) of §159.201 is amended to clarify that the notice of hearing is presumed to have been "served" (rather than mailed) to the defendant on the date it was issued. This is because service may be established through a variety of methods, and not only by mail.

Subsection (e) of §159.201 is added to state that SOAH will provide timely access to ALR case scheduling information on the agency's website. This is reflected in the rules to describe SOAH's current practice and to comply with §524.033(c)(2) of the Texas Transportation Code.

Section 159.203 relates to the waiver or dismissal of a hearing.

Subsection (b) of §159.203 is amended to clarify the method by which SOAH and the defendant are notified when a case is rescinded by DPS: DPS is required to file a notice of rescission in the docket of the SOAH case.

A new subsection (c) of §159.203 is proposed to establish a new procedure for involuntary dismissal. Both the Texas Rules of Civil Procedure and SOAH's Rules of Procedure for general docket cases allow various forms of involuntary dismissal. Yet despite the statutory scheme requiring the prompt disposition of ALR cases, SOAH currently has no consistent procedure for dismissing ALR cases when the resolution of a case is unreasonably delayed. The majority of ALR cases are currently resolved within 90 days, with fewer than 5% of all cases requiring three or more continuances. Because ALR cases are capable of being resolved so quickly, a delay of more than 90 days is unusual and potentially unreasonable depending on the circumstances. The new subsection (c) of §159.203 is proposed to establish a process by which an ALR case may be involuntarily dismissed from SOAH's docket if the case is either inactive for a period of 120 days, or the judge finds that the parties are unable to prepare for hearing after multiple continuances.

Subsection (c)(1) of §159.203 would require the judge's order of involuntary dismissal to be sent to the parties at least 15 days prior to the dismissal, and would further require the order to inform the parties of the reason for the dismissal and the process to seek reinstatement of the case. Subsection (c)(2) would allow the judge to grant a motion to reinstate the case if the moving party shows a valid and compelling reason for the delay or inaction, or the judge finds that extraordinary circumstances exist that require an exception. A dismissal under this section removes the case from SOAH's docket and rescinds the suspension without a decision on the merits. This proposed form of involuntary dismissal is fair to both parties and has the same effect as when a case is rescinded by DPS under the current 37 Texas Administrative Code §37.6.

Sedtion 159.207 relates to continuances.

Subsection (a) of §159.207 is amended to remove the former requirement for DPS to notify SOAH when a statutory "5-day" continuance is filed under section 524.032(b) of the Transportation Code. The proposed amendment is necessary to conform to current practice. Now that the scheduling of cases has been transferred to SOAH, continuance requests are filed with SOAH (not DPS) and SOAH automatically reschedules the case in response to a 5-day continuance.

Subsection (b) of §159.207 is amended for consistency with current practice to clarify that a judge may grant a continuance if the motion for continuance is supported by good cause, consent of the parties, or operation of law. SOAH has historically granted continuances for these reasons, but the current rule only references a continuance due to the unavailability of a subpoenaed witness.

Subsection (c) is amended to recognize that SOAH judges do not have discretion with respect to a statutory "5-day" continuance filed under section 524.032(b) of the Transportation Code. Consistent with current practice, this subsection is also amended to allow continuances to be filed in writing or presented orally at the hearing. Motions for continuance must state the reason for the continuance, the number of prior requests for continuance, and if written, include a certificate of service and a certificate of conference.

Subsection (e) of §159.207 is added to require responses to a written motion for continuance to be promptly submitted in writing, but an oral motion for continuance may be responded to orally at the hearing.

Section 159.209 relates to participation by telephone or video conference. The amendments to this section are intended to update the procedural rules to recognize videoconferencing as the predominant method of appearance for ALR cases, to distinguish videoconferencing from telephone conferencing, and to implement best practices when using these technologies for ALR hearings.

Subsection (a) of §159.209 is amended to address the use of videoconference technology for ALR hearings and clarify the judge's ability to allow or require an ALR hearing to be conducted by videoconference, subject to certain limitations. Subsection (a)(1) requires that the notice of hearing for a videoconference hearing must include all the necessary log-in information for the parties to participate in the hearing and must also provide a back-up or alternative option for participants to connect to the hearing audio by telephone. This practice ensures that participants have fair notice and an opportunity to attend a videoconference hearing. Subsection (a)(2) provides that when a party objects to the use of videoconferencing, the judge must timely rule on the objection in a manner consistent with Rule 21d of the Texas Rules of Civil Procedure. This rule maintains consistency with current judicial practice when considering objections to videoconferencing as a method of appearance. Subsection (a)(3) provides that before a witness is allowed to give testimony by videoconference, the judge may require the witness to appear on camera during the entirety of their testimony.

Subsection (b) of §159.209 is amended to address the use of telephone conference calling for ALR hearings. The rule distinguishes teleconferencing from videoconferencing because teleconferencing imposes greater limitations on the presentation of evidence, the examination of witnesses, and how the hearing may be conducted. Subsection (b) is amended to clarify that the parties may file a motion or agreement of the parties requesting a teleconference hearing only after SOAH acquires jurisdiction of the case and the consent of both parties is required. Notice for a teleconference hearing must include the dial-in information for joining the teleconference and instructions for submitting documents and evidence to be considered at the hearing. Before a witness is allowed to give testimony by telephone, the judge will confirm the identity of the witness, which may require the witness to provide reasonable verification of their identity under oath.

Subsection (c) of §159.209 is amended to remove former requirements for parties to provide teleconference or videoconference numbers. This requirement is a remnant from a former time when the SOAH judge would place individual phone calls to each of the parties, and then attempt to join them together on a conference line. Today, SOAH uses modern conference hosting technology platforms for both videoconferencing and teleconferences. Under current practice, participants log-in or dial-in to join the hearing at the scheduled time and are then admitted to the proceeding by the judge.

Subsection (d) of §159.209 is amended to delete the specific reference for prefiling of documentary evidence in teleconference and videoconference hearings. Prefiling is now required for all ALR proceedings without regard to the method of appearance. The prefiling requirement for exhibits is restated in the proposed amendments to §159.53(c)(5)(A), while the process for review of new evidence introduced by a witness at the hearing is deleted

and restated in the amendments to §159.211(c)(4) (relating to hearing procedures).

Subsection (e) of §159.209 relating to default of a telephone or videoconference hearing is deleted from this section and relocated with amended wording to §159.213 (relating to Failure to Attend Hearing and Defaults) so that rules relating to defaults are located together within the same rule.

A new §159.210 is proposed to establish procedures for a hearing on written submission. A hearing on written submission is an ALR hearing where the parties waive their right to present oral testimony and examine witnesses, and instead, the judge is asked to consider the evidence and issue a ruling based solely on the submitted pleadings, motions, and exhibits. Subsection (a) allows the parties to file a motion or notice of agreement for a hearing on written submission. The motion requires that the parties have filed and served or exchanged all evidence necessary for the resolution of the case. Subsection (b) provides that judges shall liberally grant requests to conduct hearings on written submission. Subsection (c) explains the parties' waiver of oral argument and cross-examination, and states that the administrative record is limited to only the pleadings, motions, exhibits, and orders filed in the case. Subsection (d) requires the judge to issue a written decision in the same manner as other ALR cases. The judge's decision is also subject to appeal in the same manner as other ALR cases.

Section 159.211 relates to hearing procedures generally. Subsection (a)(3) is amended to clarify the judge's authority and duty to conduct the hearing in a fair and expeditious manner, determine the order in which cases are heard, impose reasonable conditions on the length of time required for a hearing, and protect witnesses from abusive, repetitious, or prolonged questioning. Subsection (b) regarding application of the rules of evidence to ALR proceedings is amended to more accurately reflect that Texas Government Code §2001.081 provides for an expanded application of the rules of evidence to administrative proceedings. Subsection (c)(3) is amended to clarify that the judge may allow the testimony of witnesses to be taken by telephone or videoconference, provided that all parties have the opportunity to participate in the hearing. A new subsection (c)(4) is proposed to restate procedure for allowing a party to review any new evidence introduced by a witness that was not already prefiled. This relocates language from the current §159.209(d) (relating to documents reviewed by a witness in a telephone or videoconference hearing) so that these requirements are broadly applied to all ALR hearings, not just hearings conducted by videoconference or teleconference. Language of the current subsection (f) (relating to what happens if a defendant fails to make a timely request for an interpreter) is relocated to subsection (e). A new subsection (f) is proposed to document SOAH's current practice for how defense counsel and judges can address situations where defense counsel is scheduled to appear in more than one ALR hearing at the same time.

Section 159.213 relating to failure to attend a hearing and default is amended to update SOAH's current default rule for ALR cases. Under the current rule, only a defendant may be subject to default for a failure to appear. This is consistent with sections 524.036 and 724.044 of the Transportation Code, which state that when a defendant fails to appear for a hearing without good cause, the defendant waives their right to hearing. However, SOAH is required by Chapter 2003 of the Government Code to conduct hearings in a fair, independent, and impartial manner. Rule 155.501 of SOAH's rules of procedure for general docket cases, and Rule 156a of the Texas Rules of Civil Procedure, require a party-neutral procedure for what happens when a party fails to appear for the hearing. To this end, the proposed amendments to §159.213 would treat DPS and the defendant equally insofar as either party could potentially be found in default based on a failure to appear.

Subsection (a) of §159.213 is amended to state that if a party fails to appear for the hearing, the judge may proceed on a default basis on the judge's own motion or on the request of the opposing party.

As explained below, the current Subsection (b) (relating to requests to vacate a default) is renumbered as subsection (g). A new subsection (b) describing what constitutes a default for purposes of a telephone or videoconference hearing relocates and updates language from the current §159.209(e) (relating to participation by telephone or videoconference) so that these default procedures are described within the default rule. Under the proposed new subsection (b), if a participant either fails to attend a telephone or videoconference hearing or fails to exercise diligence to resolve any technical difficulties with attendance for a period of fifteen minutes after the scheduled time for the hearing, then they may be found in default. The proposed rule would extend the time to allow a party to attend a remote hearing from ten minutes to fifteen minutes and provides guidance on what parties who are experiencing technical difficulties with appearance by videoconference or teleconference are expected to do to avoid default. The proposed rule would also eliminate the current default rule regarding a failure of a party to be ready to proceed because such grounds do not constitute a failure to appear.

A proposed new subsection (c) of §159.213 requires a default to be supported by adequate proof that the notice of hearing was properly filed and served on the defaulting party. Subsection (c)(1) establishes a rebuttable presumption that proper notice was given to a defendant if the notice was served electronically to the defendant or defense counsel at the email address on file with the record of the case. The judge may also consider evidence that the notice was served through other methods. Subsection (c)(2) establishes a rebuttable presumption that proper notice was given to DPS if information regarding the date, time, and location or method of appearance was electronically transmitted to the Department by the SOAH Chief Clerk's Office or issued by the judge to the DPS attorney of record at the email address(es) reflected in eFile Texas. The judge is also allowed to consider evidence that the notice of the scheduled hearing was published on SOAH's website or available to DPS through re:SearchTX.

A proposed new subsection (d) of §159.213 provides that if the defendant fails to appear, the defendant's right to a hearing is waived and the judge will issue a decision authorizing suspension of the defendant's driver's license.

A proposed new subsection (e) of §159.213 provides that if DPS fails to appear, the judge will issue a default dismissal without suspension or disqualification of the defendant's driver's license. A case dismissed under this subsection may not be refiled.

The current subsection (b) of §159.213 relating to motions to vacate a default is renumbered as subsection (g). The new subsection (g) is then amended throughout to make the provision neutrally applicable to both DPS and the defendant. The time for when a motion to vacate must be filed is clarified to require filing of the motion within 10 days of the judge's issuance of a default decision and order, not within 10 days of the hearing at

which they failed to appear. The requirements for a motion to vacate are amended to include a requirement for the defaulting party to state the grounds for their failure to appear. An option for a hearing on the motion to occur by videoconference is added to the existing option for a teleconference hearing on the motion.

Subchapter F

Subchapter F relates to the disposition of a case.

Section 159.253 relates to the decision of the judge. Subsection (b) of §159.253 pertains to the finality of the SOAH judge's decision and is amended to clarify that the judge's order is not subject to a request to modify a decision, except for a corrected decision under the proposed new §159.254.

A new subsection (c) of §159.253 is proposed to clarify that the SOAH judge's decision merely adjudicates the issue of whether the DPS is authorized to suspend a license and the length of the suspension authorized; it does not determine the specific effective dates for any suspension of a defendant's license. This clarification is intended as an official rejection of any former practice at SOAH in which judges may have engaged in the practice of backdating an ALR decision in order to probate an ALR suspension or reduce the amount of time a defendant's license is suspended by DPS.

A new subsection (d) of §159.253 is proposed to clarify that the outcome of an ALR case is determined by the SOAH judge's final written decision, and not by any automated case data that is exchanged with DPS. SOAH's Administrative Case Tracking System (ACTS) maintains a two-way data exchange with DPS in which certain data elements relating to ALR cases are exchanged between SOAH and DPS to help both agencies manage the large volume of cases. When an ALR decision or order of dismissal is issued by a SOAH judge, case data relating to the disposition type and manner is relayed from the ACTS system back to DPS's automated systems. This data exchange is in addition to SOAH's formal issuance and delivery of the judge's written decision to DPS through eFile Texas. Although the automated case data provided to DPS is intended to accurately reflect the outcomes of cases, it is not officially a part of the administrative record. Occasionally, the data reported to DPS for a particular case outcome may conflict with the judge's actual written decision due to a data entry or coding error. SOAH is aware that DPS staff have occasionally misinformed defendants that DPS is without authority to correct a defendant's driver's record when a data reporting errors occur. The proposed §159.253(d) resolves this issue by clarifying that the judge's final written decision or order always controls as to the proper disposition of the case over any conflicting data reported to the DPS Enforcement and Compliance Service division.

A new subsection (e) of §159.253 is proposed to clarify that DPS is solely responsible for ensuring that the Department administers the defendant's driving record and any suspension in a manner that is consistent with the judge's final disposition of the case. The intent of this provision is to correct a mistaken belief by some as to the extent of SOAH's authority. SOAH does not have legal authority to take post-judgement enforcement action against DPS with respect to the administration of an ALR decision. This subsection supplements the new subsections (c) and (d) by further clarifying the separation of responsibility between SOAH and DPS as to which agency is responsible for administration of a defendant's driver's license record and any suspension once the SOAH judge has issued a final decision or order.

A new §159.254 is proposed relating to the correction of a final decision. It sometimes happens that when a written ALR decision is rendered, essential information that should be included in the record is inadvertently omitted, entered incorrectly, or entered into the wrong template as the result of a clerical error. Although SOAH does not have the same plenary powers as the judiciary, SOAH does have some limited ability to correct post-judgement clerical errors and omissions as necessary to ensure that the judge's intent is properly reflected in the administrative record at SOAH and that the due process rights of the parties are not inadvertently prejudiced by clerical errors in entry of judgement. §159.254 would create a formal and consistent process for the correction of such errors. Subsection (a) of §159.254 creates an exception to Rule §159.253 to allow DPS, defendants, and SOAH's own administrative law judges to seek correction of an ALR decision after it has been issued for the limited purpose of correcting a clerical error or applying the correct statutory period of suspension. Subsection (b) requires that any motion for a corrected decision must be filed as soon as possible after the error is discovered, but not later than 10 business days after the issuance of the original decision, and must specify the error to be corrected. Subsection (c) provides that a motion for a corrected decision does not extend the deadline for appeal or stay other actions. Subsection (d) establishes the ground rules for such corrections and states that a corrected decision may only be issued if the error is apparent on the face of the record and correction is required to accurately reflect the judge's intent. A corrected decision cannot be based on a request for reconsideration or new evidence and may not be used to correct judicial error in the judgment. Subsection (e) provides that the judge is not required to act on a request for correction of a final decision, and any correction of a decision must be issued by not later than the 29th day after issuance of the original decision that is in error.

Section 159.255 relates to the appeal of a judge's decision, and SOAH proposes amendments to this section for consistency with current practice.

Subsection (a) of §159.255 is amended to clarify that it is the responsibility of the person appealing an ALR decision to provide the administrative record to the appropriate court for appeal. Subsection (a) also cross-references a new subsection (d).

Subsection (a)(1) of §159.255 is amended to eliminate the outdated requirement for the record on appeal to include the "first" file-marked or stamped copy of motions and other pleadings. This requirement pre-dates the adoption of electronic case records and relates back to a time when only the original filed-stamped paper copy of a document was considered to be the official record. Today, the administrative record consists of electronic case records that have been e-filed at SOAH. When documents are e-filed with the SOAH Chief Clerk's Office, SOAH's acceptance of a filing is logged through eFile Texas and recorded on the face of the document by SOAH's electronic file stamp. This file-stamped electronic version of a record may be relied upon in the same manner as an original or certified copy. Thus, the requirement for any document to be the "first" copy is unnecessary.

Subsection (b) of §159.255 is amended to address the statutory requirement of section 524.041(c) of the Transportation Code requiring a person who appeals an ALR decision to provide a copy of the petition of appeal to SOAH. This section requires filing a copy of a file-stamped or certified copy of the petition of appeal into the record of the case at SOAH.

The former subsection (b) of §159.255 is renumbered as subsection (c) and is amended to clarify the current process for appeal transcript requests. Appeal transcript requests must be filed into the record of the case, together with a file-stamped or certified copy of the petition of appeal. This subsection is also amended to clarify that SOAH is not obligated to prepare a written transcript for cases that are not appealed, nor is SOAH required to furnish a free transcript to a party who is unable to pay the costs of a transcript. These changes are intended to ensure that SOAH's appeal transcript process is reserved for only its intended purpose of preparing written transcripts for appeal, and only upon the payment of costs. These changes are consistent with section 524.044 of the Transportation Code (relating to transcripts for ALR appeals) and Texas Attorney General Opinion GA-0524 (2007) (stating that SOAH is not required to furnish a free transcript to indigent defendants for ALR appeals).

Section 159.255(b) is also amended to remove reference to the requirement for SOAH to provide the record to the reviewing court. As provided by subsection (a) of this section, the longstanding and current practice in ALR cases is for SOAH to provide the certified record to the parties, and then the parties provide the record directly to the court. Information addressing SOAH's retention of the case file and audio recording is relocated to a new subsection (e) relating to records retention.

A new subsection (d) of §159.255 is added to recognize that some local jurisdictions throughout the state have adopted a practice of allowing ALR cases to be appealed for the sole purpose of obtaining a stay of suspension to allow additional time for a person to seek an essential need or occupational driver's license. The parties will need to confirm the local rules of the court for their particular jurisdiction, but where this is allowed, courts will sometimes waive the transcript requirement.

A new subsection (e) of §159.255 is added to address SOAH's retention of appealed case records for a period of three years. This subsection relocates language regarding records retention from the former subsection (c).

Subsection (c) of §159.255 is renumbered as subsection (f) and describes the procedure for when a reviewing court remands an ALR case to SOAH for further proceedings. This subsection is amended to remove the requirement for the parties to provide an estimate of the time required to present additional evidence if a hearing is requested. The reviewing court's instructions to SOAH regarding any hearing on remand should be set forth in the remand order, and therefore it is not necessary for the appellant to request a hearing on remand or provide a time estimate.

Subsection (d) of §159.255 relating to the effect of a remand on the suspension of a driver's license is renumbered as subsection (g).

A new §159.257 is proposed to address the effect of the disposition of criminal proceedings and any orders of expunction on the disposition of ALR cases and records at SOAH. SOAH has observed that defendants, defense counsel, and judicial officials often misunderstand how a dismissal of criminal charges, or a court order of expunction based on a dismissal of charges, affects an ALR case at SOAH. This section is intended to offer clarification and citation to the relevant laws that determine these issues. As a general matter, only the acquittal of charges based on a finding of not guilty can impact an ALR proceeding.

Subsection (a) of the proposed §159.257 states that the disposition or expunction of criminal charges relating to the same arrest that forms the basis of an ALR case does not affect SOAH's adjudication of an ALR proceeding, except as provided by §524.015 or §724.048 of the Transportation Code. These provisions of the Transportation Code state that the disposition of a criminal charge does not bar any matter in issue in an ALR case unless the person was acquitted of certain relevant criminal charges.

Subsection (b) of the proposed §159.257 provides that the records of ALR proceedings at SOAH are only subject to expunction if the expunction order complies with article 55.06 of the Code of Criminal Procedure. Article 55.06 relates specifically to ALR case records and cross-references §524.015 and §724.048 of the Transportation Code. Construed together as a whole, these laws provide that ALR records can only be expunged based on the acquittal of criminal charges relating to the same arrest at issue in the ALR proceeding.

Subsection (c) of the proposed §159.257 summarizes and restates the effect of both subsections (a) and (b) to state that only an order of expunction based on the acquittal of criminal charges can affect the disposition of an ALR case or require the expunction of ALR records; an order of expunction based on the dismissal of criminal charges has no effect.

Fiscal Impact. Kristofer S. Monson, Chief Administrative Law Judge for SOAH, has determined for the first five-year period the proposed rule amendments are in effect, there are no additional costs to state or local government. In particular, the rule changes only impact SOAH and the Texas Department of Public Safety, and most of the procedural and technology related changes proposed by the rules have already been implemented.

Local Employment Impact. The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

Small Business, Microbusiness, and Rural Community Impact: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Cost Increase to Regulated Persons: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045. More specifically, the technology-related changes proposed by the rules that require the use of videoconferencing, electronic filing and service, and electronic records access have already been implemented. SOAH provides free access to attend videoconference hearings using a videoconferencing platform hosted by SOAH. SOAH has adopted and implemented eFile Texas, which is a statewide electronic filing and service provider that is available to DPS and ALR case participants at no cost. SOAH has also adopted re:SearchTX, which is an online court records repository for access to ALR case records at SOAH and there are no costs to create an account or obtain access to SOAH records. To the extent that any individual participant may incur technology-related costs associated with SOAH's implementation of electronic filing and videoconferencing for ALR hearings, these costs are anticipated to be off-set by increased access to participation in ALR proceedings, greater efficiencies associated with electronic documents, and cost-savings associated with reduced costs for copying and mailing documents, and reduced travel expenses associated with hearing attendance.

Takings Impact Assessment. Chief Judge Monson has determined that the proposed rule amendments will not affect private real property interests, therefore SOAH is not required to

prepare a takings impact assessment under Government Code §2007.043.

Public Benefit. Chief Judge Monson has determined for the first five-year period the proposed rule amendments are in effect, there will be a benefit to the general public, attorneys, and other parties appearing at SOAH because the proposed rule amendments will provide improved efficiency in the filing and service of documents relating to ALR cases at SOAH, increased access to the administrative hearings process, and greater fairness and efficiency in the conduct of ALR hearings.

Government Growth Impact Statement. Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rule amendments. For the first five years the proposed rule amendments will be in effect, the agency has determined the following: (1) The proposed rule amendments do not create or eliminate a government program; (2) Implementation of the proposed rule amendments does not require the creation of new employee positions or the elimination of existing employee positions; (3) Implementation of the proposed rule amendments does not require an increase or decrease in future legislative appropriations to the agency; (4) The proposed rule amendments do not require an increase or decrease in fees paid to the agency; (5) The proposed rule amendments do not create a new form of regulation; (6) The proposed rule amendments do not expand, limit, or repeal existing regulations; (7) The proposed rule amendments do not increase the number of individuals subject to the rule's applicability; and (8) The proposed rule amendments do not positively or adversely affect this state's economy.

Public Comments. Written comments on the proposed rules may be submitted to State Office of Administrative Hearings, ATTN: Office of General Counsel, P.O. Box 13025, Austin, Texas 78711-3025 or by email to: rulemaking@soah.texas.gov with the subject line "SOAH ALR Rule Comments." The deadline for receipt of comments is 5:00 p.m. on June 24, 2024. Public comments will be addressed in the publication of the final adopted rule. All requests for a public hearing on the proposed rules must be received by the State Office of Administrative Hearings no more than fifteen (15) days after the notice of proposed rules have been published in the *Texas Register.*

SUBCHAPTER A. GENERAL

1 TAC §§159.1, 159.3, 159.7

Statutory Authority. The rule amendments are proposed under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code §524.002 and §724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The proposed rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, article 55 of the Texas Code of Criminal Procedure, and Chapters 522, 524, and 724 of the Texas Transportation Code.

§159.1. Scope and Construction of this Chapter.

(a) This chapter applies to contested hearings before SOAH concerning administrative suspension, denial, or disqualification of drivers' licenses under the Administrative License Revocation (ALR) Program governed by Texas Transportation Code, Chapters 522, 524, and 724.

(b) These regulations shall be construed to ensure the fair and expeditious determination of every action.

(c) These rules shall supplement the procedures required by law. [~~, but to~~] To the extent that any provisions of these rules that are necessary to expedite the hearings process [~~they~~] conflict with Texas Government Code, Chapter 2001, the provisions of this chapter shall prevail.

(d) When procedural issues arising under Texas Transportation Code, Chapters 522, 524, and 724 cannot be resolved by reference to this chapter, the APA, and applicable case law, then the presiding judge will consider and apply SOAH's Rules of Procedure in Chapter 155 of this title, and/or the Texas Rules of Civil Procedure (TRCP) as interpreted and construed by Texas case law, and persuasive authority established in other forums.

(e) An ALR hearing under this chapter is a civil administrative proceeding that is separate and independent from any criminal court proceedings relating to the same arrest.

§159.3. Definitions.

In this chapter, the following terms have the meaning indicated:

(1) Adult--An individual twenty-one years of age or older.

(2) [~~(3)~~] Alcohol concentration--Defined in Texas Penal Code §49.01.

(3) [~~(4)~~] Alcohol-related or drug-related enforcement contact--Defined in Texas Transportation Code §524.001.

(4) [~~(2)~~] ALR proceeding [~~suspension~~]--A [~~An~~] civil administrative proceeding under Texas Transportation Code, Chapters 522, 524 and/or 724 and this chapter relating to a driver's license disqualification, suspension, or denial resulting from an arrest for an offense relating to the operation of a motor vehicle or watercraft while intoxicated or under the influence of alcohol or controlled substances. [~~under the ALR Program which is the subject of this chapter.~~]

(5) Certified breath test technical supervisor--A person who has been certified by DPS to maintain and direct the operation of a breath test instrument used to analyze breath specimens of persons suspected of driving while intoxicated.

(6) Contested case--A proceeding brought under Texas Transportation Code, Chapter 522, Subchapter I; Chapter 524, Subchapter D; or Chapter 724, Subchapter D.

(7) Defendant--One who holds a license as defined in Texas Transportation Code, Chapter 521, or an unlicensed driver, whose legal rights, duties, statutory entitlement, or privileges may be affected by the outcome of a contested case under this chapter.

(8) Defense counsel--An attorney who is authorized to participate in an ALR proceeding as a current, former, or prospective representative of a Defendant. Defense counsel does not include a non-attorney representative or an attorney who is not authorized to practice law in Texas and has not obtained permission to appear pursuant to §159.57(d) of this chapter.

(9) [~~(8)~~] Denial--The non-issuance of a license or permit, and loss of the privilege to obtain a license or permit.

(10) [~~(9)~~] DPS or the Department--The Texas Department of Public Safety.

(11) [~~(10)~~] Driver--A person who drives or is in actual physical control of a motor vehicle.

(12) Efile Texas or eFile Texas--An electronic filing service provider offered by the Office of Court Administration for use in electronically filing and serving documents in cases at SOAH and in judicial courts of record, available at http://www.efiletexas.gov. In these rules, the terms "eFile Texas," "electronic filing service provider," and "electronic filing manager" may be used interchangeably, although they may be assigned more specific meaning as appropriate in a given context.

(13) Electronic filing or filed electronically--The electronic transmission of documents filed in an ALR proceeding by uploading the documents to the case docket using eFile Texas or another electronic filing service provider certified by the Office of Court Administration. In these rules, the term "electronic filing" may also include the submission of digital audio and video evidence in the manner specified on SOAH's website, but does not include the submission of filings by email, facsimile transmission, or unapproved file sharing platforms.

(14) Electronic Filing Service Provider (EFSP) or electronic filing manager--An online web portal service offered by an independent third-party provider and certified by the Office of Court Administration for use in electronically filing documents at SOAH and judicial courts of record, and that acts as the intermediary between the filer and eFileTexas.

(15) Electronic service or served electronically--The electronic transmission and delivery of documents to a party or a party's authorized representative by means of an electronic filing service provider.

(16) Electronic signature or signed electronically--An electronic version of a person's signature that is the legal equivalent of the person's handwritten signature. Electronic signature formats include:

(A) an "/s/" and the person's name typed in the space where the signature would otherwise appear;

(B) an electronic graphical image or scanned image of the signature; or

(C) a "digital signature" based on accepted public key infrastructure technology that guarantees the signers identity and data integrity.

(17) Filed--The receipt and acceptance for filing by the SOAH Chief Clerk's office.

(18) [~~(11)~~] Final decision--The decision issued by a judge who hears the contested case or another judge who reviewed the record in its entirety and who is authorized under appropriate law to issue final decisions in an ALR case.

(19) [~~(12)~~] Intoxicated--Defined in Texas Penal Code §49.01(2).

(20) [~~(13)~~] Minor--An individual under twenty-one years of age.

(21) [~~(14)~~] Operate--To drive or be in actual physical control of a motor vehicle.

(22) [~~(15)~~] Peace officer--A person elected, employed, or appointed as a peace officer under Texas Criminal Procedure Code §2.12 or other law. A peace officer may also be referred to as an arresting officer.

(23) [~~(16)~~] Public place--Defined in Texas Penal Code §1.07, Chapter 1, and Texas Transportation Code §524.001, Chapter 524.

(24) Research Texas or re:SearchTX--An online repository of court case records in Texas, including records filed in ALR proceedings at SOAH, available at http://research.txcourts.gov.

(25) [~~(17)~~] Test--The taking of blood or breath specimens as set out in Texas Transportation Code, Chapters 522, 524, and 724.

(26) Videoconference--Technology that provides for a conference of individuals in different locations, connected by electronic means through audio and video signals transmitted over the Internet, where all participants have an opportunity to communicate and participate in the conference.

(27) [~~(18)~~] The following terms are defined in 1 Texas Administrative Code §155.5 (relating to Definitions): Administrative Law Judge or judge; APA; authorized representative; business day; confidential information; Chief Judge; discovery; evidence; exhibits; ex parte communication; party; person; personal identifying information; TRCP; and SOAH.

§159.7. Other SOAH Rules of Procedure.

Other SOAH rules of procedure found at Chapter [~~Chapters~~] 155 of this title (relating to Rules of Procedure), Chapter 157 of this title (relating to Temporary Administrative Law Judges) and Chapter 161 of this title (relating to Requests for Records) may apply in contested cases under this chapter unless there are specific applicable procedures set out in this chapter. The rules that specifically apply include:

(1) Subchapter C, §§155.101, 155.103, and 155.105 of this title (relating to Filing Documents, Confidential Information, and Service of Documents on Parties);

(2) [~~(1)~~] Subchapter D, §§155.151 - 155.153, 155.155, 155.157 [~~§§155.151 - 155.157~~] of this title (relating to Assignment of Judges to Cases, Disqualification or Recusal of Judges, Powers and Duties, Orders, and Sanctioning Authority);

(3) [~~(2)~~] Subchapter E, §155.201 and §155.203 [~~§§155.201~~] of this title (relating to Representation of Parties and Withdrawal of Counsel);

(4) [~~(3)~~] Subchapter I, §155.417 of this title (relating to Stipulations);

(5) [~~(4)~~] Subchapter I, §155.425 of this title (relating to Procedure at Hearing);

(6) [~~(5)~~] Subchapter I, §155.431 of this title (relating to Conduct and Decorum);

(7) [~~(6)~~] Section 157.1 [~~§157.1~~] of this title (relating to Temporary Administrative Law Judges); and

(8) [~~(7)~~] Section 161.1 [~~§161.1~~] of this title (relating to Charges for Copies of Public Information).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2024.

TRD-202402033
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SUBCHAPTER B. CASE ADMINISTRATION [~~REPRESENTATION~~]

1 TAC §§159.51, 159.53, 159.55, 159.57, 159.59, 159.61

Statutory Authority. The rule amendments are proposed under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code §524.002 and §724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The proposed rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, and Chapters 522, 524, and 724 of the Texas Transportation Code.

§159.51. Jurisdiction [~~Withdrawal of Counsel~~].

(a) Acquisition of jurisdiction. SOAH acquires jurisdiction over a case involving a particular hearing request on the date when sufficient information required by SOAH for the scheduling of an ALR proceeding is electronically transmitted by DPS to the SOAH Chief Clerk's Office. [~~An attorney may seek to withdraw from representing a defendant only upon written motion for good cause shown. If another attorney is to be substituted as attorney for the defendant, the motion shall state the substituted attorney's name, address, telephone number, and telecopier number and state that the attorney approves the substitution.~~]

(b) Effect of acquisition of jurisdiction by SOAH. Once SOAH acquires jurisdiction, SOAH shall promptly schedule the hearing in accordance with §159.201 of this title (relating to Scheduling and Notice of Hearing), and DPS and the defendant may initiate discovery or move for appropriate relief. [~~If the defendant has no substitute attorney, the withdrawing attorney must include the defendant's last known address and a statement indicating whether the defendant consents to the withdrawal. If defendant does not consent to the withdrawal, the attorney also must affirm that the defendant has been informed of the right to object to the motion.~~]

(c) Commencement of time periods. A period of time established by these rules shall not begin to run until the hearing is initially scheduled by SOAH. [~~If the motion to withdraw is granted, the withdrawing attorney shall immediately forward the notice of hearing, all additional information about settings and deadlines, and any discovery obtained for the case to a self-represented defendant or to the substitute attorney for a defendant who is represented.~~]

(d) Cessation of Jurisdiction. SOAH jurisdiction over a case involving a particular hearing request ends upon the date the SOAH judge issues a final decision or order of dismissal, and if applicable, the deadline for any post-judgement motions has passed. Thereafter, jurisdiction may only be extended by order of the judge to:

(1) reinstate a case as provided by §159.203(c) of this title (relating to Involuntary Dismissal);

(2) vacate a default as provided by §159.213(g) of this title (relating to Failure to Attend Hearing and Default); or

(3) correct a decision as provided by §159.254 of this title (relating to Correction of Final Decision).

(e) After the cessation of jurisdiction, SOAH has concluded its involvement in the matter and has no continuing jurisdiction, including that SOAH has no authority to enforce or correct the Department's administration of a suspension, revocation, or reinstatement of a driver's license.

§159.53. Filing Documents.

(a) All notices, pleadings, motions, exhibits, and other documents for ALR proceedings must be filed in the manner specified by this section and in compliance with 1 Texas Administrative Code §155.101 and §155.103 of this title (relating to Filing Documents and Service of Documents on Parties).

(b) Methods of Filing.

(1) Electronic Filing. Defense counsel and the Department shall electronically file all notices, pleadings, motions, exhibits, and other documents for an ALR proceeding at SOAH by use of eFile Texas or another electronic filing service provider certified by the Office of Court Administration. Parties not represented by an attorney are strongly encouraged to electronically file documents but may use alternative methods of filing described in paragraph (2) of this subsection.

(A) Party Information. As soon as practicable after the initial docketing of an ALR proceeding at SOAH, each party or attorney of record shall ensure that the electronic filing manager contains complete and accurate party contact information known to the parties at the time, including the entry and verification of the mailing address, phone number, and email address of each party.

(B) Designation of Lead Counsel. If the party will be represented by an attorney, the lead counsel who is primarily responsible for the representation shall ensure that the information entered into the electronic filing manager includes the designation of lead counsel and lead counsel's state bar identification number.

(C) Service Contact Information. Each party, or lead counsel if the party will be represented by an attorney, shall ensure that the electronic filing manager contains complete and accurate service contact information known to the parties at the time of filing, including the entry and verification of the email address of each party or attorney who is required to be served.

(i) The service contact information maintained in the electronic filing manager must be sufficient to allow SOAH and the parties to electronically serve documents through eFile Texas.

(ii) SOAH may rely on the service contact information on file in eFile Texas for electronic delivery of orders, decisions, and other case-related communications from SOAH. SOAH is not required to deliver copies of orders, decisions, or other case related communications to persons who are not identified as a party, lead counsel, or service contact for the case within eFile Texas.

(iii) Failure to enter and verify service contact information within eFile Texas may result in a failure to comply with legal requirements for service of process.

(D) Document Titles and Use of Proper Filing Codes. All documents submitted for electronic filing must be properly titled or described in the electronic filing manager in a manner that permits SOAH and the parties to reasonably ascertain its contents, including through use of the correct filing code for the type of document.

(2) Filing by Self-represented Parties. Defendants without an attorney are strongly encouraged, but not required, to file electronically in the manner described in paragraph (1) of this subsection. Self-represented parties may use approved alternative methods of email, facsimile transmission, mail, or hand-delivery in the manner specified on SOAH's website.

(3) Alternative Filing Methods. For good cause, a judge may permit a party to file documents in paper or another acceptable form in a particular case.

(c) Requirements for All Filers.

(1) Address of Record Required. The defendant, the Department, and lead counsel for each party shall provide and maintain a current mailing address and email address on file with SOAH during the pendency of the proceeding. SOAH and the parties may maintain the parties' address information on file as part of the electronic record in eFile Texas.

(2) Pleadings and Motions. All pleadings, motions, or applications to the judge for an order, whether in the form of a motion, plea, or other form of request, must be filed with the SOAH Chief Clerk's Office in writing and signed by the party, unless presented orally during a hearing.

(3) Separate Submissions Required. Different document types cannot be combined into a single submission for filing. A party may not combine motions requesting different types of relief or action into a single filing but must submit each motion separately. If the document submitted for filing is an exhibit, it must be properly identified as an exhibit and submitted separately from motions, pleadings, or other filings, unless the exhibit is attached as a necessary supporting document to a pleading.

(4) Confidential Filing Required. To avoid the public disclosure or redaction of confidential information or personal identifying information necessary for the resolution of an ALR proceeding, all documents submitted for filing shall be designated as "confidential" at the time of submission. Failure to correctly submit documents as "confidential" may result in the record being publicly-accessible through the re:SearchTX court records portal.

(5) Exhibit Submission.

(A) Prefiling Required. All exhibits shall be prefiled at least two days before the hearing to avoid unnecessary surprise or delay. The judge, in his or her discretion, may grant or deny the presentation and admission of exhibits that were not timely prefiled in accordance with this section.

(B) Organization of Exhibits. Exhibits should be numbered sequentially, and multipage documents shall be paginated or Bates stamped. If multiple exhibits are combined into a single document for submission, then the document must be bookmarked to allow the judge and parties to locate each exhibit within the record.

(C) DPS Notice of Hearing. The Department must file a copy of the notice of hearing and any amended or corrected notices of hearing.

(D) Audio and Video Evidence. Evidentiary exhibits in the form of audio or video recordings shall be filed electronically in the manner specified on SOAH's website. Audiovisual evidence may only be submitted in a common, non-proprietary file format (e.g., MP4, WMV, AVI, MPEG) that can be reviewed by the judge and presented at the hearing without the need for special equipment or software.

(E) Supplemental Exhibits. Any exhibits admitted at a hearing that were not prefiled as required by this section, shall be filed electronically by the party who offered the exhibit by no later than the next business day after the conclusion of the hearing. The parties may only supplement the record with exhibits that were offered and admitted as evidence, or for which an offer of proof was presented at the hearing.

§159.55. Service of Documents on Parties.

(a) Service Required. On the same date a document is filed at SOAH, a copy shall also be sent to each party or the party's lead counsel if the party is represented by an attorney. Documents shall be served in the manner specified by this section and in compliance with 1 Texas Administrative Code §155.105 of this title (relating to Service of Documents on Parties).

(b) Service Contact Information. It is the responsibility of DPS and defense counsel, if the defendant is represented by counsel, to ensure that complete and accurate service contact information is entered in the electronic filing manager for each party or attorney who is required to be served. SOAH or the Department may assist an unrepresented defendant with entering the defendant's service contact information into eFile Texas.

(c) Method of Service.

(1) Electronic Service. A document filed electronically at SOAH must be served electronically through the use of eFile Texas or another electronic filing service provider certified by the Office of Court Administration if the email address of the party or attorney to be served is on file with the record of the case. If the email address of the party to be served is not on file with the electronic filing manager, the document may be served on that party or attorney under paragraph (2) of this subsection.

(2) Alternative Service. If the email address of the party to be served is not on file with the record of the case, then the document may be served in person, by mail, by commercial delivery service, by fax, or by such other manner as directed by the judge. Self-represented parties may use approved alternative methods of email, facsimile transmission, mail, or hand-delivery to serve documents to the Department.

(3) Service of Audio and Video Exhibits. The requirement to serve audio and video exhibits to the other party may be satisfied if the audio or video recordings are filed electronically at SOAH in the manner specified under §159.53 of this title (relating to Filing Documents), and an electronic copy or online access to such exhibits is provided to the party or attorney to be served.

(d) Certificate of Service. A person filing a document shall include a certificate of service that certifies compliance with this section and 1 Texas Administrative Code §155.105. A certificate of service shall be sufficient if it substantially complies with the following example: "Certificate of Service: I certify that on {date}, a true and correct copy of this {name of document} has been sent to {name of opposing party or authorized representative for the opposing party} by {specify method of delivery, e.g., electronic filing, regular mail, hand-delivery, fax, certified mail.} {Signature}"

(e) Proof of Service. Proof of service may be established by evidence that the document required to be served was electronically served to the party, or if party has legal representation, to party's counsel, at email address of record on file in the electronic filing manager. Alternatively, proof of service may be established by evidence that the document was served in accordance with paragraph (c)(2) of this section to the last known address, as reflected on defendant's notice of suspension, request for hearing, driving record or similar documentation.

(f) Delivery of SOAH Orders. All orders issued by the SOAH judge are considered received by the party upon SOAH's electronic transmission of the order to eFile Texas, if the recipient's email address is on file as part of the electronic record in eFile Texas.

§159.57. Representation of the Parties.

(a) Representation. A defendant may represent himself or herself, or may employ an attorney representative who is authorized to act as defense counsel. Defendants who are not represented by an at-

torney may obtain information about representing themselves in ALR proceedings on SOAH's public website at www.soah.texas.gov. SOAH cannot appoint an attorney or provide legal advice for a self-represented litigant.

(b) Appearance of Counsel. Defense counsel who has not otherwise entered an appearance as a matter of record in the proceeding at SOAH shall electronically file a notice of representation that contains the attorney's mailing address, email address, and telephone number. At the time of filing, defense counsel shall enter and verify their service contact information within eFile Texas, including the designation of lead counsel.

(c) Designation of Lead Counsel.

(1) Each party represented by counsel shall designate the lead counsel who is primarily responsible for the representation.

(2) When more than one attorney makes an appearance on behalf of a party, the attorney whose signature first appears on the initial pleading for a party shall be designated as lead counsel for that party unless another attorney is specifically designated in writing and/or within eFile Texas.

(3) If necessary to promote efficiency due to the large number of ALR cases, DPS may designate the lead attorney for the DPS region to which the case is assigned as lead counsel within eFile Texas, even if another DPS attorney appears on behalf of the Department at the hearing.

(4) All delivery of service of process and case-related communications shall be sent to the lead counsel as designated within eFile Texas.

§159.59. Withdrawal and Substitution of Counsel.

(a) Defense counsel may withdraw from representing a party only if a written motion showing good cause for withdrawal is filed by the withdrawing attorney, the substituting attorney, or the defendant.

(1) If another attorney is to be substituted as defense counsel for the defendant, the motion shall state: the substituted attorney's name, mailing address, telephone number, and email address; that the substituting attorney has been notified of all pending settings and deadlines; and that the substituting attorney approves the substitution.

(2) If the defendant has no substitute attorney, the motion shall state: the defendant's last known mailing address, telephone number, and email address; that the defendant has been notified of all pending settings and deadlines; and whether the defendant consents to the withdrawal. If the defendant does not consent to the withdrawal, the attorney also must affirm that the defendant has been served with a copy of the motion and informed of the right to object to the withdrawal.

(b) A motion to withdraw must be served on all parties and must include a certificate of conference.

(c) An attorney will remain a defendant's attorney of record until a filed motion to withdraw has been granted by the judge.

(d) If the motion to withdraw is granted, the withdrawing attorney shall immediately forward the notice of hearing, all additional information about settings and deadlines, and any discovery obtained for the case to a self-represented defendant or, if the defendant is represented by counsel, to the substitute attorney.

(e) To ensure the delivery of service of process and future case-related communications upon the withdrawal or substitution of counsel, defense counsel shall verify and update the contact information in the electronic filing manager as follows:

(1) If the defendant has no substitute attorney, the withdrawing attorney shall verify and update the party contact information and service contact information for the defendant within eFile Texas.

(2) If the defendant will be represented by a substitute attorney, then the substitute attorney shall file a notice of appearance, and shall verify and update the service contact information and lead counsel designation for the record of the case within eFile Texas.

(f) The Department may substitute one attorney for another by entering an appearance at the hearing or by providing notice to the defendant, or defense counsel if defendant is represented by an attorney, without necessity for a motion or order. Upon such substitution, the Department shall verify and update the service contact information and designation of lead counsel for the record of the case within eFile Texas to ensure the delivery of service of process and future case-related communications to the Department.

§159.61. Electronic Case Records Access.

(a) Electronic Document Repository. The case records for ALR proceedings at SOAH are available online through re:SearchTX, the electronic court records system operated by the Office of Court Administration. This system serves as an official repository for SOAH case records.

(b) Accuracy and Completeness of Records. The electronic records available through re:SearchTX are automatically updated with the filing or issuance of any new documents in the ALR proceeding through eFile Texas. Case records available through re:SearchTX may be relied upon in the same manner as an original or certified copy. The repository includes file stamped copies of all current case records, but does not necessarily include:

(1) the electronic recording of the hearing;

(2) evidentiary exhibits in the form of audio or video recordings; and

(3) the written transcript of the hearing, if any.

(c) Access to Records. Users of re:SearchTX must establish an eFile Texas account or a re:SearchTX account. Access to ALR case records is determined by the security role assigned to the individual within eFile Texas for the particular case. To access ALR case records at SOAH through re:SearchTX, users must be properly designated within the eFile Texas system as one of the following:

(1) a defendant who has used eFile Texas to file at least one document in the case and is listed as a party to the case;

(2) lead counsel for the case, with a Texas state bar number that is electronically linked with the case in eFile Texas; or

(3) a member of lead counsel's eFile Texas firm profile, where lead counsel's Texas state bar number is electronically linked with the case in eFile Texas.

(d) Attorney use of re:SearchTX. Attorneys shall establish access to re:SearchTX, and are expected to obtain and maintain a sufficient level of technical competency to monitor case activity and obtain their own case records through the use of eFileTexas and re:SearchTX for the ALR cases in which they are authorized to appear.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2024.

TRD-202402034

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Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-4993

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SUBCHAPTER C. WITNESSES AND SUBPOENAS

1 TAC §§159.101, 159.103, 159.104

Statutory Authority. The rule amendments are proposed under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code § 524.002 and § 724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The proposed rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, and Chapters 522, 524, and 724 of the Texas Transportation Code.

§159.101. Subpoenas Generally.

(a) Scope.

(1) A subpoena may command a person to give testimony for an ALR hearing and/or produce designated documents or tangible things in the actual possession of that person.

(2) A subpoena must be issued on the form provided at www.soah.texas.gov.

(3) The party that causes a subpoena to be issued must take reasonable steps to avoid imposing undue burden or expense on the person served.

(4) A party or attorney that violates the requirements of this subchapter will be subject to sanctions as determined by the judge, including, but not limited to, the loss of authority to issue subpoenas for ALR hearings.

(5) If a party that requests or issues a subpoena fails to timely appear at the hearing, any subpoenaed witnesses will be released from the subpoena and the subpoena will have no continuing effect.

(b) Attorney-issued subpoenas. An attorney who is authorized to practice law in the State of Texas may issue up to two subpoenas for witnesses to appear at a hearing. One subpoena may be issued to compel the appearance [~~presence~~] of the peace officer who was primarily responsible for the defendant's stop or initial detention and the other may be issued to compel the appearance [~~presence~~] of the peace officer who was primarily responsible for finding probable cause to arrest the defendant. If the same officer was primarily responsible for both the defendant's stop and arrest, the attorney may issue only one subpoena.

(c) Subpoena request filed with judge.

(1) Not later than ten days prior to the hearing, a party may file a subpoena request with SOAH that demonstrates good cause to compel a witness's appearance in person or by telephone or video conference, when:

(A) a party intends to call more than two peace officers to testify as witnesses;

(B) a party seeks to compel the appearance [~~presence~~] of witnesses who are not peace officers;

(C) a party seeks to compel the appearance [~~presence~~] of the breath test operator or technical supervisor and, by affidavit based on personal knowledge, has established a genuine issue concerning the validity of the breath test that requires the appearance of the witness to resolve; or

(D) a defendant, who is not represented by an attorney, seeks to compel the appearance [~~presence~~] of witnesses.

(2) A request for subpoena that is not granted prior to the hearing may be re-urged at the hearing. If the judge grants the request for a subpoena at the hearing, the hearing shall reconvene at a later date for the appearance of the witness.

(d) Judge's discretion. The decision to issue a subpoena, as described in subsection (c) of this section, shall be in the sound discretion of the judge assigned to the case. The judge shall refuse to issue a subpoena if:

(1) the testimony or documentary evidence is immaterial, irrelevant, or would be unduly repetitious; or

(2) good cause has not been demonstrated.

§159.103. Issuance and Service of Subpoenas.

(a) A party that issues or is granted a subpoena duces tecum shall be responsible for having the subpoena served, and may be required to advance the reasonable costs of reproducing any documents or tangible things requested. [~~The subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party to the case and is 18 years of age or older. A subpoena must be served by delivering a copy to the witness. If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney. A subpoena may also be served by accepted alternative methods established by a peace officer's law enforcement agency.~~]

(b) A subpoena must be served at least five days before the hearing, and must include a copy of the notice of hearing or other information that is sufficient to notify the witness of how to appear, including instructions and information for joining a videoconference or telephone conference call if applicable.

(c) Method of Service. A subpoena must be served by delivering a copy to the witness. The subpoena may be served at any place within the State of Texas by any sheriff or constable of the State of Texas, or any person who is not a party to the case and is 18 years of age or older.

(1) If the witness is a party and is represented by an attorney of record in the proceeding, the subpoena may be served on the witness's attorney.

(2) If the witness is a peace officer, then the subpoena shall be served by accepted methods established by a peace officer's law enforcement agency. If the peace officer's law enforcement agency does not have an accepted method for receipt of service of subpoenas, then the subpoena may be served by delivering a copy to the witness.

[~~(c) After a subpoena is served upon a witness, the return of service of the subpoena must be filed at SOAH at least three days prior to the hearing. Upon the subpoenaed witness's appearance at the hearing, the party that issued the subpoena shall tender a witness fee check or money order in the amount of $10 to the witness. In addition, if the witness traveled more than 25 miles round-trip to~~

~~the hearing from the witness's office or residence, mileage reimbursement must also be tendered at the same time. The amount of mileage reimbursement will be that listed in the state mileage guide at https://fmx.cpa.state.tx.us/fm/travel/travelrates.php.~~]

(d) After a subpoena is served upon a witness, the subpoena and the return of service of the subpoena must be filed at SOAH at least three days prior to the hearing. [~~If the hearing is conducted telephonically, the party that issued the subpoena shall mail the witness fee check or money order to the witness within one day of the conclusion of the hearing unless the witness fails to appear at the hearing. Also within one day of the conclusion of the hearing, the party shall forward to SOAH a certification that the witness fee or money order was mailed to the witness. A copy of the certification must be sent to the opposing party at the time it is filed at SOAH.~~]

(e) A subpoenaed witness whose assigned work location or residence is more than 150 miles from the designated hearing location is entitled to appear by telephone or videoconference. [~~If a party that served a subpoena on a witness fails to appear at a hearing, that party shall mail the witness fee check or money order to the witness within one day from receipt of a default decision or any other order issued by the judge ordering payment of the fee and mileage reimbursement. Also within one day from receipt of the judge's order, the party shall forward to SOAH a certification that the witness fee or money order was mailed to the witness. A copy of the certification must be sent to the opposing party at the time it is filed at SOAH.~~]

(f) A party seeking the admission of subpoenaed documents or audiovisual evidence at the hearing must prefile the exhibits in advance of the hearing in the manner specified by §159.53 of this chapter. [~~If special equipment will be required in order to offer subpoenaed documents or tangible things, the party seeking their admission shall be required to supply the necessary equipment. The party requesting a subpoena duces tecum may be required to advance the reasonable costs of reproducing the documents or tangible things requested.~~]

(g) Service upon opposing party.

(1) A party that issues a subpoena must serve the opposing party with a copy of the subpoena on the same date it is issued.

(2) A party that requests a subpoena from a SOAH judge must serve the opposing party with a copy of the request at the time it is filed with SOAH.

(3) When a subpoena has been served, and not less than three days prior to the hearing, a party that has served a subpoena must provide the opposing party with a copy of the return of service.

(4) If a party fails to serve a copy of a subpoena or a subpoena return on the opposing party, the subpoena may be rendered unenforceable by the judge.

(h) Continuing effect. A properly issued subpoena remains in effect until the judge releases the witness or grants a motion to quash or for protective order. If a hearing is rescheduled and a subpoena is extended, and unless the judge specifically directs otherwise, the party that requested the continuance shall promptly notify any subpoenaed witnesses of the new hearing date and serve a copy of the notice on the opposing party.

§159.104. Witness Fees.

(a) Witness Fees. Upon the subpoenaed witness's appearance at the hearing, the party that issued the subpoena shall tender a witness fee check or money order in the amount of $10 to the witness, unless the witness waives the fee.

(b) Travel Reimbursement. If the witness traveled more than 25 miles round-trip to the hearing from the witness's office or residence, mileage reimbursement must also be tendered at the same time. The amount of mileage reimbursement will be determined in accordance with the travel rates established by the Comptroller of Public Accounts at https://fmx.cpa.state.tx.us/fm/travel/travelrates.

(c) If the witness is a peace officer, then any amounts for the witness fee and/or travel reimbursement shall be sent to the peace officer's attention at the peace officer's employing law enforcement agency.

(d) If the hearing is conducted by videoconference or telephone conference call, then the party who issued the subpoena shall mail the witness fee check or money order to the witness within one business day of the conclusion of the hearing unless the witness fails to appear at the hearing. Also within one business day of the conclusion of the hearing, the party shall file with SOAH a certification that the witness fee or money order was mailed to the witness. A copy of the certification must be sent to the opposing party at the time it is filed at SOAH.

(e) If a party who served a subpoena on a witness fails to appear at a hearing, that party shall mail the witness fee check or money order to the witness within one day from receipt of a default decision or any other order issued by the judge ordering payment of the fee and mileage reimbursement. Also within one day from receipt of the judge's order, the party shall file with SOAH a certification that the witness fee or money order was mailed to the witness. A copy of the certification must be sent to the opposing party at the time it is filed at SOAH.

(f) Procedures relating to witness fees and mileage reimbursement if a subpoena request is denied or a subpoena is quashed are governed by §159.105 of this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2024.

TRD-202402035
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State Office of Administrative Hearings
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-4993

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SUBCHAPTER D. DISCOVERY

1 TAC §159.151

Statutory Authority. The rule amendments are proposed under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code §524.002 and §724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The proposed rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, and Chapters 522, 524, and 724 of the Texas Transportation Code.

§159.151. Prehearing Discovery.

(a) A request for discovery may not be filed before SOAH acquires jurisdiction over a case involving a particular hearing request and the hearing is initially scheduled by SOAH [~~the request for hearing has been received by the Department~~].

(b) No party shall file copies of discovery requests with SOAH.

(c) Depositions, interrogatories, and requests for admission shall not be permitted in ALR proceedings, and the discovery rules of the Texas Rules of Civil Procedure requiring initial disclosures without awaiting a discovery request do not apply to an ALR proceeding.

(d) Both parties have the right to review, inspect, and obtain copies of any non-privileged documents or records in the other party's possession.

(e) A request for discovery must be on a separate document from other pleadings and notices and clearly labeled as a request for discovery.

(f) A defendant's request for discovery from DPS's ALR Division shall be served to the Department or the DPS attorney of record at the email address(es) reflected in eFile Texas [~~in the manner specified in 37 Texas Administrative Code §17.16 (relating to Service on the Department of Certain Items Required to be Served on, Mailed to, or Filed with the Department)~~]. DPS's request shall be served on Defendant at the address of record.

(g) Except as provided in subsection (j) of this section, responses to discovery shall be sent to the requesting parties within five days after receipt of the request.

(h) If a party does not have any or all of the documents in its actual possession, it shall respond within five days of the request, stating that it does not have the documents in its actual possession. A party must supplement all its discovery responses within five days from the time the party receives the discoverable documents.

(i) If a document sought through discovery is received by the requesting party fewer than ten days before the scheduled hearing, the judge may grant a continuance on the request of either party. [~~The judge may grant only one continuance based on recently obtained discovery.~~]

(j) A defendant may request inspection, maintenance, and/or repair records for the instrument used to test the defendant's breath specimen for the period covering 30 days prior to the test date and 30 days following the test date. If the records are not in the actual possession of DPS, then DPS shall inform the defendant of the proper person or other third party entity from whom the defendant can obtain discovery, if known. If the records are in the actual possession of DPS, then DPS shall supply the records to the defendant within ten days of receipt of the request. If DPS fails to provide properly requested records after the defendant has paid reasonable copying charges for them, evidence of the breath specimen shall not be admitted into evidence.

(k) A party who [~~that~~] seeks relevant, probative records from a third party may request issuance of a subpoena duces tecum pursuant to Subchapter C (relating to Witnesses and Subpoenas) to have the evidence produced for [~~at~~] the hearing. A person subpoenaed to produce records need not appear at the hearing unless the person is also commanded to attend and give testimony. If a person subpoenaed under this section does not appear or otherwise respond to the subpoena, the judge may grant a continuance to allow for enforcement of the subpoena.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2024.

TRD-202402036
Shane Linkous
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State Office of Administrative Hearings
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-4993

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SUBCHAPTER E. HEARING AND PREHEARING

1 TAC §§159.201, 159.203, 159.207, 159.209 - 159.211, 159.213

Statutory Authority. The rule amendments are proposed under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; and (ii) Texas Transportation Code § 524.002 and § 724.003, which provide that SOAH shall adopt rules to administer those chapters.

Cross Reference to Statute. The proposed rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, and Chapters 522, 524, and 724 of the Texas Transportation Code.

§159.201. Scheduling and Notice of Hearing.

(a) On receipt of a timely request for hearing, DPS shall promptly refer the case to SOAH for [~~schedule~~] a hearing to be conducted by a SOAH judge. After SOAH acquires jurisdiction over the matter in accordance with §159.51 of this title (relating to Jurisdiction), then SOAH has primary responsibility for the scheduling of a hearing.

(b) SOAH shall schedule hearings to be conducted at the earliest possible date, taking into consideration the availability and feasibility of videoconference technology as a means to promote the prompt, fair, and cost-effective resolution of ALR proceedings. To the extent possible, cases shall be scheduled by geographic region based on the defendant's county of arrest. [~~The location of the hearing will be set in accordance with the requirements of Texas Transportation Code §524.034 and §724.041. SOAH or DPS may change the hearing site upon agreement of all parties.~~]

(c) Once [~~DPS issues~~] the notice of hearing scheduling the hearing is issued [~~by telephone or videoconference~~], the hearing may be removed from that docket only upon timely request pursuant to §159.207 of this title (relating to Continuances), by order of the judge, or by agreement of the parties and with the ALJ's consent.

(d) It is a rebuttable presumption that [~~DPS mailed~~] the notice of the hearing was served to the defendant on the same date as the date listed in the notice.

(e) SOAH will provide timely access to ALR scheduling information on SOAH's website at www.soah.texas.gov.

§159.203. Waiver or Dismissal of Hearing.

(a) Waiver of Request for Hearing. The defendant may waive the request for hearing at any time before the administrative order is final. If the defendant requests a waiver after the notice of hearing is issued, the judge will enter an order accepting the waiver.

(b) Rescission of Notice of Suspension. If, after issuing a notice of hearing, DPS rescinds a notice of suspension, it shall immediately inform SOAH and the defendant of the rescission by the filing of a notice of rescission. A judge shall issue an order [~~may, on his or her~~

own motion,] dismissing [dismiss] the case from SOAH's [its] docket once the notice of suspension has been rescinded.

(c) Involuntary Dismissal. A judge may dismiss a case on his or her own motion if the record shows no activity by the filing of pleadings or otherwise has occurred for a period of 120 days, or the case has not been brought to hearing with due diligence after multiple continuances to allow the parties to prepare for hearing.

(1) Notice of the judge's intention to dismiss must be sent to the parties at least 15 days prior to the effective date of dismissal. The judge may, but is not required to, conduct a hearing on the dismissal. The order of dismissal shall:

(A) state the reason for dismissal;

(B) inform the parties of an opportunity to seek reinstatement of the case; and

(C) inform the parties that the case is dismissed unless:

(i) a party files a motion to reinstate the case on the docket not later than 15 days after the issuance of the order; and

(ii) the motion to reinstate specifies the basis for the motion and addresses the grounds for dismissal stated in the judge's order.

(2) The judge may grant a motion to reinstate the case if the moving party shows valid and compelling reasons for the delay or inaction, or the judge finds that extraordinary circumstances exist that require reinstatement of the case.

(3) In the event a timely motion for reinstatement is not decided by written order of the judge within 30 days after the dismissal order is signed, the motion shall be deemed overruled by operation of law.

(4) Dismissal under this section removes the case from the SOAH docket and rescinds the notice of suspension without a decision on the merits.

§159.207. Continuances.

(a) A request for continuance will be considered in accordance with the provisions of Texas Transportation Code § 524.032(b) [§524.032(b)] and (c) (relating to rescheduling a hearing upon a defendant's request), § 524.039 [§524.039] (relating to appearance of technicians), and Texas Transportation Code § 724.041(g) [§724.041(g)]. [DPS shall immediately notify SOAH of a continuance request under Texas Transportation Code §524.032(b).]

(b) A judge may grant a continuance if the motion is supported by good cause, consent of the parties, or operation of law [a subpoenaed witness is unavailable for the hearing].

(c) With the exception of a hearing that is rescheduled in accordance with Texas Transportation Code § 524.032(b), the [The] granting of continuances shall be in the sound discretion of the judge, provided, however, that the judge shall expedite the hearings whenever possible. A party requesting a continuance [shall supply three dates on which the parties will be available for rescheduling of the hearing. The judge will consider these dates in resetting the case.] may file a written motion or present the motion orally at the hearing. The motion shall include:

(1) the specific reason for the continuance;

(2) a statement of the number of motions for continuance previously filed in the case by each party; and

(3) for written motions, a certificate of service and a certificate of conference as required by §159.205 of this title (relating to Service of Documents on Parties). Failure to include a certificate of service and a certificate of conference when filing a motion for continuance may result in denial of the continuance request or subsequent continuance requests in the same case.

(d) With the exception of a hearing that is rescheduled in accordance with Texas Transportation Code § 524.032(b) [524.032(b)], no party is excused from appearing at a hearing until notified by SOAH that a motion for continuance has been granted.

(e) Responses to a motion for continuance, if any, should be promptly submitted in writing, except a response to a motion for continuance made on the date of the hearing may be presented orally at the hearing.

§159.209. Participation by Telephone or Videoconference.

(a) Videoconference. Upon appropriate notice, SOAH may allow or require an ALR hearing to be conducted by videoconference. [Consent of the parties. The judge may, with consent of the parties and if SOAH has been notified of a telephone or videoconference hearing request at least 14 days prior to the hearing date, conduct all or part of the hearing on the merits by telephone or videoconference if each participant in the hearing has an opportunity to participate in and hear the entire proceeding. The judge may conduct all or part of a hearing on preliminary matters by telephone or videoconference, on the judge's own motion, if each participant has an opportunity to participate in and hear the entire proceeding.]

(1) The notice for a videoconference hearing shall include log-in information for joining the videoconference and provide an option for participants to access the hearing audio by telephone.

(2) If a party files a written objection within a reasonable time after receiving notice of a videoconference hearing, and states good cause for the objection, the judge shall timely rule on the objection in a manner consistent with Rule 21d of the Texas Rules of Civil Procedure.

(3) The judge may require a witness to appear on camera as a condition of being allowed to testify in a videoconference hearing.

(b) Telephone Conference Call. After SOAH acquires jurisdiction, a party may file a consent motion or notice of agreement by the parties to conduct an ALR hearing by telephone conference call. The judge may grant the motion and schedule the hearing to be conducted by telephone conference call with proper notice to the parties. [Before a witness is allowed to give testimony by telephone, the judge will confirm that the witness is the person he or she has been represented to be.]

(1) The notice shall include dial-in information or instructions for joining the telephone conference call and include instructions for submitting documents and evidence to be considered in the proceeding.

(2) Before a witness is allowed to give testimony by telephone, the judge will confirm that the witness is the person he or she has been represented to be, which may require the witness to provide reasonable verification of their identity under oath.

(c) Procedural Rights and Duties. All substantive and procedural rights and duties apply to telephone or videoconference hearings, subject only to the limitations of the physical arrangement. [The parties shall notify SOAH of their telephone or videoconference numbers for the purpose of their appearances at the hearing.] The parties shall contact their respective witnesses to assure their availability at the hearing.

[(d) Documentary evidence. To be offered in a telephone or videoconference hearing, copies of exhibits should be marked and must be filed with SOAH and all parties no later than two business days prior to the scheduled hearing, unless otherwise agreed by the parties. If a

~~witness, in preparation for or during testimony, reviews any document that has not been prefiled and the opposing party requests an opportunity to review the document, the judge may go off the record and allow the witness to read the document to the opposing party.~~]

[~~(e) Default. For a telephone or videoconference hearing, the following may be considered a failure to appear and grounds for default, if the conditions exist for more than ten minutes after the scheduled time for hearing:~~]

[~~(1) failure to answer the telephone or videoconference line;~~]

[~~(2) failure to free the line for the proceeding; or~~]

[~~(3) failure to be ready to proceed with the hearing or a prehearing or post-hearing conference, as scheduled.~~]

§159.210. Hearing on Written Submission.

(a) A party may file a motion or notice of agreement by the parties to convert an oral proceeding to a hearing on written submission at any time after SOAH acquires jurisdiction. The motion should acknowledge that the moving party or parties have filed and served or exchanged copies of all evidence necessary for resolution of the case.

(b) To expedite resolution of the case, the judge shall liberally grant requests to conduct hearings on written submission.

(c) For hearings conducted on written submission, the opportunity for the presentation of oral testimony and the examination of witnesses is waived by the parties. The factual matters asserted and evidence presented for the judge's consideration shall consist solely of the pleadings, motions, admitted exhibits, and orders filed in the administrative record.

(d) The judge shall issue a written decision for a hearing conducted on written submission in the same manner as provided by §159.253 of this title (relating to Decision of the Judge). The parties may appeal the decision as provided by § 524.041 of the Texas Transportation Code.

§159.211. Hearings.

(a) Procedures.

(1) Hearings shall be conducted in accordance with the APA, Texas Government Code, Chapter 2001, when applicable, and with this chapter, provided that if there is a conflict between the APA and this chapter, this chapter shall govern. If a conflict exists between this chapter and the Texas Transportation Code, Chapters 522, 524, or 724, and these rules cannot be harmonized with those chapters, the applicable Texas Transportation Code provision controls.

(2) Once the hearing has begun, the parties may be off the record only when the judge permits. If a discussion off the record is pertinent, the judge will summarize it for the record.

(3) ALR hearings shall be conducted in a fair and expeditious manner. In the interest of justice and efficiency, the judge may determine the order in which cases are heard, impose reasonable conditions on the length of time required for a hearing, question witnesses, and protect witnesses from abusive, repetitious, or unreasonably prolonged questioning.

(4) The judge shall exclude testimony or any evidence which is irrelevant, immaterial, or unduly repetitious.

(b) Evidence. Except as otherwise provided by [~~Pursuant to~~] Texas Government Code § 2001.081 [~~§2001.081~~], the rules of evidence as applied in a non-jury civil case in a district court of this state shall apply in ALR proceedings.

(c) Witnesses and affidavits.

(1) All witnesses shall testify under oath.

(2) An officer's sworn report of relevant information shall be admissible as a public record. However, the defendant shall have the right to subpoena the officer in accordance with §159.103 of this title (relating to Subpoenas). If the defendant timely subpoenas an officer and the officer fails to appear without good cause, information obtained from that officer shall not be admissible. In the alternative, if the party who requested the subpoena wants to seek enforcement of the subpoena, the judge may grant the party a continuance.

(3) The judge, on his or her own motion or on request of a party [~~and with the consent of all parties~~], may allow the testimony of any witness to be taken by telephone or videoconference, provided that all parties have the opportunity to participate in and hear the proceeding. All substantive and procedural rights apply to the telephone or videoconference appearance of a witness, subject to the limitations of the physical arrangement as described in §159.209(c) of this title (relating to Participation by Telephone or Videoconference).

(4) If a witness, in preparation for or during testimony, reviews any document that has not been prefiled and the opposing party requests an opportunity to review the document, the judge may allow the witness to present or read the document to the opposing party.

(d) Record of hearing.

(1) The judge shall make an accurate and complete recording of the oral proceedings of the hearing.

(2) SOAH will maintain a case file that includes the recording, pleadings, evidence, and the judge's decision.

(3) SOAH will maintain case files in accordance with the terms of its records retention schedule.

(e) Interpreters. When an interpreter will be needed for all or part of a proceeding, a party shall file a written request at least seven days before the hearing. If the defendant fails to make a timely request, the judge may provide an interpreter or may continue the hearing to secure an interpreter. SOAH shall provide and pay for:

(1) an interpreter for deaf or hearing impaired parties and subpoenaed witnesses in accordance with § 2001.055 of the APA;

(2) reader services or other communication services for blind and sight-impaired parties and witnesses; and

(3) a certified language interpreter for parties and witnesses who need that service.

(f) Simultaneous ALR Appearances. If defense counsel is scheduled to appear in more than one ALR proceeding at the same time, the attorney may request the judge to facilitate the attorney's appearance at both hearings by controlling the order in which cases are heard. [~~If the defendant fails to make a timely request, the judge may provide an interpreter or may continue the hearing to secure an interpreter.~~]

§159.213. Failure to Attend Hearing and Default.

(a) If a party fails to appear for the hearing, the judge, on his or her own motion or on request of the opposing party, may proceed in that party's absence on a default basis. [~~Upon proof by DPS that notice of the hearing on the merits was sent to defendant's or, if defendant has legal representation, to defense counsel's last known address, and that notwithstanding such notice, defendant failed to appear, defendant's right to a hearing on the merits is waived. A rebuttable presumption that proper notice was given to defendant may be established by the introduction of a notice of hearing dated not less than 11 days prior to the hearing date and addressed to defendant's or defense counsel's last known address, as reflected on defendant's notice of suspension,~~]

~~request for hearing, driving record or similar documentation presented by DPS. Under those circumstances, the judge will proceed in defendant's absence and enter a default order upon DPS's motion.~~]

(b) For a telephone or videoconference hearing, the following may be considered a failure to appear and grounds for default, if the conditions exist for more than fifteen minutes after the scheduled time for hearing:

(1) failure to attend the telephone conference call or videoconference at the scheduled time; or

(2) failure to exercise due diligence to address a technical difficulty with attending a videoconference by contacting the SOAH Chief Clerk's Office for assistance or by utilizing the option to access the hearing audio by telephone.

(c) A default under this section must be supported by adequate proof that the notice of hearing was properly filed and served in accordance with §159.53 of this title (relating to Filing Documents) and §159.55 of this title (relating to Service of Documents on Parties).

(1) A rebuttable presumption that proper notice was given to a defendant is established by evidence that the notice of hearing was electronically served to the defendant, or if defendant has legal representation, to defense counsel, at the email address provided under §159.53 and §159.55 of this title, or at the email address as reflected on defendant's request for hearing. Alternatively, the judge may consider evidence that the notice of hearing was timely provided to defendant or if defendant has legal representation, to defense counsel, at the mailing address reflected on defendant's notice of suspension, driving record, or similar documentation presented by DPS.

(2) A rebuttable presumption that proper notice was given to DPS is established by evidence that information regarding the date, time, and location or method of appearance was electronically transmitted to the Department by the SOAH Chief Clerk's Office or issued by the judge to the DPS attorney of record at the email address(es) reflected in eFile Texas. Alternatively, the judge may consider evidence that notice of the scheduled hearing was published on SOAH's website and/or available to DPS through re:SearchTX.

(d) Defendant's Failure to Appear. A Defendant who requests a hearing and fails to appear without good cause waives the right to a hearing on the merits, and the judge will issue a decision and order authorizing the Department to suspend the Defendant's driver's license.

(e) Department's Failure to Appear. If the Department fails to appear through its attorney without good cause, the judge will issue an order dismissing the case without suspension or disqualification. A case dismissed under this subsection is dismissed with prejudice and may not be refiled.

(f) [~~(b)~~] Within ten business days after [~~of~~] the issuance of a default decision and order, the defaulting party [~~defendant~~] may file a written motion with SOAH [~~and DPS~~] requesting that the default order be vacated because the party [~~defendant~~] had good cause for failing to appear. In the motion, the party [~~defendant~~] must state the grounds for their failure to appear and whether the motion is opposed [~~DPS opposes the motion, and if DPS does oppose the motion, list dates and times for a hearing on the motion that are agreeable to both parties~~]. Regardless of whether the motion is opposed [~~Whether or not DPS opposes the motion~~], the judge may rule on the motion without setting a hearing or may set a hearing to consider the motion. A hearing on a motion to vacate a default order may be held by videoconference or telephone conference call. If the judge finds good cause for the party's [~~defendant's~~] failure to appear, the judge shall vacate the default order and reset the case for a hearing.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2024.

TRD-202402037
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-4993

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SUBCHAPTER F. DISPOSITION OF CASE

1 TAC §§159.253 - 159.255, 159.257

Statutory Authority. The rule amendments are proposed under: (i) Texas Government Code § 2003.050, which provides that the Chief Administrative Law Judge shall adopt rules that govern procedures that relate to hearings conducted by SOAH; (ii) Texas Transportation Code § 524.002 and § 724.003, which provide that SOAH shall adopt rules to administer those chapters; and (iii) Texas Government Code § 2003.055, which provides that the Chief Administrative Law Judge shall develop and implement the effective use of technological solutions to improve the agency's ability to perform its functions.

Cross Reference to Statute. The proposed rule amendments affect Chapters 2001 and 2003 of the Texas Government Code, and Chapters 522, 524, and 724 of the Texas Transportation Code.

§159.253. Decision of the Judge.

(a) Upon conclusion of the hearing, the judge shall issue a written decision that includes findings of fact and conclusions of law.

(b) The decision of the judge is final and appealable. Except as authorized by §159.254 of this title (relating to Correction of Final Decision) no [~~No~~] party shall file a motion for rehearing or request to modify a decision with SOAH.

(c) The judge's decision does not determine the effective dates of any suspension that may be enforced by DPS.

(d) Any automated case data exchanged by SOAH with DPS regarding the disposition of ALR proceedings is provided for the sole purpose of administrative convenience and is not part of the administrative record. The outcome of a particular proceeding as reflected by the judge's final written decision or order takes precedence over any conflicting data reported to the DPS Enforcement and Compliance Service.

(e) DPS is solely responsible for ensuring that the Department administers the defendant's driving record and any suspension in a manner that is consistent with the judge's final disposition of the case.

§159.254. Correction of Final Decision.

(a) SOAH has no continuing jurisdiction to modify an ALR decision after it has been signed, except that the judge, on his or her own motion or on request of a party, may amend an ALR decision to:

(1) correct a clerical error in the original written decision, including, but not limited to, the unintentional entry of a decision using the wrong form or template; or

(2) conform the decision to reflect the correct statutory period of suspension.

(b) A request for correction must be filed as soon as possible after the error is discovered, but not later than 10 business days after the issuance of the original decision, and must specify the clerical error or period of suspension that is proposed for correction.

(c) The filing of a motion to correct a decision does not extend the deadline for appeal under Texas Transportation Code § 524.041 or stay any action that has been previously authorized.

(d) A corrected decision may only be issued if the error is apparent on the face of the record and a correction is required to accurately reflect the judge's intent at the time the original decision was entered. A corrected decision cannot be based on a request for reconsideration or new evidence or arguments that were not presented at the hearing on the merits, and may not be used to correct judicial error.

(e) The judge is not required to act on a request for correction of a final decision. Any corrected decision must be issued by the judge not later than the 29th day after the date the original ALR decision was signed.

§159.255. Appeal of Judge's Decision.

(a) Record on Appeal. Except as described by subsection (d) of this section, a person who appeals a SOAH decision is responsible for filing the record on appeal with the court. The record on appeal shall consist of the following:

(1) the [~~first~~] file-marked or stamped copy of all parties' motions or other pleadings;

(2) all written orders or decisions issued by the judge and any evidence of transmittal to the parties;

(3) all exhibits admitted into evidence;

(4) all exhibits not admitted into evidence but made a part of the record by a party as an offer of proof or bill of exceptions; and

(5) a transcription of the proceedings electronically recorded by SOAH.

(b) Notice to SOAH Required. A person who appeals a decision shall file a copy of the petition of appeal with SOAH. The copy submitted for filing must be filed-stamped or certified by the clerk of the court in which the petition is filed. Filing under this section satisfies the requirements of Transportation Code, § 524.041(c) to provide SOAH with a copy of the petition.

(c) [~~(b)~~] Appeal Transcript Requests. A person who intends to pursue the appeal [~~appeals~~] a suspension may obtain a written transcript of the administrative hearing by filing [~~sending~~] a written request to SOAH, together with a filed-stamped or certified copy of the petition of appeal, within ten days of filing the appeal and paying the applicable fees. The fees shall not exceed the actual cost of preparing or copying the transcript, and upon receipt of the fees, SOAH shall promptly furnish [~~the reviewing court and~~] both parties a certified copy of the record. SOAH is not required to prepare a written transcript for non-appealed cases, or to furnish a free transcript to a party who is unable to pay the applicable fee for preparation of the transcript. [~~The transcription of the electronic recording made by SOAH constitutes the official record for appellate purposes. For three years after notice of an appeal is filed, SOAH will maintain the file and original recording of proceedings. A copy of the file and recording will be available for review by the parties or a reviewing court, if needed.~~]

(d) Essential Need or Occupational License Only. A person who appeals a suspension for the sole purpose of seeking an essential need or occupational driver's license may be excused from filing the record on appeal if the administrative record is not required by local rules of the court where the appeal is filed.

(e) Records Retention for Appealed Cases. For three years after notice of an appeal is filed, SOAH will maintain the file and original recording of proceedings. A copy of the file and recording will be available for review by the parties or a reviewing court, if needed.

(f) [~~(c)~~] If a case is remanded for taking of additional evidence, the appellant must file with SOAH, within ten days of the signing of the reviewing court's remand order, a request for relief, including setting a hearing on remand. The request must include a copy of the remand order [~~and an estimate of the time required to present the additional evidence, if a hearing is requested.~~].

(g) [~~(d)~~] A remand under this section does not stay the suspension of a driver's license.

§159.257. Disposition of Criminal Charges and Expunction of Records.

(a) Except for acquittal of a criminal charge as provided by § 524.015(b) or § 724.048(c) of the Texas Transportation Code, the disposition or expunction of a criminal charge relating to an arrest that forms the basis of the ALR proceeding does not affect a driver's license suspension or bar any matter in issue in an ALR proceeding.

(b) The records of ALR proceedings at SOAH are subject to expunction only upon receipt by SOAH of a judicial court order of expunction that complies with the requirements of Texas Code of Criminal Procedure Article 55.06.

(c) A judicial court order of expunction based on the dismissal, and not the acquittal, of criminal charges does not require or authorize SOAH to expunge records relating to the ALR proceeding.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 7, 2024.

TRD-202402038
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-4993

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CHAPTER 167. DISPUTE RESOLUTION PROCESSES APPLICABLE TO CERTAIN CONSUMER HEALTH BENEFIT DISPUTES

The State Office of Administrative Hearings (SOAH) proposes the repeal of Title I, Chapter 167 in its entirety concerning the Dispute Resolution Process Applicable to Certain Consumer Health Benefits Disputes.

House Bill 2256, 81st R.S. (2009) enacted Chapter 1467 of the Texas Insurance Code relating to Out-Of-Network Claim Dispute Resolution. From September 1, 2009, to August 31, 2019, Insurance Code Chapter 1467 required SOAH to administer a mandatory "balance billing mediation" program for the resolution of certain consumer disputes relating to medical bills for out-of-network health benefit claims. Texas Insurance Code §1467.004 formerly required SOAH to adopt administrative rules relating to SOAH's implementation of the mediation program, and these rules were adopted as Title I, Chapter 167, Subchapters A, B, C, D, and E (Rules §§167.1 - 167.209). Senate Bill 1264, 86th R.S. (2019) amended chapter 1467 of the Insurance Code to estab-

lish a revised out-of-network claim dispute resolution program at the Texas Department of Insurance.

Although Section 3.03 of S.B. 1264 repealed relevant sections of Insurance Code, Chapter 1467 pertaining to SOAH's balance billing mediation program, Section 5.01 of S.B. 1264 provided that "The changes in law made by this Act apply only to a health care or medical service or supply provided on or after January 1, 2020. A health care or medical service or supply provided before January 1, 2020, is governed by the law in effect immediately before the effective date of this Act [Sept. 1, 2019], and that law is continued in effect for that purpose." This transition provision required SOAH to continue to administer balance billing mediations for both existing and new out-of-network health benefit claims that were eligible under the repealed Insurance Code provisions and SOAH rules.

On or about December 18, 2023, SOAH referred all of the remaining health benefit dispute cases that could not be successfully resolved by mediation to a special judge for trial in accordance with the requirements of the former Insurance Code §1467.057. Now that SOAH's administrative duties under the former law have been concluded, the repeal of SOAH's rules in Title 1, Chapter 167 is necessary to fully-implement S.B. 1264.

Fiscal Note. Kristofer S. Monson, Chief Administrative Law Judge for SOAH, has determined that for the first five-year period the proposed repeal is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments because of the repeal of Chapter 167. Additionally, Chief Judge Monson has determined that the repeal of Chapter 167 does not have foreseeable implications relating to the costs or revenues of state or local government.

Probable Economic Costs. Chief Judge Monson has determined for the first five-year period the proposed repeal is in effect, there will be no additional economic costs to persons required to comply with the repeal of the rule.

Local Employment Impact. The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

Small Business, Microbusiness, and Rural Community Impact: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

Cost Increase to Regulated Persons: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

Takings Impact Assessment. Chief Judge Monson has determined that the proposed repeal will not affect private real property interests, therefore SOAH is not required to prepare a takings impact assessment under Government Code §2007.043.

Public Benefit. Chief Judge Monson has determined for the first five-year period the proposed repeal is in effect, there will be a benefit to the general public because the proposed repeal will eliminate obsolete SOAH rules.

Government Growth Impact Statement. Pursuant to Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed repeal. For the first five years the proposed repeal will be in effect, the agency has determined the following: (1) The proposed repeal does not create or eliminate a government program; (2) Implementation of the proposed repeal does not require the creation of new employee positions or the elimination of existing employee positions; (3) Implementation of the proposed repeal does not require an increase or decrease in future legislative appropriations to the agency; (4) The proposed repeal does not require an increase or decrease in fees paid to the agency; (5) The proposed repeal does not create a new form of regulation; (6) The proposed repeal does not expand, limit, or repeal existing regulations; (7) The proposed repeal does not increase the number of individuals subject to the rule's applicability; and (8) The proposed repeal does not positively or adversely affect this state's economy.

Public Comments. Written comments on the proposed rules may be submitted to State Office of Administrative Hearings, ATTN: Office of General Counsel, P.O. Box 13025, Austin, Texas 78711-3025 or by email to: rulemaking@soah.texas.gov with the subject line "Balance Billing Rule Comments." The deadline for receipt of comments is 5:00 p.m. on June 24, 2024. Any public comments will be addressed in the publication of the final adopted rule. All requests for a public hearing on the proposed rules must be received by the State Office of Administrative Hearings no more than fifteen (15) days after the notice of proposed rules have been published in the *Texas Register.*

SUBCHAPTER A. GENERAL

1 TAC §167.1, §167.3

Statutory Authority. The repeal is proposed under §2003.050, Texas Government Code, which authorizes SOAH to establish procedural rules for hearings conducted by SOAH.

Cross Reference to Statute. The proposed rule amendments affect 2003 of the Texas Government Code, and Chapter 1467 of the Texas Insurance Code. No other statutes, articles, or codes are affected by the repeal.

§167.1. Purpose and Scope.

§167.3. Definitions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2024.

TRD-202402093
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-4993

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SUBCHAPTER B. INITIATING APPOINTMENT OF A MEDIATOR

1 TAC §167.51

Statutory Authority. The repeal is proposed under §2003.050, Texas Government Code, which authorizes SOAH to establish procedural rules for hearings conducted by SOAH.

Cross Reference to Statute. The proposed rule amendments affect 2003 of the Texas Government Code, and Chapter 1467 of the Texas Insurance Code. No other statutes, articles, or codes are affected by the repeal.

§167.51. Forms.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2024.

TRD-202402094
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-4993

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SUBCHAPTER C. MEDIATOR

1 TAC §§167.101, 167.103, 167.105, 167.107, 167.109

Statutory Authority. The repeal is proposed under §2003.050, Texas Government Code, which authorizes SOAH to establish procedural rules for hearings conducted by SOAH.

Cross Reference to Statute. The proposed rule amendments affect 2003 of the Texas Government Code, and Chapter 1467 of the Texas Insurance Code. No other statutes, articles, or codes are affected by the repeal.

§167.101. Mediator Qualifications.

§167.103. Roster of Mediators.

§167.105. Mediator Roster Update, Withdrawal, and Fee Arrangements.

§167.107. Appointment of a Mediator.

§167.109. Mediator Duties and Responsibilities.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2024.

TRD-202402095
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-4993

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SUBCHAPTER D. POST MEDIATION REPORTS

1 TAC §167.151

Statutory Authority. The repeal is proposed under §2003.050, Texas Government Code, which authorizes SOAH to establish procedural rules for hearings conducted by SOAH.

Cross Reference to Statute. The proposed rule amendments affect 2003 of the Texas Government Code, and Chapter 1467 of the Texas Insurance Code. No other statutes, articles, or codes are affected by the repeal.

§167.151. Mediator's Reports Following Mediation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2024.

TRD-202402096
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-4993

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SUBCHAPTER E. SPECIAL JUDGES

1 TAC §§167.201, 167.203, 167.205, 167.207, 167.209

Statutory Authority. The repeal is proposed under §2003.050, Texas Government Code, which authorizes SOAH to establish procedural rules for hearings conducted by SOAH.

Cross Reference to Statute. The proposed rule amendments affect 2003 of the Texas Government Code, and Chapter 1467 of the Texas Insurance Code. No other statutes, articles, or codes are affected by the repeal.

§167.201. Special Judge Qualifications.

§167.203. Order of Referral to Special Judge.

§167.205. Roster of Special Judges.

§167.207. Appointment of Special Judge.

§167.209. Special Judge Roster Update, Withdrawal, and Fee Arrangements.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2024.

TRD-202402097
Shane Linkous
General Counsel
State Office of Administrative Hearings
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-4993

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

The Texas Department of Agriculture (Department) proposes amendments to Texas Administrative Code (TAC), Title 4, Part 1, Chapter 19 (Quarantines and Noxious and Invasive Plants), Subchapter A (General Quarantine Provisions), §19.1

(Definitions), §19.2 (Inspection Certificates), §19.3 (Inspection and Testing Fees), and §19.5 (Phytosanitary Growing Season Inspection); Subchapter B (Burrowing Nematode Quarantine), §19.23 (Restrictions); Subchapter E (Date Palm Lethal Decline Quarantine), §19.50 (Quarantined Pest), §19.51 (Geographical Areas Subject to the Quarantine) and §19.52 (Quarantined Articles); Subchapter F (Lethal Yellowing Quarantine), §19.60 (Quarantined Pest), §19.61 (Quarantined Areas), and §19.62 (Quarantined Articles); Subchapter G (European Brown Garden Snail Quarantine), §19.73 (Restrictions); Subchapter H (Gypsy Moth Quarantine), §19.81 (Adoption of Federal Quarantine); Subchapter J (Red Imported Fire Ant Quarantine), §19.101 (Quarantined Areas) and §19.103 (Restrictions); Subchapter K (European Corn Borer Quarantine), §19.113 (Restrictions); Subchapter M (Sweet Potato Weevil Quarantine), §19.133 (Restrictions); Subchapter Q (Sapote Fruit Fly Quarantine), §19.170 (Basis for Quarantine - Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity)), §19.171 (Duration of the Quarantine), §19.172 (Infested Areas), §19.173 (Non-Infested Areas), §19.174 (Articles Subject to the Quarantine), §19.175 (Restrictions on Movement of Articles Subject to the Quarantine) and §19.176 Monitoring and Eradication of the Dangerous Pest or Plant Disease; and Subchapter X (Citrus Greening Quarantine), §19.616 (Infested Geographical Areas Subject to the Quarantine) and §19.622 (Mandatory Treatment of Citrus Nursery Plants in the Citrus Zone). The Department also proposes repeal of Subchapter I (Pine Shoot Beetle Quarantine), §19.91 (Adoption of Federal Quarantine); and Subchapter Q (Sapote Fruit Fly Quarantine), §19.177 (Consequences for Failure to Comply with Quarantine Restrictions) and §19.178 (Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions).

In addition, the Department proposes new Title 4, Chapter 19, Subchapter Y, Cottonseed Bug Quarantine, §§19.623 - 19.626, concerning a quarantine for a dangerous plant pest, the cottonseed bug, *Oxycarenus hyalinipennis.* The new sections are proposed to establish requirements and restrictions necessary to address dangers posed by the potential introduction of cottonseed bug in Texas.

The cottonseed bug is widely distributed in Africa, Asia, Europe, in the Caribbean Basin and South America. In 2010 it was detected in Florida and subsequently eradicated in 2014. In 2019, cottonseed bug was found in Los Angeles County and shortly thereafter in Orange, Riverside and San Diego Counties of California.

The United States plays a vital role as a key producer and exporter of cotton, with 35 percent of global cotton export. Texas ranks first in cotton production in the U.S. and accounts for approximately one-half of the cotton acres and roughly 40% of the total production in the country. Cotton is the leading cash crop in the state and is grown on five million acres, generating $1.6 billion in cash for farmers, with a total economic impact of $5.2 billion for the state.

Cottonseed bug is considered a major pest of cotton and poses a significant risk to cotton in Texas and other cotton producing states. Cottonseed bug causes substantial damage to cotton by sucking seed contents, reproducing in cotton bolls, and staining lint in the field and at processor. It is one of the world's worst cotton pests with dire international trade implications.

The proposed amendments include a change to Subchapter E's title from "Date Palm Lethal Decline" to "Lethal Bronzing of Palms Quarantine" to account for the new common name for the quarantined organism.

The proposed amendments to §19.1 remove definitions for "certified regulated article," "non-certified regulated article," and "insect exclusionary cover," because these terms do not appear in this chapter; remove definitions for "Mediterranean fruit fly," "Oriental fruit fly," and "peach fruit fly" because these insects are not addressed in this chapter; remove the term "Mediterranean fruit fly" from the definition of "fruit fly" and add the term "Caribbean fruit fly" to the definition of "fruit fly" to address the specific types of fruit flies regulated in this chapter; remove a duplicative definition for "West Indian fruit fly;" and make the terms "phytosanitary certificate," "phytosanitary growing season inspection certificate," "quarantined area," "quarantined article," "quarantined pest," and "regulated article" lower-case because they appear as such in this chapter.

The proposed amendments to §19.2 remove unnecessary language about the U.S. Domestic Japanese Beetle Harmonization Plan, update Department contact information, correct grammatical errors, and make editorial changes to language to improve the rule's readability.

The proposed amendments to §19.3 make references to the United States Department of Agriculture the same as its definition in §19.1 and update Department contact information.

The proposed amendments to §19.5 add Department contact information for those wanting to obtain applications for phytosanitary growing season inspections.

The proposed amendments to §19.23 make grammatical changes to language to improve the rule's readability.

Consistent with the change to Subchapter E's title, the proposed amendment to §19.50 updates the name of the quarantined organism to "Lethal Bronzing of Palms" to account for its new name.

The proposed amendments to §19.51 update out-of-state areas to the quarantined areas for lethal bronzing of palms and, consistent with the change to Subchapter E's title, update the name of the quarantined organism to "Lethal Bronzing of Palms" to account for its new name.

The proposed amendment to §19.52 clarifies that the definition of a quarantined article includes any species determined to be a vector of disease, updates the list and names of palms that are quarantined, and adds quarantined areas based on current information available.

The proposed amendment to §19.60 clarifies that the quarantined pest is a disease caused by *Candidatus Phytoplasma palmae* or phytoplasma 16SrIV-A.

The proposed amendments to §19.61 update the out-of-state quarantined areas for Date Palm Lethal Decline.

The proposed amendments to §19.62 clarify that the definition of a quarantined article includes any species determined to be a vector of disease, updates the list and names of palms that are quarantined, and adds quarantined areas based on current information available.

The proposed amendments to §19.73 make a reference to the Department "department" because the term "department" is generally used throughout Title 4, Part 1, and correct grammatical errors.

The proposed amendments to §19.81 update Department contact information and a citation to the regulation of gypsy moths in the Code of Federal Regulations as well as make editorial changes to language to improve the rule's readability.

The proposed amendments to §19.101 remove subsection (b) because the most recent list of quarantines areas provided through Code of Federal Regulations (CFR), Title 7, §301.81-3 includes all areas listed in that subsection, update a citation to 7 CFR §301.81-3, change the term "regulated areas" to "quarantined areas," as the former is the term found in 7 CFR §301.81-3, provide an additional means to access the federal imported fire ant quarantine, update contact information for the Department, and remove unnecessary language.

The proposed amendments to §19.103 correct grammatical errors and make editorial changes to language to improve the rule's readability.

The proposed amendments to §19.113 remove unnecessary language, correct grammatical errors, and make editorial changes to language to improve the rule's readability.

The proposed amendments to §19.133 make header information in a subsection lower-case, as this is how such information generally appears in rules throughout Title 4, Part 1, add language clarifying time restrictions on planting sweet potatoes, update Department contact information, correct grammatical errors, and make editorial changes to language to improve the rule's readability.

The proposed amendments to §19.170 remove unnecessary language, change an internal reference to this chapter from "title" to "chapter" as the former is generally used throughout Title 4, Part 1, and update a citation to the Code.

The proposed amendments to §19.171 remove unnecessary language and make editorial changes to language to improve the rule's readability.

The proposed amendments to §19.172 make the rule's title more concise, remove unnecessary and inapplicable language on sources of information on quarantined infested areas and core areas, make editorial changes to language to improve the rule's readability, specify a reference to the sapote fruit fly, correct grammatical and mathematical errors, and make all mentions of quarantined infested areas "quarantined infested areas."

The proposed amendments to §19.173 make the rule's title more concise, specify a reference to the sapote fruit fly, remove unnecessary language, and make editorial changes to language to improve the rule's readability.

The proposed amendments to §19.174 specify a reference to the sapote fruit fly and correct a grammatical error.

The proposed amendments to §19.175 changes the language of the rule to align with §19.504 of this chapter (relating to Restrictions on Movement of Articles Subject to the Quarantine). The current language of the rule contains unnecessary, inapplicable provisions for quarantined non-infested areas. Likewise, the rule contains obsolete provisions involving fumigation protocols no longer in existence. The rule's applicable provisions are consistent with those in §19.504 but expressed with less clarity. In addition, §19.504 also contains additional provisions requiring those who transport regulated articles to ensure that they do not become infested and that the quarantined pest is not spread.

The proposed amendments to §19.176 update a reference to the United States Department of Agriculture.

The proposed amendments to §19.616 correct the address of the Department's Valley Regional Office and remove reference of the citrus greening quarantine map being posted on the department's website.

The proposed amendments to §19.622 correct the address of the Department's Valley Regional Office and remove unnecessary language.

The proposed repeal of §19.91 is proposed because, per 85 Fed. Reg. 61806 and as of November 2, 2020, the United States Department of Agriculture (USDA) removed its regulations pertaining to domestic pine shoot beetle quarantines and restrictions applying to the importation of pine shoot beetle host material from Canada, which include the regulations referred to in this rule. This action followed the USDA's determination that its regulatory program was ineffective in slowing the spread of pine shoot beetles and reducing damage, which the USDA found to be minimal. The USDA determined this removal would provide flexibility to states in managing pine shoot beetles.

The proposed repeal of §19.177 is appropriate and necessary to remove redundant language that is identical to that contained within state statute namely, Sections 12.020, 71.009, 71.012, 71.013, 71.009, and 71.0092 of the Texas Agriculture Code (Code).

The proposed repeal of §19.178 is proposed because its provisions are included verbatim in Section 71.010 of the Code and consequently are unnecessary.

The Department proposes the establishment of new 4 TAC Part 1, Chapter 19, Subchapter Y, Cottonseed Bug Quarantine comprised of §§19.623 - 19.626. New §19.623 defines the quarantined pest as the cottonseed bug.

New §19.624 defines the quarantined areas and outline when the Department may designate additional or expanded quarantined areas.

New §19.625 defines what constitutes quarantined articles.

New §19.626 defines the travel restrictions for quarantined articles.

The proposed amendments, proposed repeals, and proposed new subchapter are collectively referred to as the "proposal."

LOCAL EMPLOYMENT IMPACT STATEMENT: The Department has determined that the proposal will not affect a local economy so the Department is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, the Department provides the following Government Growth Impact Statement for the proposal. For each year of the first five years the proposal will be in effect, the Department has determined the following:

(1) the proposal will not create or eliminate a government program;

(2) implementation of the proposal will not require the creation or elimination of existing employee positions;

(3) implementation of the proposal will not require an increase or decrease in future legislative appropriations to the Department;

(4) the proposal will not require an increase or decrease in fees paid to the Department;

(5) the proposal does not create a new regulation;

(6) the proposal will not expand, limit, or repeal an existing regulation;

(7) the proposal will not increase or decrease the number of individuals subject to the rules; and

(8) the proposal will not affect this state's economy.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. Awinash Bhatkar, the Coordinator for Biosecurity and Agriculture Resource Management, has determined that for the first five-year period the proposal is in effect, there will be minimal or no fiscal implications for the state or local governments as a result of enforcing or administering the proposal.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COST: Mr. Bhatkar has determined that for each year of the first five-year period the proposal is in effect, the public benefit will be the elimination of rules that will no longer be administered by the Department, and increased consumer protection due to updates to the chapter to reflect current Department efforts at enforcing quarantines, and relatedly, through the improved readability and clarity of this chapter. In addition, Mr. Bhatkar has determined that the public benefit related to new Subchapter Y will be increased consumer protection through safeguarding the production and export of cotton products from cottonseed bug. Mr. Bhatkar has also determined that for each year of the first five-year period the proposal is in effect, there will be no costs to persons who are required to comply with the proposal.

FISCAL IMPACT ON SMALL BUSINESSES, MICROBUSINESSES, AND RURAL COMMUNITIES: The Department has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposal, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

Written comments on the proposal may be submitted by mail to Liat DeVere, Assistant General Counsel, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to liat.devere@texasagriculture.gov. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

SUBCHAPTER A. GENERAL QUARANTINE PROVISIONS

4 TAC §§19.1 - 19.3, 19.5

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rule to administer its powers and duties under the Code. The amendments are further proposed under Section 12.021 of the Code, which requires the Department to collect inspection fees for phytosanitary inspections required by other states and foreign countries for agricultural products, processed products, or equipment exported from Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed amendments are Chapters 12 and 71 of the Texas Agriculture Code.

§19.1. Definitions.

In addition to the definitions set out in the Texas Agriculture Code and the Texas Administrative Code, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

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

~~[(3) Certified regulated article--A regulated article, under a given subchapter of this chapter, produced in a facility certified by the department, according to program standards, and maintained under program-defined conditions that prevent exposure to pests and diseases.]~~

(3) [~~(4)~~] Compliance Agreement--A written signed agreement in which a person engaged in propagating, producing, growing, distributing, or selling or moving quarantined articles agrees to comply with conditions specified in the agreement.

(4) [~~(5)~~] Core area--Within a given quarantined area, a defined area surrounding a location where one or more quarantined pests have been detected.

(5) [~~(6)~~] Day degree--A unit of measurement equal to the amount of heat required to further the development of an insect or other arthropod through its life cycle. Day-degree life cycle requirements are calculated through a modeling process that is specific to each species.

(6) [~~(7)~~] Distribute--Offer for sale or lease, hold for sale or lease, sell, lease, barter, offer to buy, buy, offer to supply, or supply.

(7) [~~(8)~~] Free Area--An area not quarantined for a pest or disease.

(8) [~~(9)~~] Fruit fly or fruit flies--The Mexican fruit fly, Caribbean [~~Mediterranean~~] fruit fly, sapote fruit fly, or West Indian fruit fly, or any other species in family Tephritidae.

(9) [~~(10)~~] Host--Any plant or plant product designated in the quarantine upon or in which the quarantined pest completes its life cycle or is dependent for completion of any portion of its life cycle.

(10) [~~(11)~~] Infested--Officially determined to be contaminated by a pest using methods prescribed by the department.

~~[(12) Insect exclusionary cover--A bag, box, enclosure, structure or other cover that prevents Asian citrus psyllids from coming into contact with a regulated article; the openings of any incorporated screen mesh shall not exceed 0.3 square millimeters.]~~

~~[(13) Mediterranean fruit fly or Medfly-The insect, *Ceratitis capitata* (Weidemann), in any stage of development.]~~

(11) [~~(14)~~] Mexican fruit fly or Mexfly--The insect, *Anastrepha ludens* (Loew), in any stage of development.

(12) [~~(15)~~] Move--To ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.

~~[(16) Non-certified regulated article-Any regulated article that is not a certified regulated article.]~~

[(17) Oriental fruit fly--The insect, *Bactrocera dorsalis* (Hendel), in any stage of development.]

[(18) Peach fruit fly--The insect, *Anastrepha zonata* (Saunders), in any stage of development.]

(13) [(19)] Permit--In addition to its ordinary meaning, a permit shall include any authorized state or federal quarantine compliance stamp, limited permit, or trip ticket.

(14) [(20)] Person--Any individual, partnership, corporation, association, joint venture, or other legal entity.

(15) [(21)] Pest--All living stages of the insect, disease, or other pest organism of plants or plant products against which the quarantine is directed.

(16) [(22)] Phytosanitary certificate [Certificate]--A document issued by the department regarding the pest condition of plants, parts of plants or plant products required for movement within this state or by other states or foreign countries for such products exported from this state.

(17) [(23)] Phytosanitary growing season inspection certificate [Growing Season Inspection Certificate]--A document issued by the department regarding the pest condition of field grown crops.

(18) [(24)] Plant Protection and Quarantine or PPQ--The organizational unit within APHIS that has been delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

(19) [(25)] Quarantined area [Area]--A described area declared by the department to be subject to requirements and restrictions of a given quarantine.

(20) [(26)] Quarantined article [Article]--Any article of any character as described in the quarantine carrying or capable of carrying the quarantined pest.

(21) [(27)] Quarantined pest [Pest]--The plant pest against which a given quarantine is directed.

(22) [(28)] Regulated article [Article]--Any article so specified in a given quarantine and therefore subject to quarantine requirements and restrictions.

(23) [(29)] Sapote fruit fly--The insect, *Anastrepha serpentina,* in any stage of development.

(24) [(26)] USDA--The United States Department of Agriculture.

(25) [(30)] West Indian fruit fly--The insect, *Anastrepha obliqua* (Macquart), in any stage of development.

[(31) West Indian fruit fly--The insect, Anastrepha obliqua (Macquart), in any stage of development.]

§19.2. Inspection Certificates.

(a) (No change.)

(b) An inspection certificate may be issued if the quarantined articles:

(1) (No change.)

(2) have been inspected and are free of insect pests and diseases; [and]

(3) (No change.)

(c) - (d) (No change.)

(e) The department hereby adopts the standards included in the U.S. Domestic Japanese Beetle Harmonization Plan (Plan) [approved by the National Plant Board at its Grand Rapids, Michigan meeting held on August 19, 1998]. Nursery products and/or floral items shipped from other states into Texas must adhere to the requirements listed in the [U.S. Domestic Japanese Beetle Harmonization] Plan. The Plan [plan] provides specific additional declaration to be entered on phytosanitary certificates accompanying the shipments. The declaration mentions the procedure used in reducing the risk of Japanese beetle introduction. A shipment without appropriate additional declaration on the accompanying phytosanitary certificate shall be subject to seizure or stop-sale order and may require treatment, destruction, or, if feasible, returning to point of origin. A copy of the harmonization plan may be obtained from [at] the Plant Quality Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(f) (No change.)

§19.3. Inspection and Testing Fees.

(a) The department shall collect an inspection fee of $30 for the issuance of a state phytosanitary or a growing season inspection certificate. The department shall collect the same amount of certification and administrative fees as established by USDA [U.S. Department of Agriculture] to issue the federal phytosanitary certificates. Information on the phytosanitary certification fees can be obtained by contacting the Plant Quality Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 [department at 1-800 TELL-TDA (1-800-835-5832)] or a local USDA [United States Department of Agriculture] Animal and Plant Health Inspection Service office. Fields designated for genetic identity by the department are exempt from the fee. In addition, the department shall collect $30 per sample for nematode laboratory analysis.

(b) (No change.)

§19.5. Phytosanitary Growing Season Inspection.

(a) (No change.)

(b) An application for a growing season inspection accompanied by a field location map shall be submitted to the department no later than 40 days after planting. The application can be obtained from the Plant Quality Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 [department]. Failure to submit the application prior to the deadline may result in denial of the application.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402133
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Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER B. BURROWING NEMATODE QUARANTINE

4 TAC §19.23

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department

to adopt rules to administer its powers and duties under the Code. The amendments are further proposed under Code, Section 71.005, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed amendments is Chapter 71 of the Texas Agriculture Code.

§19.23. Restrictions.

(a) General. Plants, plant parts for propagation, and growing media originating from quarantined areas are prohibited entry into or through Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. Plants produced from seed, planted and grown in sterile media or other suitable material determined by laboratory assay to be free of plant parasitic nematodes and protected from nematode infestation until shipped, are exempt from the provisions of this subchapter.

(c) Exceptions. Shipments from quarantined areas may enter Texas if each package or bundle is accompanied by a phytosanitary certificate issued by an authorized representative of the state or commonwealth of origin that:

(1) (No change.)

(2) certifies that the quarantine plants, propagative plant parts, and growing media have been sampled and determined by laboratory assay to be free of burrowing nematode not more than two months prior to shipment and protected from nematode infestation until shipped. A laboratory analysis report should accompany the shipment. Co-mingling of plant material from any other origin or source is prohibited unless the plant roots and growing media have been sampled and determined by laboratory assay to the free of burrowing nematode.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402134
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER E. [~~DATE PALM~~] LETHAL BRONZING OF PALMS [~~DECLINE~~] QUARANTINE

4 TAC §§19.50 - 19.52

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further proposed under Section 71.001 of the Code, which allows the Department to quarantine at the boundaries of Texas an insect pest or plant disease the Department determines as dangerous that is new to and not widely distributed in Texas existing in any areas outside Texas; Section 71.002 of the Code, which allows the Department to quarantine an insect pest or plant disease the Department determines as dangerous that is not widely distributed in Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, providing for the destruction of trees or fruits, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed amendments is Chapter 71 of the Texas Agriculture Code.

§19.50. Quarantined Pest.

The quarantined pest is the disease, [~~Date~~] Palm Lethal Bronzing or Lethal Decline[~~, which is~~] caused by phytoplasma 16SrIV-D.

§19.51. Geographical Areas Subject to the Quarantine.

(a) Quarantined areas. State of Florida and parishes of East Baton Rouge, Iberia, Jefferson, Orleans and West Baton Rouge of Louisiana. Areas of Texas [~~Those areas~~] described as quarantined areas on the department's Lethal Bronzing of Palms [~~Date Palm Lethal Decline~~] Quarantine web page (http://www.TexasAgriculture.gov) are declared to be quarantined areas.

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

(b) Core areas. Those areas described as core areas on the department's Lethal Bronzing of Palms [~~Date Palm Lethal Decline~~] Quarantine web page (http://www.TexasAgriculture.gov) are declared to be core areas. Core areas shall be drawn so as to include an area approximately one mile around each latitude-longitude location where an infected tree has been found.

(c) Designation or modification of a quarantined area or a core area is effective upon the posting of the notification of the quarantined area or core area on the department's Lethal Bronzing of Palms [~~Date Palm Lethal Decline~~] Quarantine web page (http://www.TexasAgriculture.gov).

§19.52. Quarantined Articles.

(a) The quarantined pest is a quarantined article, including any species determined to be a vector of the disease.

(b) All parts of the following figure [~~Canary Island date palm, *Phoenix canariensis;* silver date palm, *Phoenix sylvestris;* queen palm, *Syagrus romanzoffiana;* cabbage palm or sabal palm, *Sabal palmetto;* and the date palm, *Phoenix dactylifera*~~] are quarantined.
Figure: 4 TAC §19.52(b)

(c) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402135
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER F. LETHAL YELLOWING QUARANTINE

4 TAC §§19.60 - 19.62

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further proposed under Section 71.002 of the Code, which allows the Department to quarantine an insect pest or plant disease the Department determines as dangerous that is not widely distributed in Texas; Section 71.005 of the Texas Agriculture Code (Code), which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, providing for the destruction of trees or fruits, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed amendments is Chapter 71 of the Texas Agriculture Code.

§19.60. Quarantined Pest.
The quarantined pest is the disease, Lethal Yellowing caused by Candidatus phytoplasma palmae or phytoplasma 16SrIV-A.

§19.61. Quarantined Areas.
The quarantined areas are the entire state of Florida, the Commonwealth of Puerto Rico, [~~and~~] the Territory of Guam, East Baton Rouge, Iberia, Jefferson, Orleans and West Baton Rouge parishes of Louisiana.

§19.62 Quarantined Articles.

(a) The quarantined pest is a quarantined article, including leafhopper vector Haplaxius *(Myndus) crudus,* and sod species infested with *Haplaxius crudus* or any other species determined to be a vector of the disease.

(b) The following articles are quarantined:
Figure: 4 TAC §19.62(b)
[~~Figure:~~ 4 ~~TAC~~ ~~§19.62(b)~~]

~~[(c) Any plant determined to be a host of this disease is quarantined.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402136
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER G. EUROPEAN BROWN GARDEN SNAIL QUARANTINE

4 TAC §19.73

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are proposed under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed amendments is Chapter 71 of the Texas Agriculture Code.

§19.73. Restrictions.

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

(c) Exceptions. Quarantined articles may enter Texas if:

(1) accompanied by a certificate, issued by and bearing the signature of an authorized representative of the origin state's department of agriculture, certifying that such quarantined articles were inspected and found to be apparently free of European Brown Garden Snail; [~~or~~]

(2) accompanied by a certificate authorized by a compliance agreement which:

(A) is on file with the department [~~Texas Department of Agriculture~~];

(B) - (C) (No change.)

(D) requires inspection by an authorized representative of the origin state's department of agriculture on at least a semiannual basis; [.]

(3) - (4) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402137

Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER H. GYPSY MOTH QUARANTINE

4 TAC §19.81

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further proposed under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed amendments is Chapter 71 of the Texas Agriculture Code.

§19.81. Adoption of Federal Quarantine.

The department hereby adopts by reference the federal gypsy month quarantine found at [~~Federal Gypsy Moth Quarantine as adopted by the United States Department of Agriculture,~~] 7 Code of Federal Regulations, Part 301.45 through 301.45-12. A copy of the regulation may be obtained from [~~at~~] the Plant Quality Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402145
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER I. PINE SHOOT BEETLE QUARANTINE

4 TAC §19.91

The repeal is proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code, as necessary. The repeal is further proposed under Section 71.005 of the Texas Agriculture Code (Code), which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed repeal is Chapter 71 of the Texas Agriculture Code.

§19.91. Adoption of Federal Quarantine.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402151
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER J. RED IMPORTED FIRE ANT QUARANTINE

4 TAC §19.101, §19.103

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further proposed under Section 71.001 of the Code, which allows the Department to establish quarantines within Texas against out-of-state insect pests or plant diseases new to and not widely distributed in Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed amendments is Chapter 71 of the Texas Agriculture Code.

§19.101. Quarantined Areas.

[~~(a)~~] The department hereby adopts by reference as quarantined areas those counties in Texas, or portions thereof, listed as quarantined [~~regulated~~] areas in the most current federal imported fire ant quarantine [~~as adopted by the United States Department of Agriculture, and found~~] at 7 Code of Federal Regulations, Part 301.81-3. A copy of the regulation may be obtained through a link provided in the

regulation or from [at] the Plant Quality Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

[(b) In addition to the areas described in subsection (a) of this section, Archer, Baylor, Brooks, Brown, Cameron, Callahan, Clay, Coke, Coleman, Concho, Crane, Crockett, Delta, Dimmit, Duval, Ector, Fisher, Haskell, Hidalgo, Howard, Irion, Jack, Jones, Kenedy, Kimble, Kinney, Lamar, La Salle, Mason, Martin, Maverick, McCulloch, Midland, Mills, Mitchell, Montague, Nolan, Palo Pinto, Reagan, Red River, Runnels, San Saba, Schleicher, Scurry, Shackelford, Starr, Stephens, Terrell, Throckmorton, Upton, Val Verde, Ward, Webb, Wilbarger, Willacy, Winkler, Young, and Zavala counties in Texas, and the area of the City of Lubbock located within Highway 27 to the East, Ursuline Street to the North, Milwaukee Street to the West and 98 Street to the South are quarantined.]

§19.103. Restrictions.

(a) General. Quarantined articles from [the] quarantined areas [area] are prohibited entry into or through the free areas of Texas, except as provided in subsections (b) and (c) of this section.

(b) Exemptions. The following quarantined articles are exempt from permit requirements:

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

(5) stumpwood, if free of excessive amounts of soil; provided the railroad loading site has been treated and the stumpwood is consigned to a designated plant; [and]

(6) used mechanized soil-moving equipment, if free of quarantined articles; and

(7) other articles [exemptions may be granted] upon departmental review.

(c) Exceptions. Shipments from quarantined areas are allowed entry into or through the free areas under the following conditions.

(1) (No change.)

(2) Phytosanitary certificates or permits may be issued by an inspector or under the authority of a compliance agreement if the quarantined articles:

(A) have originated in certified imported fire ant-free [ant free] premises in a quarantined area and have not been exposed to infestation while within the quarantined area; [or]

(B) upon examination, have been found to be free of infestation; [or]

(C) - (D) (No change.)

(3) Phytosanitary certificates or permits shall be securely attached to the outside of the container in which the quarantined articles are moved except where the certificate or permit is attached to the shipping document and the quarantined articles are adequately described on the shipping document or on the certificate or permit.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402146
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER K. EUROPEAN CORN BORER QUARANTINE

4 TAC §19.113

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further proposed under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed amendments is Chapter 71 of the Texas Agriculture Code.

§19.113. Restrictions.

(a) (No change.)

(b) Exemptions. The following quarantined articles are exempt from the restrictions of this subchapter:

(1) (No change.)

(2) grain comprised of packages less than 10 pounds and free from portions [portion] of plants or fragments capable of harboring the European Corn Borer;

(3) - (7) (No change.)

(8) divisions without stems of the previous year's growth, seedling plants, rooted cuttings, and cut flowers of ornamental plants listed in §19.112(b)(3) of this subchapter (relating to Quarantined Articles) if shipped during the period between November 30 [30th] to May 1 [1st]; and

(9) quarantined articles destined for [to] a processing facility [may be granted an exemption] upon departmental review.

(c) Exceptions.

(1) A quarantined article may be shipped into a free area in Texas if it is accompanied by a certificate issued by an authorized representative of the origin state's department of agriculture certifying that the article has met one of the following conditions:

(A) the quarantined article was a product of a state not listed as quarantined in this subchapter, and the quarantined article has been maintained to assure no blending or mixing with other quarantined articles produced in or shipped from quarantined areas described in this subchapter; [or]

(B) grain has been screened through a one-half [1/2] inch or smaller mesh screen, or otherwise processed prior to loading and is free from stalks, cobs, stems or such portions of plants or fragments; [or]

(C) the quarantined article has been fumigated in a manner prescribed by the department; [or]

(D) the quarantined article originated from an approved establishment:

(i) (No change.)

(ii) which has a current compliance agreement with the originating state department of agriculture; [~~or~~]

(E) divisions without stems of the previous year's growth, seedling plants, rooted cuttings, and cut flowers of ornamental plants listed in §19.112 (b)(3) of this subchapter [~~(relating to Quarantined Articles)~~], seedling plants and cuttings of Cannabis spp., and articles listed in §19.112(b)(2) of this subchapter (relating to Quarantined Articles), if each lot or shipment is inspected by an authorized representative of the origin state's department of agriculture and no European Corn Borer is found; [~~or~~]

(F) the greenhouse or the growing area where ornamentals with divisions without stems of the previous year's growth, rooted cuttings, seedling plants, or cut flowers were produced, were inspected and no European Corn Borer was found; or

(G) (No change.)

(2) Unfumigated and unscreened grain may be shipped through the free area of Texas if it is destined to a foreign port through a port elevator operating under the authority of the Federal Grain Inspection Service [~~(FGIS)~~], provided a certificate from the state of origin accompanies each shipment stating:

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402147
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER M. SWEET POTATO WEEVIL QUARANTINE

4 TAC §19.133

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further proposed under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed amendments is Chapter 71 of the Texas Agriculture Code.

§19.133. Restrictions.

(a) (No change.)

(b) Exceptions.

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

(3) No certificate shall be issued for the shipment of quarantined articles, except those used for research purposes, from quarantined areas [~~area~~] in Texas to:

(A) a sweet potato weevil-free [~~weevil free~~] area in Texas unless they were produced in a weevil free area and moved under special permit; or

(B) (No change.)

(4) (No change.)

(c) (No change.)

(d) Bedding, production, and distribution of propagative sweet potatoes and slips in weevil-free areas [~~Production, and Distribution of Propagative Sweet Potatoes and Slips in Weevil Free Areas~~].

(1) Only state-certified [~~state certified~~] sweet potato plants may be sold or offered for sale in Texas.

(2) No sweet potato vines, plants, or parts thereof shall be planted within one mile of an infestation which has been found within 12 months of the planting date; except the grower must agree in writing to follow an insecticide treatment program approved by the department.

(3) - (4) (No change.)

(e) Treatment area. An area within one-half mile from the point of weevil detection at any locations or fields, including sweet potato fields, sweet potato packing, processing, or storage facilities, or urban areas is considered to be [~~as~~] a treatment area. Information on the treatment areas may be obtained from the Plant Quality Program [~~Regulatory Programs Division~~], Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(f) - (g) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402148
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER Q. SAPOTE FRUIT FLY QUARANTINE

4 TAC §§19.170 - 19.176

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendment is further proposed under Section 71.001 of the Code, which allows the Department to quarantine an area if it

determines that a dangerous insect pest or plant disease new to and not widely distributed in this state exists in any area outside the state; Section 71.002 of the Code, which allows the Department to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; and Section 71.007 of the Code, which allow the Department to adopt rules necessary for the protection of the state's agricultural and horticultural interests.

The code affected by the proposed amendments is Chapter 71 of the Texas Agriculture Code.

§19.170. Basis for Quarantine - Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity).

(a) (No change.)

(b) Description of dangerous insect pest or plant disease. The sapote fruit fly, scientific name *Anastrepha serpentina* (Wiedemann) [~~and also known as the serpentine fruit fly~~], is a dangerous pest of the numerous host plants listed in §19.174 of this chapter [~~title~~] (relating to Articles Subject to the Quarantine). The fly oviposits in the fruit where the larvae subsequently hatch and begin feeding. The larvae, feeding inside the fruit, cause damage to the flesh of the fruit making it unmarketable. The United States Department of Agriculture [~~(USDA)~~], as well as many other states, consider the sapote fruit fly to be a pest of quarantine significance whose control and eventual eradication from quarantined areas is imperative.

(c) (No change.)

(d) The department is authorized by [~~§71.002 of~~] the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous insect pest or plant disease identified in this section.

§19.171. Duration of the Quarantine.

The quarantine established by this subchapter shall remain in effect until the sapote fruit fly [~~dangerous insect pest or plant disease described in §19.170 of this title (relating to Basis for Quarantine - Dangerous Insect Pest or Plant Disease (Proscribed Biological Entity))~~] is eradicated. The sapote fruit fly shall be considered eradicated from the quarantined area when no additional sapote fruit flies are detected for a time period equal to three consecutive generations after the most recent detection. For the sapote fruit fly, the number of days required to complete a reproductive cycle, i.e., one generation, is dependent upon temperature. Therefore, a day-degree model will be used to calculate the duration of each consecutive generation.

§19.172. Quarantined Infested [~~Geographical~~] Areas [~~Subject to the Quarantine~~].

(a) Quarantined infested areas.

(1) Quarantined infested areas [~~(infested geographical areas subject to the quarantine)~~] are those locations within this state in which the sapote fruit fly [~~dangerous insect pest or plant disease~~] is currently found, from which dissemination of the pest or disease is to be prevented, and in which the pest or disease is to be eradicated.

(2) There are no [~~The following areas are declared to be~~] quarantined infested areas[~~: None~~] at this time.

[~~(3) A map of the quarantined area may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, fax (956) 787-6701.~~]

(b) Creating, modifying, or extending quarantined infested areas. When five or more adults of the sapote fruit fly are trapped or otherwise discovered within a time period equal to one fly generation and within three [~~3~~] miles of each other or a mated female or one larva is trapped or otherwise discovered, a quarantined infested [~~quarantine~~] area shall be established around the site where the fly was trapped or otherwise discovered. The quarantined infested area [~~quarantined~~] shall consist of an area of approximately five miles in [~~5 mile~~] radius with the detection site at the center (roughly 80 [~~81~~] square miles).

(c) Core areas. One [~~In addition to the quarantined area, one~~] or more core areas may be established within each quarantined infested area around a detection site. Each core area shall consist of an approximately one [~~1.0~~] square mile area with a detection site at or near the center. Each approximately square-shaped core area shall be [~~is~~] defined by four GPS coordinates [~~readings~~] for each of its corners [~~corner of the core area~~]. Core areas shall be [~~are~~] subject to more extensive monitoring and handling (including transportation and treatment) requirements. There are no [~~The following areas are declared to be~~] core areas[~~: None~~] at this time. The establishment of any core areas shall be published in the *Texas Register*.

[~~(d) Core areas are shown on the map of the quarantined area referred to in subsection (a) of this section. Additional core areas, if any, shall be published by the department in the In- Addition section of the *Texas Register* as they are established.~~]

§19.173. Quarantined Non-Infested [~~Geographical~~] Areas [~~Subject to the Quarantine~~].

Quarantined non-infested areas [~~(non-infested geographical areas subject to the quarantine)~~] are those locations within this state in which the sapote fruit fly [~~dangerous insect pest or plant disease~~] is not found and which is surrounded by quarantined infested areas. There are no [~~The following areas are declared to be~~] quarantined non-infested areas[~~: None, in this instance and~~] at this time.

§19.174. Articles Subject to the Quarantine.

An article subject to the quarantine, or regulated article, is an item the handling of which is controlled, regulated, or restricted by Chapter 71 of the Texas Agriculture Code, this subchapter, and any department orders issued pursuant to these rules and Chapter 71, in order to prevent dissemination of the sapote fruit fly [~~dangerous insect pest or plant disease~~] to areas located outside a quarantined infested area or into a quarantined non-infested area. The following articles are subject to the quarantine.

(1) (No change.)

(2) the fruit, at any stage of development, of all of the following plants, listed by common name with genus and species in parentheses, when grown, harvested, processed, or otherwise handled within or transported through the quarantined area:

(A) - (U) (No change.)

(V) Sapote (*Pouteria sapota);* and

(W) (No change.)

(3) - (5) (No change.)

§19.175. Restrictions on Movement of Articles Subject to the Quarantine.

(a) A regulated article shall not be moved into, within, out of, or through a quarantined infested area except as specified in this subchapter.

(b) Movement of regulated articles that are detached fruit.

(1) Regulated articles that are detached fruit may be moved into, within, out of, or through a quarantined infested area only if:

(A) the grower, transporter and processor have entered into a compliance agreement with the department or the USDA; and

(B) the fruit is treated and handled in accordance with the requirements set forth in the compliance agreement; and

(C) the fruit is accompanied by documentation of:

(i) treatment required by either this subchapter or a compliance agreement; and

(ii) the origin of the regulated articles.

(2) Detached fruit carried in a part of a conveyance or equipment that is open to the outside environment must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the quarantined pest from contacting the fruit.

(3) Detached fruit processed to commercial standards and free of the quarantined pest may be transported into, within, out of or through a quarantined infested area, either in an enclosed vehicle or under complete cover that does not allow exposure of the regulated article to the quarantined pest.

(4) Detached fruit or other regulated articles originating outside a quarantined infested area and transported without being either enclosed or under cover that prevents exposure of the fruit to the quarantined pest, shall be subject to all restrictions and requirements as are regulated articles originating in the quarantined infested area.

(c) A person who transports a regulated article into, within, out of, or through a quarantined infested area shall ensure that non-infested regulated articles do not become infested and that the quarantined pest is not spread within the quarantined area or moved out of the quarantined infested area.

(d) Regulated articles other than detached fruit shall not be moved except under the provisions of a written notice issued by the department or the USDA or a written compliance agreement between the person and the department or the USDA.

(e) Exception. Any quarantined pest that has been rendered sterile or that is being moved as part of a regulatory or other official activity of the department or of the USDA is exempt from the requirements and restrictions of this subchapter.

[(a) In General.]

[(1) A regulated article originating within a quarantined infested area may not be moved outside the infested area except as otherwise provided by these rules.]

[(2) A regulated article originating outside a quarantined non- infested area may not be moved into the non-infested area except as otherwise provided by these rules.]

[(3) In order to prevent the movement of regulated articles, including the dangerous insect pest or plant disease, from a quarantined area into a non-quarantined area, as required by Section 71.005(a) of Chapter 71 of the Texas Agriculture Code, a person that transports a regulated article through or within an infested area using a motor vehicle, railcar, or other conveyance capable of transporting the regulated article outside the infested area, is subject to the requirements of subsection (c) of this section.]

[(b) Conditions Under Which Regulated Articles May Be Moved Out of an Infested Area. Plants that are regulated articles shall not be moved outside the quarantined infested area with fruit attached. Detached fruit originating within a quarantined infested area may be moved outside the infested area if:]

[(1) the fruit is covered by a tarpaulin or other approved covering and taken directly to and segregated in an approved packing house or other approved treatment facility and fumigated as prescribed in the Texas Valley Mexican Fruit Fly Protocol 2005, a copy of which may be obtained at the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866, fax (956) 787-6701, and the fruit is accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA;]

[(2) the grower has entered into a compliance agreement with the department or the USDA, the fruit has been treated and is being handled in accordance with the requirements set forth in the compliance agreement (at the time these rules are published, a compliance agreement requires use of approved bait sprays at 10 to 12 day intervals, or a shorter or longer period upon receipt of written notice from the department or the USDA of the modified treatment interval, starting at least 30 days before harvest and continued through the harvest period), and the fruit is accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA; or]

[(3) the fruit is to be moved outside the quarantined area for juicing and the fruit is covered by a tarpaulin or other approved covering and accompanied by all documentation of origin or treatment required by this subchapter or a compliance agreement with the department or USDA].

[(c) Requirements for Transporters of Regulated Articles Within or Through an Infested Area.]

[(1) A person who transports a regulated article within or through an infested area using a motor vehicle, railcar, other conveyance, or equipment capable of transporting the regulated article outside the infested area shall take the following precautions to ensure that the dangerous insect pest or plant disease is not disseminated outside the quarantined area and that non-infested regulated articles do not become infested by virtue of transport within or through the infested area: if carried in a part of the conveyance or equipment that is open to the outside environment, detached fruit must be covered by a tarpaulin, plastic sheet, or other covering sufficient to prevent the sapote fruit fly from contacting the fruit; regulated articles other than detached fruit shall not be moved within or through the quarantined area unless handled in accordance with the provisions of a written notice issued by the department or the USDA or a written compliance agreement between the person and the department or the USDA]

[(2) Regulated articles originating outside the quarantined area and transported through the quarantined area in an open part of a conveyance or piece of equipment and without an appropriate covering shall be treated the same under this subchapter as regulated articles originating in the quarantined area and shall be handled according to the procedures described in subsection (b) of this section and elsewhere in this subchapter.]

[(3) Requirements for Movement into an Non-Infested Area. A regulated article originating outside a quarantined non-infested area may be moved into the non-infested area if: Not applicable.]

§19.176. Monitoring and Eradication of the Dangerous Pest or Plant Disease.

(a) A regulated article located within a core area shall be monitored, handled, and treated by ground or aerial sprays, as prescribed in a written notice issued by the department or the United States Department of Agriculture (USDA) [USDA] or as specified in a written compliance agreement between the owner or person in control of the regulated article or the property on which the regulated article is located.

(b) - (e) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402149
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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4 TAC §19.177, §19.178

The repeals are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code, as necessary. The repeals are further proposed under Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposal is Texas Agriculture Code, Chapter 71.

§19.177. Consequences for Failure to Comply with Quarantine Restrictions.
§19.178. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.
The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402152
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER X. CITRUS GREENING QUARANTINE

4 TAC §19.616, §19.622

The amendments are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code. The amendments are further proposed under Section 71.002 of the Code, which allows the Department to quarantine an insect pest or plant disease the Department determines as dangerous that is not widely distributed in Texas; Section 71.005 of the Code, which requires the Department to prevent the movement, from a quarantined area into an unquarantined area or pest-free area, of any plant, plant product, or substance capable of disseminating the pest or disease that is the basis for the quarantine; and Section 71.007 of the Code, which allows the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the selling, moving, or transporting of any plant, plant product, or substance that is found to be infested or found to be from a quarantined area, providing for the destruction of trees or fruits, and preventing entry into a pest-free zone of any plant, plant product, or substance found to be dangerous to the agricultural and horticultural interests of the zone.

The code affected by the proposed amendments is Chapter 71 of the Texas Agriculture Code.

§19.616. Infested Geographical Areas Subject to the Quarantine.

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

(c) A map of the quarantined area may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 83 [~~82~~], San Juan, Texas 78598, (956) 787-8866[~~, or by visiting the department's website at: http://www.TexasAgriculture.gov~~].

§19.622. Mandatory Treatment of Citrus Nursery Plants in the Citrus Zone.

(a) Treatment Requirements:

(1) Interstate sale, distribution or movement. Any regulated article produced or under production in the citrus zone, as specified in §21.4 of this title (relating to Citrus Zone), that is intended for interstate sale, distribution or movement shall be treated as provided in 7 CFR §301.76, and as specified in the "Interstate Movement of Citrus and other Rutaceous Plants For Planting From Areas Quarantined for Citrus Canker, Citrus Greening, or Asian Citrus Psyllid" as published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine. A copy of the requirements may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 83 [~~82~~], San Juan, Texas 78598, (956) 787-8866; and

(2) Intrastate sale, distribution or movement. Any regulated article produced or under production in the citrus zone, as specified in §21.4 of this title, that is intended for intrastate sale, distribution or movement, either within or outside of the Citrus Zone:

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

(C) A copy of the requirements in this subsection may be obtained by contacting the department's Valley Regional Office[~~, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866~~].

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

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402150
Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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SUBCHAPTER Y. COTTONSEED BUG QUARANTINE

4 TAC §§19.623 - 19.626

The new rules in Subchapter Y are proposed under the Department's authority in Code, Section 12.016, which authorizes the Department to adopt rules to administer its powers and duties under the Code, as necessary, and Code, §§71.001 and 71.002, which authorizes the Department to establish quarantines against in-state and out-of-state diseases and pests; and §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles.

Chapter 71 of the Texas Agriculture Code is affected by the proposal.

§19.623. Quarantined Pest.

The quarantined pest is the cottonseed bug, *Oxycarenus hyalinipennis,* in any life stage.

§19.624. Quarantined Areas.

(a) The counties of Los Angeles, Orange, Riverside, and San Diego and any other infested areas of the State of California, other states, or country.

(b) The department may designate additional or expanded quarantined areas, or a reduction of the quarantined area based upon the confirmation of the presence or absence of the cottonseed bug. The designations will be effective upon the posting of the notification of the quarantined areas on the department's website.

§19.625. Quarantined Articles.

The following articles are quarantined:

(1) The quarantined pest in any of its life stages;

(2) All plant and plant parts of the family Malvaceae including, nursery stock and other living, or dead, cut or fallen fruit, fruiting structures, or seeds;

(3) All equipment used for production and transportation of cotton; and

(4) Quarantined articles in transit through an area infested with cotton seed bug.

§19.626. Restrictions.

(a) General. Quarantined articles originating from quarantined areas are prohibited entry into or through the State of Texas, except as provided in subsection (b) of this section unless the articles are:

(1) Accompanied by a phytosanitary certificate from the state of origin declaring the articles have been inspected after harvest and found to be free of the cotton seed bug, and the articles have been stored in such a manner to remain free of the cotton seed bug; or

(2) Included in a cooperative agreement with the Texas Department of Agriculture;

(b) Exemptions. Interstate and intrastate movement of regulated articles for scientific or experimental purposes shall be exempt from the provisions of this rule and may move under a compliance agreement and scientific permit, as required.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402153

Susan Maldonado
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 463-6591

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION

SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.21

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC, Chapter 1, Administration, §1.21, Action by Department if Outstanding Balances Exist. The purpose of the proposed repeal is to update it for consistency with other Department award review policies and to clarify its applicability in certain cases.

Tex. Gov't Code §2001.0045(b) does not apply to the rule proposed for action because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this proposed rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the repeal would be in effect:

1. The repeal does not create or eliminate a government program but relates to changes to an existing activity: how to handle instances where an outstanding balance is owed to the Department.

2. The repeal does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The repeal does not require additional future legislative appropriations.

4. The repeal will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The repeal is not creating a new regulation, except that it is being replaced by a new rule simultaneously to provide for revisions.

6. The repeal will not expand, limit, or repeal an existing regulation.

7. The repeal will not increase or decrease the number of individuals subject to the rule's applicability.

8. The repeal will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the repeal and determined that the repeal will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The repeal does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the repeal as to its possible effects on local economies and has determined that for the first five years the repeal would be in effect there would be no economic effect on local employment; therefore, no local employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the changed sections would be an updated and more germane rule. There will not be economic costs to individuals required to comply with the repealed section.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the repeal is in effect, enforcing or administering the repeal does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 24, 2024 to June 24, 2024, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, June 24, 2024.

STATUTORY AUTHORITY. The repeal is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the repeal affects no other code, article, or statute.

§1.21. Action by Department if Outstanding Balances Exist.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2024.

TRD-202402086
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-3959

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10 TAC §1.21

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC, Chapter 1, Administration, §1.21, Action by Department if Outstanding Balances Exist. The purpose of the new section is to bring this rule into consistency with other more recent revisions to Department processes including removal of the prior process for the Executive Award Review and Advisory Committee (EARAC) and clarification that this rule does not apply to specific multifamily processes nor to vendors.

Tex. Gov't Code §2001.0045(b) does not apply to the rule because it was determined that no costs are associated with this action, and therefore no costs warrant being offset.

The Department has analyzed this rulemaking and the analysis is described below for each category of analysis performed.

a. GOVERNMENT GROWTH IMPACT STATEMENT REQUIRED BY TEX. GOV'T CODE §2001.0221.

Mr. Bobby Wilkinson has determined that, for the first five years the new section would be in effect:

1. The new section does not create or eliminate a government program but relates to changes to an existing activity, the handling of outstanding balances owed to the Department.

2. The new section does not require a change in work that would require the creation of new employee positions, nor are the rule changes significant enough to reduce work load to a degree that eliminates any existing employee positions.

3. The new section does not require additional future legislative appropriations.

4. The new section will not result in an increase in fees paid to the Department, nor in a decrease in fees paid to the Department.

5. The new section is not creating a new regulation, except that it is replacing a section being repealed simultaneously to provide for revisions.

6. The new section will not expand, limit, or repeal an existing regulation.

7. The new section will not increase or decrease the number of individuals subject to the rule's applicability.

8. The new section will not negatively or positively affect the state's economy.

b. ADVERSE ECONOMIC IMPACT ON SMALL OR MICRO-BUSINESSES OR RURAL COMMUNITIES AND REGULATORY FLEXIBILITY REQUIRED BY TEX. GOV'T CODE §2006.002.

The Department has evaluated the new section and determined that it will not create an economic effect on small or micro-businesses or rural communities.

c. TAKINGS IMPACT ASSESSMENT REQUIRED BY TEX. GOV'T CODE §2007.043. The new section does not contemplate or authorize a taking by the Department; therefore, no Takings Impact Assessment is required.

d. LOCAL EMPLOYMENT IMPACT STATEMENTS REQUIRED BY TEX. GOV'T CODE §2001.024(a)(6).

The Department has evaluated the new section as to its possible effects on local economies and has determined that for the first five years the new section would be in effect there would be no economic effect on local employment; therefore, no local

employment impact statement is required to be prepared for the rule.

e. PUBLIC BENEFIT/COST NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(5). Mr. Wilkinson has determined that, for each year of the first five years the new section is in effect, the public benefit anticipated as a result of the new section would be a more current and germane rule. There will not be economic costs to individuals required to comply with the new sections.

f. FISCAL NOTE REQUIRED BY TEX. GOV'T CODE §2001.024(a)(4). Mr. Wilkinson also has determined that for each year of the first five years the new section is in effect, enforcing or administering the section does not have any foreseeable implications related to costs or revenues of the state or local governments.

REQUEST FOR PUBLIC COMMENT. The public comment period will be held May 24, 2024 to June 24, 2024, to receive input on the proposed action. Comments may be submitted to the Texas Department of Housing and Community Affairs, Attn: Brooke Boston at brooke.boston@tdhca.state.tx.us. ALL COMMENTS MUST BE RECEIVED BY 5:00 p.m., Austin local time, June 24, 2024.

STATUTORY AUTHORITY. The new section is made pursuant to Tex. Gov't Code §2306.053, which authorizes the Department to adopt rules.

Except as described herein the new section affects no other code, article, or statute.

§1.21. Action by Department if Outstanding Balances Exist.

(a) Purpose. The purpose of this section is to inform Persons or entities requesting awards of new funds or resources, Form(s) 8609, application amendments, LURA amendments, new Contracts (with the exception of a Household Commitment Contract), Contract amendments, or loan modifications that, with the exceptions noted by this rule, if fees or loan payments (principal or interest) are past due, or Disallowed Costs have not been repaid, to the Department, the request may be denied, delayed, or the Subrecipient/Administrator/Developer/Owner's Contract(s) terminated. This rule does not apply to active contracts with vendors that have been procured by the Department.

(b) Definitions.

(1) Capitalized words used herein have the meaning assigned in the specific Chapters and Rules of this Part that govern the program associated with the request, or assigned by federal or state law.

(2) Disallowed Costs: Expenses claimed by a Subrecipient/Administrator/Developer/Owner, paid by the Department, and subsequently determined by the Department to be ineligible and subject to repayment.

(c) Except in the case of interim construction loans, if Disallowed Costs, fees, or loan payments are past due on the subject property requesting the action the Department will not: issue Form(s) 8609; amend applications or LURAs; or modify loan documents.

(d) Except in the case of Contracts for CSBG non-discretionary funds, the Department will not make awards of new funds or resources, enter into new Contracts, or amend Contracts when Disallowed Costs, fees, or loan payments remain unpaid, or approve an entity's Ownership transfer into an existing property unless the entity or Affiliate (as applicable) has entered into, and is complying with, an agreed-upon repayment plan that is approved by the Department's Executive Director or Enforcement Committee.

(e) Once the Department notifies a Person or entity that they are responsible for the payment of Disallowed Costs, required fee or payment that is past due, if no corrective action is taken within seven days of notification, the Executive Director may deny the requested action for failure to comply with this rule.

(f) Exception for a Work Out Development. If fees (not including application or amendment fees) or payments affiliated with a work out Development are past due, then the past due amounts affiliated with a work out Development may be excepted from this rule, so long as the work out is actively underway by Department staff. In which case, in the Department's sole discretion, LURA or any other kinds of amendments may be considered for the subject Development or Contract.

(g) In accordance with Subchapter C of this Chapter (relating to Previous Participation Review of Department Awards), if a Person or entity applies for funding or an award from the Department, any fees, Disallowed Costs, or payment of principal or interest to the Department that is past due beyond any grace period provided for in the applicable loan documents and any past due fees (not just those related to the subject of the request) will be reported to the Executive Director for review.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2024.

TRD-202402087
Bobby Wilkinson
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-3959

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1031

The Texas Education Agency (TEA) proposes an amendment to §61.1031, concerning school safety requirements. The proposed amendment would implement Senate Bill (SB) 838 and House Bill (HB) 3, 88th Texas Legislature, Regular Session, 2023, and clarify requirements for school safety to ensure a safe and secure environment in Texas public schools.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 61.1031 prescribes minimum school safety standards to address the safety of students and staff in Texas public schools.

Legislation from the 88th Texas Legislature, Regular Session, 2023, added and amended school safety requirements in Texas Education Code (TEC), §§7.061, 37.1083, 37.117, 37.351, and 37.355. The proposed amendment to §61.1031 would implement legislation and clarify existing requirements, as follows.

The proposed amendment would modify the definition of "exterior secure area" in subsection (a)(2)(A) to establish that an exte-

rior secure area is utilized when keeping doors closed, latched, and locked is not operationally practicable.

The proposed amendment to subsection (a)(7)(C) would clarify the functionality of a "secure vestibule."

The proposed amendment to subsection (c)(1) would add information related to door numbering requirements in compliance with International Fire Code, §505, and remove the phrase "campus-wide."

The proposed amendment to subsection (c)(3)(A) would modify the requirements for exterior doors by removing the phrase "by default."

The proposed amendment to subsection (c)(8) would clarify the intent of the requirement. The language would outline that roof access doors should remain closed, latched, and locked when not actively in use.

The proposed amendment to subsection (c)(11) would be modified to specify that school systems must ensure compliance with federal and state Kari's Laws and RAY BAUM's Act related to 9-1-1 for school telephone systems.

The proposed amendment to subsection (d)(2)(C) would be modified in accordance with new statutory requirements in TEC, §37.117, as added by HB 3, 88th Texas Legislature, Regular Session, 2023. This statute requires that each school district and open-enrollment charter school provide the Department of Public Safety, local law enforcement, and emergency first responders an accurate map of each district campus and school campus. These entities must also be provided an opportunity to conduct a walk-through of facilities utilizing the maps provided.

The proposed amendment to subsection (d)(3)(A)(iv) would remove the requirement that video surveillance monitoring systems trigger an alert. Artificial intelligence is not intended to be a minimal safety standard.

Proposed new subsection (i) would be added to address the confidentiality requirements of TEC, §37.355, as added by HB 3, 88th Texas Legislature, Regular Session, 2023.

The proposed amendment to re-lettered subsection (j)(1) would align school safety initiatives, including vulnerability assessments, with the responsibility of TEA rather than the Texas School Safety Center.

The proposed amendment would remove provisional language set to expire on August 31, 2024.

FISCAL IMPACT: James Finley, deputy chief of school safety and security, has determined that for the first five years the proposal is in effect, there are no additional costs to state government. However, there will be fiscal implications for local government, including school districts and open-enrollment charter schools, required to comply with the proposal. The statewide cost to school systems totals approximately $1.5 billion during fiscal years 2023 and 2024. The estimate was determined based on a sample of district costs to upgrade school safety standards. To offset these projected costs, $400 million was appropriated by the Budget Execution Order dated October 27, 2022, executed by Governor Abbott, and $1.1 billion was appropriated by SB 30, Section 4.02, 88th Texas Legislature, Regular Session, 2023.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The requirements of this proposal would impose costs on school districts and open-enrollment charter schools. However, the rule is not subject to the limitations of Texas Government Code, §2001.0045. The school safety requirements are necessary to protect the safety and welfare of residents of this state. Additionally, TEC, §7.061, explicitly requires the commissioner to review at least every two years the rules for a safe and secure environment and update those rules when necessary. Consequently, any costs imposed by the update of the rules are necessary to implement the legislation passed by the legislature. Additionally, grants provided to school districts help defray or completely offset the estimated costs. Safety and Facilities Enhancement (SAFE) Grants total $1.1 billion and School Safety Standards Formula Grants total $400 million.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation to clarify existing definitions and incorporate additional statutory requirements following the 88th Texas Legislature, Regular Session, 2023, specifically those outlined in TEC, §§7.061, 37.1083, 37.117, 37.351, and 37.355.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Finley has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that school districts and open-enrollment charter schools implement minimum school safety standards to address the safety of students and staff in Texas public schools. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 24, 2024, and ends June 24, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calen-

dar days after notice of the proposal has been published in the *Texas Register* on May 24, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.061, as amended by House Bill (HB) 3, 88th Texas Legislature, Regular Session, 2023, which requires the commissioner of education to adopt and amend rules to ensure a safe and secure environment for public schools, which includes best practices for design and construction of new facilities and improving, renovating, and retrofitting existing facilities. The section requires the commissioner to review all rules by September 1 of each even-numbered year and take action as necessary to ensure school facilities for school districts and open-enrollment charter schools continue to provide a safe and secure environment; TEC, §37.1083, as added by HB 3, 88th Texas Legislature, Regular Session, 2023, which establishes the Office of School Safety and Security within the Texas Education Agency (TEA) and charges TEA with monitoring the implementation and operation requirements of school district safety and security. Monitoring efforts must include technical assistance related to multihazard emergency operations plans and safety and security audits. Further, the statute establishes that any document or information collected, identified, developed, or produced related to the monitoring of district safety and security is confidential under Texas Government Code, §418.177 and §418.181, making them not subject to disclosure under Texas Government Code, Chapter 552. Subsection (k) allows the commissioner to adopt rules as necessary to implement the section; TEC, §37.115(b), which allows Texas Education Agency (TEA), in coordination with the Texas School Safety Center, to adopt rules to establish a safe and supportive school program, including providing for physical and psychological safety; TEC, §37.117, as added by Senate Bill 838, 88th Texas Legislature, Regular Session, 2023, which requires that each school district or open-enrollment charter school have silent alert panic technology allowing for immediate contact with district or school emergency services and emergency services agencies, law enforcement agencies, health departments, and fire departments; TEC, §37.117, as added by HB 3, 88th Texas Legislature, Regular Session, 2023, which requires that each school district and open-enrollment charter school provide the Department of Public Safety, local law enforcement, and emergency first responders an accurate map of each district campus and school campus, in accordance with standards outlined in TEC, §37.351. Additionally, school systems must provide these emergency services personnel an opportunity to conduct a walk-through of each campus and school building using the map provided; TEC, §37.351, as added by HB 3, 88th Texas Legislature, Regular Session, 2023, which requires school districts to comply with each school facilities standard, including performance standards and operational requirements, related to safety and security adopted under TEC, §7.061, or provided by other law or TEA rule. Additionally, school districts must develop and maintain documentation of the district's implementation of and compliance with school safety and security facilities standards for each district facility; and TEC, §37.355, as added by HB 3, 88th Texas Legislature, Regular Session, 2023, which outlines that any document or information collected, identified, developed, or produced relating to a safety or security requirement under TEC, Chapter 37, Subchapter J, is confidential under Texas Government Code, §418.177 and §418.181, and not subject to disclosure under Texas Government Code, Chapter 552.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §7.061, as amended by House Bill (HB) 3, 88th Texas Legislature, Regular Session, 2023; §37.1083, as added by HB 3, 88th Texas Legislature, Regular Session, 2023; §37.115(b); §37.117, as added by Senate Bill 838 and HB 3, 88th Texas Legislature, Regular Session, 2023; and §37.351 and §37.355, as added by HB 3, 88th Texas Legislature, Regular Session, 2023.

§61.1031. School Safety Requirements.

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

(1) Actively monitored--supervised by an adult who can visibly review visitors prior to entrance, who can take immediate action to close and/or lock the door, and whose duties allow for sufficient attention to monitoring.

(2) Exterior secured area--an area fully enclosed by a fence and/or wall that:

(A) is utilized when keeping doors closed, locked, and latched is not operationally practicable;

(B) [~~(A)~~] if enclosed by a fence or wall, utilizes a fence or wall at least 6 feet high with design features that prevent it from being easily scalable, such as stone, wrought iron, chain link with slats or wind screen, or chain link topped with an anti-scaling device, or utilizes a fence or wall at least 8 feet high;

(C) [~~(B)~~] is well maintained; and

(D) [~~(C)~~] if gated, features locked gates with emergency egress hardware and has features to prevent opening from the exterior without a key or combination mechanism.

(3) Instructional facility--this term has the meaning assigned in Texas Education Code (TEC), §46.001, and includes any real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching curriculum under TEC, §28.002. For purposes of this section, an instructional facility does not include real property, improvements to real property, or necessary fixtures of an improvement to real property that are part of a federal, state, or private correctional facility or facility of an institution of higher education, medical provider, or other provider of professional or social services over which a school system has no control.

(4) Modular, portable building--

(A) an industrialized building as defined by Texas Occupations Code (TOC), §1202.002 and §1202.003;

(B) any relocatable educational facility as defined by TOC, §1202.004, regardless of the location of construction of the facility; or

(C) any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(5) Primary entrance--

(A) the main entrance to an instructional facility that is closest to or directly connected to the reception area; or

(B) any exterior door the school system intends to allow visitors to use to enter the facility during school hours either through policy or practice.

(6) School system--a public independent school district or public open-enrollment charter school.

(7) Secure vestibule--a secured space with two or more sets of doors and an office sign-in area where all but the exterior doors shall:

(A) remain closed, latched, and locked;

(B) comply with subsection (c)(3)(B) of this section; and

(C) only unlock [~~open~~] once the visitor has been visually verified.

(b) The provisions of this section apply to all school instructional facilities owned, operated, or leased by a school system, regardless of the date of construction or date of lease. The provisions of this section ensure that all school system instructional facilities have access points that are:

(1) secured by design;

(2) maintained to operate as intended; and

(3) appropriately monitored.

(c) A school system shall implement the following safety and security standards compliance requirements to all school instructional facilities owned, operated, or leased by the school system.

(1) All instructional facilities [~~campus-wide~~], including modular, portable buildings, must include the addition of graphically represented alpha-numerical characters on both the interior and exterior of each exterior door location. The characters may be installed on the door, or on at least one door at locations where more than one door leads from the exterior to the same room inside the facility, or on the wall immediately adjacent to or above the door location. Characters shall comply with the International Fire Code, §505, which requires numbers to be a minimum of four inches in height. The primary entrance of an instructional facility shall always be the first in the entire sequence and is the only door location that does not require numbering. The numbering sequence shall be clockwise and may be sequenced for the entire campus or for each facility individually. The door-numbering process must comply with any and all accessibility requirements related to signage.

(2) Unless a secure vestibule is present, a primary entrance shall:

(A) meet all standards for exterior doors;

(B) include a means to allow an individual located within the building to visually identify an individual seeking to enter the primary entrance when the entrance is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms;

(C) feature a physical barrier that prevents unassisted access to the facility by a visitor; and

(D) feature a location for a visitor check-in and check-out process.

(3) All exterior doors shall:

(A) be [~~, by default,~~] set to a closed, latched, and locked status, except that:

(i) a door may be unlocked if it is actively monitored or within an exterior secured area; and

(ii) for the purposes of ventilation, a school system may designate in writing as part of its multi-hazard emergency operations plan under TEC, §37.108, specific exterior doors that are allowed to remain open for specified periods of time if explicitly authorized by the school safety and security committee established by TEC, §37.109, when a quorum of members are present, and only if it is actively monitored or within an exterior secured area;

(B) be constructed, both for the door and door frame and their components, of materials and in a manner that make them resistant to entry by intruders. Unless inside an exterior secured area, doors constructed of glass or containing glass shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to open or otherwise enter through the door (for example, using forced entry-resistant film);

(C) include:

(i) a mechanism that fully closes and engages locking hardware automatically after entry or egress without manual intervention, regardless of air pressure within or outside of the facility; and

(ii) a mechanism that allows the door to be opened from the inside when locked to allow for emergency egress while remaining locked; and

(D) if keyed for re-entry, be capable of being unlocked with a single (or a small set of) master key(s), whether physical key, punch code, or key-fob or similar electronic device.

(4) Except when inside an exterior secured area, classrooms with exterior entry doors shall include a means to allow an individual located in the classroom to visually identify an individual seeking to enter the classroom when the door is closed and locked, including, but not limited to, windows, camera systems, and/or intercoms.

(5) Except when inside an exterior secured area, all windows that are adjacent to an exterior door and that are of a size and position that, if broken, would easily permit an individual to reach in and open the door from the inside shall be constructed or modified such that the glass cannot be easily broken.

(6) Except when inside an exterior secured area, all ground-level windows near exterior doors that are of a size and position that permits entry from the exterior if broken shall be constructed or modified such that the glass cannot be easily broken and allow an intruder to enter through the window frame (for example, using forced entry-resistant film).

(7) If designed to be opened, all ground-level windows shall have functional locking mechanisms that allow for the windows to be locked from the inside and, if large enough for an individual to enter when opened or if adjacent to a door, be closed and locked when staff are not present.

(8) Roof access doors should remain closed, latched, and locked [~~default to a locked, latched, and closed position~~] when not actively in use [~~and be lockable from the interior~~].

(9) All facilities must:

(A) include one or more distinctive, exterior secure master key box(es) designed to permit emergency access to both law enforcement agencies and emergency responder agencies from the exterior (for example, a Knox box) at a location designated by the local authorities with applicable jurisdiction; or

(B) provide all local law enforcement electronic or physical master key access to the building(s).

(10) A communications infrastructure shall be implemented that must:

(A) ensure equipment is in place such that law enforcement and emergency responder two-way radios can function within most portions of the building(s); and

(B) include a panic alert button, duress, or equivalent alarm system, via standalone hardware, software, or integrated into other telecommunications devices or online applications, that includes the following functionality.

(i) An alert must be capable of being triggered by campus staff, including temporary or substitute staff, from an integrated or enabled device.

(ii) An alert must be triggered automatically in the event a district employee makes a 9-1-1 call using the hardware or integrated telecommunications devices described in this subparagraph from any location within the school system.

(iii) With any alert generated, the location of where the alert originated shall be included.

(iv) The alert must notify a set of designated school administrators as needed to provide confirmation of response, and, if confirmed, notice must be issued to the 9-1-1 center of an emergency situation requiring a law enforcement and/or emergency response and must include the location of where the alert originated. A notice can simultaneously be issued to all school staff of the need to follow appropriate emergency procedures.

(v) For any exterior doors that feature electronic locking mechanisms that allow for remote locking, the alert system will trigger those doors to automatically lock.

(11) School [~~In implementing the requirements of this section, school~~] systems shall ensure compliance [~~comply~~] with state and federal Kari's Laws and federal RAY BAUM's Act and corresponding rules and regulations pertaining to 9-1-1 service for school telephone systems, including a multi-line telephone system.

(d) Certain operating requirements. A school system shall implement the following.

(1) Access control. The board of trustees or the governing board shall adopt a policy requiring the following continued auditing of building access:

(A) conduct at least weekly inspections during school hours of all exterior doors of all instructional facilities to certify that all doors are, by default, set to a closed, latched, and locked status and cannot be opened from the outside without a key as required in subsection (c)(3)(A) of this section;

(B) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the school system's safety and security committee as required by TEC, §37.109, and ensure the results are kept for review as part of the safety and security audit as required by TEC, §37.108;

(C) report the findings of weekly inspections required by subparagraph (A) of this paragraph to the principal or leader of the instructional facility to ensure awareness of any deficiencies identified and who must take action to reduce the likelihood of similar deficiencies in the future; and

(D) include a provision in the school system's applicable policy stating that nothing in a school system's access control procedures will be interpreted as discouraging parents, once properly verified as authorized campus visitors, from visiting campuses they are authorized to visit.

(2) Exterior and interior door numbering site plan.

(A) A school system must develop and maintain an accurate site layout and exterior and interior door designation document for each instructional facility school system-wide that identifies all exterior and interior doors in the instructional facility and depicts all exterior doors on a floor plan with an alpha-numeric designation, in accordance with the door numbering specifications established in subsection (c)(1) of this section.

(B) Copies of exterior and interior door numbering site plans shall be readily available in each campus main office.

(C) Electronic copies of exterior and interior door numbering site plans shall be provided [~~supplied~~] to the local 9-1-1 administrative entity, the Department of Public Safety, local law enforcement agencies, and emergency first responders in accordance with TEC, §37.117. These entities shall be afforded an opportunity to conduct a walk-through of facilities utilizing the site plans provided [~~so that the site plans can be made available to emergency responders by 9-1-1 dispatchers~~].

(D) The site layout and exterior and interior door designation document should be oriented in a manner that depicts true north.

(3) Maintenance.

(A) A school system shall perform at least twice-yearly maintenance checks to ensure the facility components required in subsection (c) of this section function as required. At a minimum, maintenance checks shall ensure the following:

(i) instructional facility exterior doors function properly, including meeting the requirements in subsection (c)(3)(A) and (C) of this section;

(ii) the locking mechanism for any ground-level windows that can be opened function properly;

(iii) any perimeter barriers and related gates function properly;

(iv) all panic alert or similar emergency notification systems in classrooms and campus central offices function properly, which includes at least verification from multiple campus staff and classroom locations that a notification can be issued and received by the appropriately designated personnel and [~~,~~] that the alert is successfully broadcast to all campus staff and to appropriate law enforcement and emergency responders [~~, and that a potential threat observed on video triggers an alert from video surveillance monitoring systems~~];

(v) all school telephone systems and communications infrastructure provide accurate location information when a 9-1-1 call is made in accordance with state and federal laws and rules and when an alert is triggered in accordance with this section;

(vi) all exterior master key boxes function properly and the keys they contain function properly;

(vii) law enforcement and emergency responder two-way radios operate effectively within each instructional facility; and

(viii) two-way radios used by school system peace officers, school resource officers, or school marshals properly communicate with local law enforcement and emergency response services.

(B) A school system shall ensure procedures are in place to require that staff who become aware of a facility component functionality deficiency that would be identified during the twice-yearly maintenance review described by subparagraph (A) of this paragraph immediately report the deficiency to the school

system's administration, regardless of the status of the twice-yearly maintenance review.

(C) A school system shall promptly remedy any deficiencies discovered as a consequence of maintenance checks required by subparagraph (A) of this paragraph or reports made under subparagraph (B) of this paragraph.

(e) In implementing the requirements of this section, school systems shall comply with the provisions of §61.1040(j) of this title (relating to School Facilities Standards for Construction on or after November 1, 2021).

(f) To the extent that any provisions of this section conflict with rules adopted in Chapter 61, Subchapter CC, of this title (relating to Commissioner's Rules Concerning School Facilities), including terms defined by this section or standards established by this section, the provisions of this section prevail.

(g) In implementing the requirements of this section, school systems shall comply with the standards adopted under Texas Government Code, §469.052.

(h) In implementing the requirements of this section, school systems must adopt a 3-year records control schedule that complies with the minimum requirements established by the Texas State Library and Archives Commission schedule, record series item number 5.4.017, as referenced in Texas Government Code, §441.169, and Texas Local Government Code, §203.041.

(i) Any document or information collected, identified, developed, or produced relating to the monitoring of school district safety and security requirements is confidential under Texas Government Code, §418.177 and §418.181, and is not subject to disclosure under Texas Government Code, Chapter 552.

(j) [~~(i)~~] Certification.

(1) A school system must annually [~~All requirements in subsections (c) and (d) of this section shall be implemented during the 2022-2023 school year and thereafter. Annually, a school system shall~~] certify compliance with subsections (c) and (d) of this section [~~those requirements~~] as part of ongoing security audits under TEC, §37.108(b); maintain the certification locally; and provide documentation upon request by TEA [~~report as required by the Texas School Safety Center~~]. Non-compliance with subsections (c) and (d) of this section and all information received upon completion of a district vulnerability assessment under TEC, §37.1083, [~~Any and all non-compliance~~] shall be reported to the school system's safety and security committee, the school system's board, and TEA, as applicable [~~the Texas School Safety Center, as required by TEC, §37.108(c)~~].

[~~(2) A school system may provisionally certify compliance of a facility component described in subsection (c) of this section that is not in compliance with the requirements of paragraph (1) of this subsection if:~~]

[~~(A) the school system has taken the necessary steps to initiate an upgrade of the facility component to ensure compliance; and~~]

[~~(B) for the 2023-2024 school year, the contractor or supplier has been procured and has provided a time frame when the upgrade will be completed.~~]

(2) [~~(3)~~] TEA may modify rule requirements or grant provisional certification for individual site needs as determined by TEA [~~the agency~~].

[~~(j) Subsection (i)(2) of this section and this subsection expire August 31, 2024.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402138
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-1497

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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER EE. ACCREDITATION STATUS, STANDARDS, AND SANCTIONS

DIVISION 1. STATUS, STANDARDS, AND SANCTIONS

19 TAC §§97.1055, 97.1057, 97.1059, 97.1067, 97.1069, 97.1073

The Texas Education Agency (TEA) proposes amendments to §§97.1055, 97.1057, 97.1059, 97.1067, 97.1069, and 97.1073, concerning accreditation status, standards, and sanctions. The proposed amendments would establish that a superintendent appointed in conjunction with a board of managers assumes office immediately upon appointment and update cross references to statute and other administrative rules.

BACKGROUND INFORMATION AND JUSTIFICATION: The proposed amendments to §97.1055 and §97.1059 would update the references to the title of 19 TAC Chapter 157, Hearings and Appeals, Subchapter EE, which was changed from "Informal Review, Formal Review, and Review by State Office of Administrative Hearings" to "Informal Review, Hearing Following Investigation, and Review by State Office of Administrative Hearings" effective April 6, 2022.

Proposed changes to §97.1055 would also update the references to 19 TAC §97.1005, Results Driven Accountability, which was repealed and incorporated into 19 TAC §97.1001, Accountability Rating System, effective November 14, 2023.

The proposed amendment to §97.1057 would update statutory references to align with House Bill 3, 86th Texas Legislature, 2019, which transferred and redesignated Texas Education Code (TEC), §42.258, to TEC, §48.272. The proposed amendment would also update a cross reference to 19 TAC §100.1023, Intervention Based on Charter Violations, which is proposed to be renumbered to 19 TAC §100.1045.

The proposed amendments to §97.1067 and §97.1069 would update statutory references to align with Senate Bill 1488, 85th Texas Legislature, Regular Session, 2017, which transferred and redesignated TEC, §39.107, to TEC, §§39A.152-39A.159, and transferred and redesignated TEC, §39.108, to TEC, §39A.901.

The proposed amendment to §97.1073 would establish that a superintendent appointed in conjunction with a board of managers assumes office immediately upon appointment to clarify

when the appointed superintendents take on their responsibilities.

FISCAL IMPACT: Steve Lecholop, deputy commissioner of governance, has determined that for the first five-year period the proposal is in effect, there are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation by providing for the immediate assumption of powers and duties of a superintendent appointed by the commissioner of education.

It would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Lecholop has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be ensuring that rule language is based on current law. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 24, 2024, and ends June 24, 2024. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 17, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §39.051, which requires the commissioner to determine accreditation statuses; TEC, §39.052, which establishes the requirements for the commissioner to consider when determining accreditation statuses; TEC, §39A.152, which establishes eligibility requirements an entity to be an alternative manager of a campus; TEC, §39A.153, which establishes requirements for contracting with an alternative managing entity; TEC, §39A.154, which allows the commissioner to require a district to extend a contract with a management entity; TEC, §39A.155, which establishes requirements for evaluating the performance of a management entity; TEC, §39A.156, which establishes the conditions under which a management contract must be cancelled; TEC, §39A.157, which establishes requirements for returning the management of a school district back to the board of trustees; TEC, §39A.158, which establishes that campuses operated by a managing entity are still subject to TEC, Chapters 39 and 39A; TEC, §39A.159, which establishes that the funding for a campus operated by a managing entity may not be less than other campuses in the same district; TEC, §39A.202, which requires the commissioner to appoint a district superintendent when appointing a board of managers; and TEC, §39A.901, which requires the commissioner to annually review the performance of school district or campus undergoing interventions, sanctions, or alternative management to determine appropriate actions.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§39.051, 39.052, 39A.152-39A.159, 39A.202, and 39A.901.

§97.1055. Accreditation Status.

(a) (No change.)

(b) Determination of Accredited-Warned status.

(1) (No change.)

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Warned status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) (No change.)

(B) after review and/or investigation under TEC, §39.003 or §39.056, the commissioner finds:

(i) the district's programs monitored under §97.1001 [~~§97.1005~~] of this title [~~(relating to Results Driven Accountability)~~] exhibit serious or persistent deficiencies that, if not addressed, may lead to probation or revocation of the district's accreditation; or

(ii) (No change.)

(3) (No change.)

(c) Determination of Accredited-Probation status.

(1) (No change.)

(2) Notwithstanding the district's performance under paragraph (1) of this subsection, a district shall be assigned Accredited-Probation status if the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) (No change.)

(B) after review and/or investigation under TEC, §39.003 or §39.056, the commissioner finds:

(i) the district's programs monitored under §97.1001 [~~§97.1005~~] of this title exhibit serious or persistent deficiencies that, if not addressed, may lead to revocation of the district's accreditation; or

(ii) (No change.)

(3) (No change.)

(d) Determination of Not Accredited-Revoked status; Revocation of accreditation.

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

(4) A district shall have its accreditation revoked if, notwithstanding its performance under paragraph (1) of this subsection, the commissioner determines this action is reasonably necessary to achieve the purposes of TEC, §39.051 and §39.052. Such action is generally required by the following circumstances:

(A) (No change.)

(B) after review and/or investigation under TEC, §39.003 or §39.056, the commissioner finds:

(i) the district's programs monitored under §97.1001 [~~§97.1005~~] of this title exhibit serious or persistent deficiencies that require revocation of the district's accreditation; or

(ii) (No change.)

(5) (No change.)

(6) The commissioner's decision to revoke a district's accreditation may be reviewed under Chapter 157, Subchapter EE, of this title (relating to Informal Review, Hearing Following Investigation [~~Formal Review~~], and Review by State Office of Administrative Hearings). If, after review, the decision is sustained, the commissioner shall appoint a management team or board of managers to bring to closure the district's operation of the public school.

(7) (No change)

(e) - (f) (No change.)

§97.1057. Interventions and Sanctions; Lowered Rating or Accreditation Status.

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

(f) In determining whether to impose a particular sanction under TEC, Chapters 39 and 39A, or this subchapter, the commissioner may consider the costs and logistical concerns of the district but shall give primary consideration to the best interest of the district's students. The sanction selected shall be reasonably calculated to address the district's or campus' deficiencies immediately or within a reasonable time, in the best interest of its present and future students. The following shall be considered as being contrary to the best interests of the district's students:

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

(3) receipt of a substantial over-allocation of funds for which the district has failed to plan prudently in light of its obligation to repay the funds under TEC, §48.272 [~~§42.258~~]; and

(4) (No change.)

(g) (No change.)

(h) The commissioner shall notify the school district or open-enrollment charter school in writing of a sanction imposed under this subchapter or §100.1045 [~~§100.1023~~] of this title (relating to Intervention Based on Charter Violations). The notice must state the basis for finding that the district or open-enrollment charter school does not satisfy the applicable criteria as indicated in this subchapter or §100.1045 [~~§100.1023~~] of this title. The finding(s) may be made in the notice or in a final investigative report or based on a final investigative report.

(i) - (k) (No change.)

§97.1059. Standards for All Accreditation Sanction Determinations.

(a) (No change.)

(b) In making a determination under subsection (a) of this section, the commissioner shall consider the seriousness, number, extent, and duration of deficiencies identified by the Texas Education Agency (TEA) and shall impose one or more accreditation sanctions on a district and its campuses as needed to address:

(1) each material deficiency identified by the TEA through its systems for district and campus accountability, including:

(A) - (E) (No change.)

(F) the results of an investigative report under Chapter 157, Subchapter EE, of this title (relating to Informal Review, Hearing Following Investigation [~~Formal Review~~], and Review by State Office of Administrative Hearings); complaint investigation; special education due process hearing; or data integrity investigation, including an investigation of assessment or financial data;

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

(2) - (4) (No change.)

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

§97.1067. Alternative Management of Campuses.

(a) (No change.)

(b) A contract under this section must be executed by the district and the service provider and must:

(1) (No change.)

(2) comply with TEC, §§39A.153-39A.159 [~~§39.107(m)-(o)~~]; this section; and the requirements and performance measures established by the Texas Education Agency (TEA) under §97.1069 of this title;

(3) - (8) (No change.)

(c) The service provider may perform the duties and responsibilities of a principal, and in addition may make requests and recommendations to the district concerning all aspects of campus administration, including personnel and budget decisions.

(1) (No change.)

(2) The commissioner may implement additional sanctions under this subchapter and consider such reports under TEC, §39A.901 [~~§39.108~~] and §39A.155 [~~§39.107(n)~~], as well as §97.1065(b) of this title.

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

(f) The commissioner shall order closure of a campus when alternative management of the campus was ordered under this section and:

(1) the district resumed operation of the campus under TEC, §39A.155 [~~§39.107(n)~~]; and

(2) (No change.)

(g) - (h) (No change.)

§97.1069. Providers of Alternative Campus Management.

(a) Each school year, the Texas Education Agency (TEA) will issue a request for qualifications (RFQ) to solicit proposals from qualified non-profit management entities to assume the management of campuses identified for sanction under §97.1067 of this title (relating to Alternative Management of Campuses). The commissioner of education may solicit proposals from qualified for-profit entities to assume management of a campus subject to this section if a non-profit entity has not responded to the RFQ.

(1) To be approved as a provider of alternative campus management services, a non-profit entity must meet the requirements of Texas Education Code (TEC), §39A.152 [~~§39.107~~], and any additional qualifications and procedural requirements specified by the TEA in the RFQ.

(2) (No change.)

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

§97.1073. Appointment of Monitor, Conservator, or Board of Managers.

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

(c) The commissioner may appoint a conservator or management team under TEC, §§39A.002, 39A.003, [~~39A.006,~~] and 39A.102, when:

(1) - (5) (No change.)

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

(f) The superintendent, upon appointment, immediately assumes all powers, duties, rights, and responsibilities of the superintendent of the district to which the superintendent is appointed.

(g) [~~(f)~~] Not later than the second anniversary date of the appointment of the board of managers, the commissioner shall notify the board of managers and the board of trustees of the date on which the appointment of the board of managers will expire.

(h) [~~(g)~~] A board of managers shall, during the period of the appointment, order the election of members of the board of trustees of the district in accordance with applicable provisions of law. Except as provided by this subsection, the members of the board of trustees do not assume any powers or duties after the election until the appointment of the board of managers expires.

(1) - (8) (No change.)

(i) [~~(h)~~] The training in effective leadership strategies required under TEC, §39A.205, shall be provided by TEA-approved authorized providers of school board training to each individual appointed by the commissioner to a board of managers, including board of trustees members appointed under subsection (h)(4) [~~(g)(4)~~] of this section, and, following the expiration of the appointment of the board of managers, to the board of trustees of the school district.

(j) [~~(i)~~] A board of trustees member appointed under subsection (h)(4) [~~(g)(4)~~] of this section must complete the training required in subsection (i) [~~(h)~~] of this section prior to or within 10 days of the appointment. Failure to do so may result in the removal of the board of trustees member from the board of managers.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402142

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Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-1497

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19 TAC §97.1071

The Texas Education Agency (TEA) proposes an amendment to §97.1071, concerning special program performance and monitoring, review, and supports. The proposed amendment would clarify current practice and align with federal guidance related to state supervision requirements.

BACKGROUND INFORMATION AND JUSTIFICATION: Section 97.1071 defines criteria for special program monitoring, review, and support that a school district or open-enrollment charter school must engage in with TEA.

New subsection (a) would define school districts to include open-enrollment charter schools.

Re-lettered subsection (b) would be amended to include 34 Code of Federal Regulations (CFR), §§300.600-300.609, as part of the compliance requirements that school districts are subject to for general supervision and monitoring. Re-lettered subsection (b)(2) would be amended to update a cross reference to include Texas Education Code (TEC), §39.003 and §39.004, as part of the activities for intensive or special investigative remote or on-site reviews.

New subsection (d) would be added to provide compliance requirements for program effectiveness to include emergent bilingual students in TEC, §29.062. This TEC citation would also be added to re-lettered subsection (j).

The proposed changes to re-lettered subsections (e), (f), and (j) would update a cross reference to 19 TAC §97.1001, where provisions for Results Driven Accountability are addressed.

Re-lettered subsection (h) would be amended to change the cyclical monitoring process from discretionary to mandatory as required by federal guidance.

Re-lettered subsection (k) would be amended to include reference to 19 TAC §89.1076, which describes the system of interventions and sanctions established to ensure program effectiveness and compliance with federal and state requirements for special education and related services. Paragraphs (1), (2), (4), (5), (6), (7), and (8) would be deleted as these guidelines are already established in §89.1076.

To comply with current federal requirements as to how a state will address what is termed an "area of concern," new subsection (l) would be added to establish a process that provides for the investigation and issuance of findings regarding alleged violations of the Individuals with Disabilities Education Act (IDEA), Part B, or a state statute or administrative rule created to implement IDEA. Proposed new subsection (l) would define "area of concern"; provide guidelines that apply to the process of investigating and issuing findings for alleged violations of IDEA, Part B; and describe the actions TEA may take when receiving, investigating, substantiating, and acting on a substantiated area of concern.

FISCAL IMPACT: Justin Porter, associate commissioner and chief program officer for special populations, has determined that for the first five-year period the proposal is in effect, there

are no additional costs to state or local government, including school districts and open-enrollment charter schools, required to comply with the proposal.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal does not impose a cost on regulated persons, another state agency, a special district, or a local government and, therefore, is not subject to Texas Government Code, §2001.0045.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff prepared a Government Growth Impact Statement assessment for this proposed rulemaking. During the first five years the proposed rulemaking would be in effect, it would expand an existing regulation to align with federal regulations related to state supervision and clarify current program practices. This expansion is necessary as TEA is charged with supervision and monitoring of school district and open-enrollment charter school compliance with IDEA, Part B.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not limit or repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Mr. Porter has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be defining criteria for special program monitoring, review, and support that a school district must engage in with TEA. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: The public comment period on the proposal begins May 24, 2024, and ends June 24, 2024. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Proposed_Commissioner_of_Education_Rules/. Public hearings will be conducted to solicit testimony and input on the proposed amendment at 9:30 a.m. on May 30 and 31, 2024. The public may participate in either hearing virtually by linking to the hearing at https://zoom.us/j/95891521987. Anyone wishing to testify must be present at 9:30 a.m. and indicate to TEA staff their intent to comment and are encouraged to also send written testimony to sped@tea.texas.gov. The hearing will conclude once all who have signed in have been given the opportunity to comment. Questions about the hearing should be directed to Derek Hollingsworth, Special Populations Policy, Reporting and Technical Assistance, Derek.Hollingsworth@tea.texas.gov.

STATUTORY AUTHORITY. The amendment is proposed under Texas Education Code (TEC), §7.028, which establishes limitations on compliance monitoring; TEC, §28.006, which establishes requirements for reading diagnostic instruments; TEC, §29.062, which establishes compliance requirements for programs designed for emergent bilingual students; TEC, §38.003, which establishes criteria for screening and treatment for dyslexia and related disorders; TEC, §39.003, which establishes the authority for special investigations; TEC, §39.004, which establishes the conduct of special investigations; TEC, §39.056, which establishes criteria for monitoring reviews; 34 Code of Federal Regulations (CFR), §300.149, which lists the state's responsibility for general supervision of the Individuals with Disabilities Education Act (IDEA), Part B; and 34 CFR, §§300.600-300.609, which describe the requirements for state monitoring and enforcement of IDEA, Part B.

CROSS REFERENCE TO STATUTE. The amendment implements Texas Education Code, §§7.028, 28.006, 29.062, 38.003, 39.003, 39.004, and 39.056; and 34 Code of Federal Regulations, §§300.149 and 300.600-300.609.

§97.1071. Special Program Performance; Monitoring, Review, and Supports.

(a) For purposes of this section, school districts include open-enrollment charter schools.

(b) [~~(a)~~] School districts [~~and open-enrollment charter schools~~] are subject to general supervision and monitoring activities for compliance with state law and federal regulation, including 34 Code of Federal Regulations (CFR), §§300.600-300.609, and review of program implementation and effectiveness within certain special populations of students. Activities may include:

(1) random, targeted, or cyclical reviews authorized under Texas Education Code (TEC), §39.056, conducted remotely or on-site to identify problems implementing state and federal requirements and to provide support for development of reasonable and appropriate strategies to address identified problems; and/or

(2) intensive or special investigative remote or on-site reviews authorized under TEC, §39.003 and §39.004 [~~§39.057~~].

(c) [~~(b)~~] Activities described in subsection (b) [~~(a)~~] of this section are applicable for compliance with requirements for reading diagnosis in TEC, §28.006, and dyslexia and related disorders in TEC, §38.003, and §74.28 of this title (relating to Students with Dyslexia and Related Disorders).

(d) Activities described in subsection (b) of this section are applicable for compliance with requirements for program effectiveness for emergent bilingual students in TEC, §29.062.

(e) [~~(c)~~] The commissioner of education shall assign school districts[~~, including open-enrollment charter schools,~~] an annual determination level based on performance levels of certain special populations student groups under §97.1001 of this title (relating to Accountability Rating System) [~~§97.1005 of this title (relating to Results Driven Accountability)~~] according to the following general criteria:

(1) the degree to which the district's performance reflects a need for targeted or intensive supports, as indicated by the seriousness, number, extent, and duration of the student performance, program effectiveness, and/or program compliance deficiencies identified by the Texas Education Agency (TEA);

(2) a comparison of the district's performance relative to aggregated state performance and state performance standards;

(3) a statistical distribution of districts exhibiting a comparable need for targeted support; and

(4) the length of time the performance standard has been in place and the length of time the district has exhibited deficiencies under the standard.

(f) [~~(d)~~] In addition to performance levels determined under §97.1001 [~~§97.1005~~] of this title, the commissioner may consider any other applicable information, such as:

(1) complaints investigation results;

(2) special education due process hearing decisions;

(3) data validation activities;

(4) integrity of assessment or financial data;

(5) longitudinal intervention history; and

(6) other federally required elements.

(g) [~~(e)~~] The standards used to assign districts to specific determination levels under this section are established annually by the commissioner and communicated to all school districts. Determination level categories for assignment include:

(1) meets requirements;

(2) needs assistance;

(3) needs intervention; and

(4) needs substantial intervention.

(h) [~~(f)~~] In addition to determination levels described in subsections [~~(e) and~~] (e) and (g) of this section, the commissioner shall [~~may~~] develop a system of cyclical monitoring to ensure every district participates in general supervision activities. Based on a district's assigned determination level, as part of its cyclical monitoring process, or as part of compliance monitoring activities, a district may be required to implement and/or participate in:

(1) focused self-analysis of district data and program effectiveness;

(2) focused remote and/or on-site review;

(3) required stakeholder engagement;

(4) focused compliance reviews;

(5) strategic support and continuous improvement planning; and/or

(6) corrective action plan development.

(i) [~~(g)~~] The commissioner shall notify in writing each district identified for review under this section as a result of assigned determination level or cyclical selection prior to requiring a district to implement or participate in any activities included in subsection (h)(1)-(6) [~~(f)(1)-(6)~~] of this section.

(j) [~~(h)~~] Actions taken under this section are intended to assist the district in raising its performance and/or achieving compliance under §97.1001 [~~§97.1005~~] of this title, statutory requirements in TEC, §§28.006, 29.062, and [§]38.003, and §74.28 of this title and do not preclude or substitute for a sanction under another provision of this subchapter.

(k) [~~(i)~~] Actions taken under this section do not preclude or substitute for other responses to or consequences of program ineffectiveness or noncompliance identified by [~~the~~] TEA, such as those described in §89.1076 of this title (relating to Interventions and Sanctions) and[~~:~~]

[~~(1) required fiscal audit of specific program(s) and/or of the district, paid for by the district;~~]

[~~(2) required submission of improvement and/or corrective action plan(s), including the provision of compensatory services as appropriate, paid for by the district;~~]

[~~(3)~~] expanded oversight, including, but not limited to, frequent follow-up contacts with the district, submission of documentation verifying implementation of intervention activities and/or an improvement plan, and submission of district/program data.[~~;~~]

[~~(4) public release of monitoring review findings;~~]

[~~(5) denial of requests under TEC, §7.056 and/or §12.114;~~]

[~~(6) reduction, suspension, redirection, or withholding of program funds;~~]

[~~(7) lowering of the special education determination level of the district; and/or~~]

[~~(8) lowering of the district's accreditation status, academic accountability rating, and/or financial accountability rating.~~]

(l) In exercising its general supervision authority under 34 CFR, §300.149 and §300.600, TEA has established a process that provides for the investigation and issuance of findings regarding alleged violations of the Individuals with Disabilities Education Act (IDEA), Part B, or a state statute or administrative rule created to implement IDEA, that arise from an area of concern. The following guidelines shall apply to this process.

(1) "Area of concern" means that TEA has been made aware of an allegation regarding a violation of, or noncompliance with, a requirement of IDEA, Part B, or a state special education law or administrative rule.

(2) Information and awareness of an area of concern may arise directly from TEA or from external sources.

(3) TEA will engage in a process to determine if an area of concern is determined to be credible, and, if determined credible, TEA will initiate an investigation to determine if findings of noncompliance will be issued.

(4) A media report or social media post alleging special education noncompliance, as well as an anonymous report of alleged noncompliance, will not be treated as an area of concern unless TEA identifies or receives information and facts that a specific violation of state or federal law or rule has occurred if the allegation were to be confirmed true.

(5) When an individual reports an allegation of special education noncompliance, TEA may direct the individual to the established dispute resolution processes. Depending on the frequency or specificity of the type of allegation made, TEA may engage in the activities described in paragraph (3) of this subsection.

(6) The process and investigation described in paragraph (3) of this subsection may include one or more of the following actions:

(A) contacting the district that is the subject of the allegation to gather more information, which may include staff, parent, or student interviews, and requesting a response to an allegation;

(B) reviewing existing citations of noncompliance or any noncompliance identified within the last two school years on the same or similar alleged violation;

(C) reviewing filed state complaints that are in process of being investigated or that have been substantiated within the last two school years on the same or similar alleged violation;

(D) reviewing due process hearing decisions issued within the last two years in which the hearing officer's final written decision contains a finding of noncompliance on the same or similar alleged violation;

(E) contacting groups that represent or advocate for families and communities served by the district;

(F) reviewing and analyzing available student- or district-level data that relate to the alleged violation;

(G) reviewing and analyzing fiscal and program information, such as grant applications, contracts, self-assessments, and other special education documents submitted to TEA by the district; and

(H) any other activity or measure within TEA's general supervision and monitoring authority.

(7) TEA may apply any intervention or sanction within its authority if noncompliance or a violation is substantiated, including those described in subsection (h) of this section and §89.1076 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402140
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-1497

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES
SUBCHAPTER F. ELECTRONIC TRANSACTIONS

28 TAC §21.501

The Texas Department of Insurance (TDI) proposes to add new 28 TAC §21.501, concerning notices of termination of insurance policies. The new section will be in new Subchapter F, Electronic Transactions. Proposed new §21.501 implements House Bill 1040, 88th Legislature, 2023.

EXPLANATION. New §21.501 defines "termination" to specify that nonrenewal and discontinuation are terminations for the purposes of Insurance Code §35.004.

HB 1040 amended Insurance Code §35.003 and §35.004 to allow regulated entities to do business electronically without obtaining consent from the other party. Before HB 1040, a regulated entity had to obtain an agreement from a party to an insurance transaction to do business or deliver documents electronically. Under HB 1040, no express agreement is required, and the regulated entity can simply notify the party that it will conduct business electronically. After receiving notice, the party has a right to withdraw consent from doing business electronically.

HB 1040 also added to §35.004 new subsection (l), which requires a regulated entity to send notices in both electronic form and on paper or another nonelectronic form to a party when cancelling or terminating a policy. With the proliferation of electronic transactions, entities may be sending notices in only electronic form. The 88th Legislature included subsection 35.004(l) to make sure that regulated entities send notices in nonelectronic form as well as electronic. TDI is proposing this rule to clarify that nonrenewals and discontinuations of insurance policies are considered forms of termination.

Section 21.501. New §21.501 defines "termination" to include nonrenewal, a refusal to renew, or discontinuation by a regulated entity for the purposes of Insurance Code §35.004.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Marianne Baker, director of the Property and Casualty Lines Office, has determined that during each year of the first five years the proposed new section is in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering the new section, other than that imposed by the statute. Ms. Baker made this determination because the proposed new section does not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with the proposed new section.

Ms. Baker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed new section is in effect, Ms. Baker expects that enforcing the proposed new section will have the public benefit of ensuring that TDI's rules conform to Insurance Code §35.004 and making sure that consumers are adequately notified when their policies are not renewed.

Ms. Baker expects that the proposed new section will not increase the cost of compliance with Insurance Code §35.004 because it clarifies the statute and does not impose requirements beyond those in the statute. Insurance Code §35.004(l) requires that regulated entities notify parties in electronic and nonelectronic formats when cancelling or terminating an insurance policy. As a result, the cost associated with notifying a party nonelectronically and electronically when a policy is not renewed does not result from the enforcement or administration of the proposed new section.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the proposed new section will not have an adverse economic effect on small or micro businesses, or on rural communities. The new section applies specifically to entities regulated by TDI that notify parties regarding the cancellation, nonrenewal, or termination of an in-

surance policy. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons. Even if the proposal did impose costs, no additional rule amendments would be required under Government Code §2001.0045 because proposed new §21.501 is necessary to implement legislation. The proposed rule implements Insurance Code §35.004(l), as added by HB 1040.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the proposed new section is in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will create a new regulation;

- will not expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal that are received by TDI no later than 5:00 p.m., central time, on June 24, 2024. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

To request a public hearing on the proposal, submit a request before the end of the comment period to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030. The request for public hearing must be separate from any comments and received by TDI no later than 5:00 p.m., central time, on June 24, 2024.

STATUTORY AUTHORITY. TDI proposes new §21.501 under Insurance Code §§35.0045, 551.001, 1202.051, 1271.307, and 36.001.

Insurance Code §35.0045 requires the commissioner to adopt rules necessary to implement and enforce Chapter 35.

Insurance Code §551.001 authorizes the commissioner to adopt rules related to the cancellation and nonrenewal of insurance policies issued under specified provisions of the Insurance Code.

Insurance Code §1202.051 requires the commissioner to adopt necessary rules related to the cancellation and renewal of individual health insurance policies.

Insurance Code §1271.307 authorizes the commissioner to adopt necessary rules related to the renewal of managed care individual health insurance policies.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. Section 21.501 implements Insurance Code §35.004(l).

§21.501. Notices of Termination.

"Termination" includes nonrenewal, a refusal to renew, or discontinuation by a regulated entity for the purposes of Insurance Code §35.004, concerning Minimum Standards for Regulated Entities Electronically Conducting Business with Consumers.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2024.

TRD-202402132
Jessica Barta
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 676-6555

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 230. GROUNDWATER AVAILABILITY CERTIFICATIONS FOR PLATTING

30 TAC §§230.1 - 230.11

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to 30 Texas Administrative Code (TAC) §§230.1 - 230.11.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rule proposal is to implement the provisions of Senate Bill (SB) 2440, passed during the 88th Texas Legislature's Regular Session in 2023. Local Government Code (LGC), §212.0101 and §232.0032 establish requirements for groundwater availability certification in the municipal and county plat application and approval process for proposed subdivisions when the groundwater beneath the land serves as the primary source of water supply. SB 2440 amended §212.0101(a) and §232.0032(a) to make groundwater availability certification a mandatory component of the plat application and approval process. SB 2440 also established specific circumstances under which a municipal or county authority may waive the certification requirement by adding §212.0101(a)(1) and (a)(2)

and §232.0032(a)(1) and (a)(2). SB 2440 became effective on January 1, 2024, and requires that existing TCEQ rules are continued in effect for plat applications filed before January 1, 2024.

The charge to TCEQ under LGC, §212.0101(b) and (c) and §232.0032(b) and (c) is limited to adopting rules that establish the form and content of a groundwater availability certification and require transmittal of specific information to the Texas Water Development Board and the applicable groundwater conservation district. Currently, 30 TAC §230.1 and §§230.3 - 230.11 include references to applicability and have embedded forms. Since applicability is addressed by LGC, §212.0101(a), (a)(1) and (a)(2) and §232.0032(a), (a)(1) and (a)(2) and does not require further definition, TCEQ proposes to replace applicability provisions with general provisions that identify the purpose of the rule. The commission specifically seeks comments on whether to include a definition for "credible evidence," as it relates to the waiver requirements defined by Local Government Code §§212.0101(a-1)(1) and 232.0032(a-1)(1), and what that definition would be. Since the current rules specify transmittal requirements and groundwater availability certification contents, TCEQ also proposes to remove the embedded forms and replace those with references to TCEQ forms so that the format of the forms can be updated as technology changes.

Section by Section Discussion

§230.1, Applicability

LGC, §212.0101(b) and (c) and §232.0032(b) and (c) charge TCEQ with adopting rules that establish the form and content of a groundwater availability certification and require transmittal of specific information to the Texas Water Development Board and the applicable groundwater conservation district. TCEQ proposes amendments to this section that eliminate the applicability provisions because those are established by LGC, §212.0101(a), (a)(1), and (a)(2) and §232.0032(a), (a)(1), and (a)(2). Those provisions are replaced by general provisions that identify the purpose of the rule consistent with LGC, §212.0101(b) and (c) and §232.0032(b) and (c) that charge TCEQ with adopting rules that establish the form and content of a groundwater availability certification.

TCEQ also proposes amendments to remove the form embedded at §230.1(c)(2) and instead require submittal of Plat Attesting Form (TCEQ-20983). Removing the form from the rule allows for the format to change with technology over time. Conforming changes are proposed throughout 30 TAC §230.1.

§230.2, Definitions

TCEQ proposes to delete the definition of "executive administrator" at §230.2(6), because "executive administrator" is not used independently from "of the Texas Water Development Board" within the chapter and, therefore, the definition is not necessary.

§230.3, Certification of Groundwater Availability for Platting

TCEQ proposes amendments that make conforming changes where these sections reference the provisions modified at §230.1. TCEQ also proposes amendments to remove the form embedded at §230.3(c) and instead require submittal of Certification of Groundwater Availability for Platting Form (TCEQ-20982). Removing the form from the rule allows for the format to change with technology over time. Conforming changes are proposed throughout 30 TAC §230.3.

§230.4, Administrative Information

TCEQ proposes amendments to §230.4 to make a conforming citation where the plat applicant "must" now follow 30 TAC Chapter 230 rules, rather than "may" or "shall" follow 30 TAC Chapter 230 rules. The word "must," now replaces "may" and "shall," throughout §230.4. Additionally, amendments are proposed that make conforming changes where these sections reference the provisions modified at §230.1 and §230.3.

TCEQ proposes amendments to require an email address with all contact information required by this section.

§§230.5 - 230.11

TCEQ proposes amendments to §§230.5 - 230.11 to make a conforming citation where the plat applicant "must" now follow 30 TAC Chapter 230 rules, rather than "may" or "shall" follow 30 TAC Chapter 230 rules. The word "must," now replaces "may" and "shall," throughout §§230.5 - 230.11. Additionally, the commission proposes amendments that make conforming changes where these sections reference the provisions modified at §230.1 and §230.3.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no costs are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit would be consistency with state law, specifically SB 2440 from the 88th Regular Legislative Session (2023). The proposed rulemaking would not result in fiscal implications for businesses or individuals.

Local Employment Impact Statement

TCEQ reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Communities Impact Assessment

TCEQ reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

TCEQ reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

TCEQ prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and would not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation to be consistent with state law. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

TCEQ reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "Major environmental rule" as defined in the Texas Administrative Procedure Act. A "Major environmental rule" is a rule that is specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

This rulemaking does not meet the statutory definition of a "Major environmental rule" because it is not the specific intent of the rule to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to implement legislative changes enacted by SB 2440, which requires groundwater certification during the platting process.

In addition, the rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rule would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The cost of complying with the proposed rule is not expected to be significant with respect to the economy.

Furthermore, the proposed rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). There are no federal standards governing groundwater certification in the plat application and approval process. Second, the proposed rulemaking does not exceed an express requirement of state law. Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Finally, the proposed rulemaking is not an adoption of a rule solely under the general powers of the commission as the proposed rules are required by SB 2440.

TCEQ invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

TCEQ evaluated the proposed rule and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the proposed rulemaking is to implement legislative changes enacted by Senate Bill 2440, which requires groundwater certification during the platting process with certain exceptions. The proposed rule would substantially advance this purpose by amending the Chapter 230 rules to incorporate the new statutory requirements.

Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. The proposed rule does not affect a landowner's rights in private real property because this rulemaking does not relate to or have any impact on an owner's rights to property. The proposed rule would primarily affect landowners planning to use only groundwater to supply water for subdivisions; this would not be an effect on real property. Therefore, the adopted rulemaking would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

TCEQ reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

TCEQ will hold a hold a hybrid virtual and in-person public hearing on this proposal in Austin on June 24, 2024, at 2:00 p.m. in building F, room 2210 at TCEQ's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 1:30 p.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, June 20, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, June 21, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZmFlNDM4MTktMTk0MS00ODlkLWE0MjctYWExYTZiOTBhNmJl%40thread.v2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact

Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2024-006-230-OW. The comment period closes on June 25, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at *https://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Abiy Berehe, Groundwater Planning and Assessment Team, by phone at (512) 239-5480 or by email at abiy.berehe@tceq.texas.gov.

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.102, which establishes the Commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the Commission's general authority to adopt rules; and §5.105, which establishes the Commission's authority to set policy by rule. In addition, Local Government Code, §212.0101(b) and §232.0032(b) require the commission to promulgate rules that establish the appropriate form and content of a certification to be attached to a plat application.

The proposed amendments implement the language set forth in SB 2440 from the 88th Texas Legislature.

§230.1. General [~~Applicability~~].

(a) Purpose. This chapter establishes the form and content of a certification to be attached to a [~~Subdivisions utilizing groundwater as the source of water supply. In the~~] plat application [~~and approval process, municipal and county authorities may require certification that adequate groundwater is available for a proposed subdivision if groundwater under that land is to be the source of water supply. The municipal or county authority is not required to exercise their authority~~] under Texas Local Government Code, §212.0101 or §232.0032. [~~However, if they do exercise their authority, the form and content of this chapter must be used.~~]

[~~(b)~~] [~~Use of this chapter. If required by the municipal or county authority, the plat applicant and the Texas licensed professional engineer or the Texas licensed professional geoscientist shall use this chapter and the attached form to certify that adequate groundwater is available under the land of a subdivision subject to platting under Texas Local Government Code, §212.004 and §232.001.~~] These rules do not replace:

(1) other state and federal requirements applicable to public drinking water supply systems; [~~. These rules do not replace~~]

(2) the authority of counties within designated priority groundwater management areas under Texas Water Code, §35.019;[~~,~~] or

(3) the authority of groundwater conservation districts under Texas Water Code, Chapter 36.

(b) [~~(c)~~] Transmittal of data. Copies [~~If use of this chapter is required by the municipal or county authority, the plat applicant shall:~~]

[~~(1)~~] [~~provide copies~~] of the information, estimates, data, calculations, determinations, statements, and certification required by §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data), §230.9 of this title (relating to Determination of Groundwater Quality), §230.10 of this title (relating to Determination of Groundwater Availability), and §230.11 of this title (relating to Groundwater Availability and Usability Statements and Certification) must be provided with the certification to:

(1) the executive administrator of the Texas Water Development Board; and

(2) [~~to~~] the applicable groundwater conservation district or districts. [~~; and~~]

(c) [~~(2)~~] Plat Attesting Form. The Plat Attesting Form (TCEQ-20983) must be submitted with the certification, attesting [~~using the attached form, attest~~] that copies of the information, estimates, data, calculations, determinations, statements, and the certification have been provided to:

(1) the executive administrator of the Texas Water Development Board; and

(2) the applicable groundwater conservation district or districts. [~~The executive director may make minor changes to this form that do not conflict with the requirements of these rules.~~]
[~~Figure: 30 TAC §230.1(c)(2)~~]

§230.2. Definitions.
The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this chapter is not contained in this section, it shall have the same definition and meaning as used in the practices applicable to hydrology and aquifer testing.

(1) Applicable groundwater conservation district or districts--Any district or authority created under Texas Constitution, Article III, Section 52, or Article XVI, Section 59, that:

(A) has the authority to regulate the spacing of water wells, the production from water wells, or both, and

(B) which includes within its boundary any part of the plat applicant's proposed subdivision.

(2) Aquifer--A geologic formation, group of formations, or part of a formation that contains water in its voids or pores and may be used as a source of water supply.

(3) Aquifer test--A test involving the withdrawal of measured quantities of water from or addition of water to a well and the measurement of resulting changes in water level in the aquifer both during and after the period of discharge or addition for the purpose of determining the characteristics of the aquifer. For the purposes of this chapter, bail and slug tests are not considered to be aquifer tests.

(4) Certification--A written statement of best professional judgement or opinion submitted [~~as attested to~~] on the Certification of Groundwater Availability for Platting Form (TCEQ-20982) and attested to on the Plat Attesting Form (TCEQ-20983) [~~contained under §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting)~~].

(5) Drinking water standards--As defined in commission rules covering drinking water standards contained in Chapter 290, Subchapter F of this title (relating to Drinking Water Standards Governing

Drinking Water Quality and Reporting Requirements for Public Water Systems).

[(6) Executive administrator--The executive administrator of the Texas Water Development Board.]

(6) [(7)] Full build out--The final expected number of residences, businesses, or other dwellings in the proposed subdivision.

(7) [(8)] Licensed professional engineer--An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(8) [(9)] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(9) [(10)] Plat applicant--The owner or the authorized representative or agent seeking approval of a proposed subdivision plat application pursuant to municipal or county authority.

(10) [(11)] Requirements applicable to public drinking water supply systems--The requirements contained in commission rules covering public drinking water supply systems in Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems).

§230.3. Certification of Groundwater Availability for Platting.

(a) Preparation of the certification [Certification]. The certification required by this chapter must be prepared by a Texas licensed professional engineer or a Texas licensed professional geoscientist.

(b) Certification Requirements. The certification must meet the requirements relating to §§230.4 - 230.11 (Administrative Information, Proposed Subdivision Information, Projected Water Demand Estimate, General Groundwater Resource Information, Obtaining Site-Specific Groundwater Data, Determination of Groundwater Quality, Determination of Groundwater Availability, and Groundwater Availability and Usability Statements and Certification) of this chapter.

(c) [(b)] Submission of information. The certification must be submitted [The plat applicant shall provide] to the following:

(1) the municipal or county authority,

(2) the executive administrator of the Texas Water Development Board, and

(3) the applicable groundwater conservation district or districts [the certification of adequacy of groundwater under the subdivision required by this chapter].

(d) [(c)] Form required. The certification required by this chapter must be submitted on the Certification of Groundwater Availability for Platting Form (TCEQ-20982). [This chapter and the following form shall be used and completed if plat applicants are required by the municipal or county authority to certify that adequate groundwater is available under the land to be subdivided. The executive director may make minor changes to this form that do not conflict with the requirements of these rules.]
[Figure: 30 TAC §230.3(c)]

§230.4. Administrative Information.

At a minimum, the following general administrative information [as specified in §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting),] must [shall] be provided for a proposed subdivision for which groundwater under the land will be the source of water supply:

(1) the name of the proposed subdivision;

(2) any previous or other name(s) which identifies the tract of land;

(3) the name, address, phone number, email address, and facsimile number of the property owner or owners;

(4) the name, address, phone number, email address, and facsimile number of the person submitting the plat application;

(5) the name, address, phone number, email address, facsimile number, and registration number of the licensed professional engineer or the licensed professional geoscientist preparing the certification as required in this chapter;

(6) the location and property description of the proposed subdivision; and

(7) the tax assessor parcel number(s) by book, map, and parcel.

§230.5. Proposed Subdivision Information.

At a minimum, the following information pertaining to the proposed subdivision must [shall] be provided [as specified in §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting)]:

(1) the purpose of the proposed subdivision, for example, single family residential, multi-family residential, non-residential, commercial, or industrial;

(2) the size of the proposed subdivision in acres;

(3) the number of proposed lots within the proposed subdivision;

(4) the average size (in acres) of the proposed lots in the proposed subdivision;

(5) the anticipated method of water distribution to the proposed lots in the proposed subdivision including, but not limited to:

(A) an expansion of an existing public water supply system to serve the proposed subdivision (if groundwater under the subdivision is to be the source of water supply);

(B) a new public water supply system for the proposed subdivision;

(C) individual water wells to serve individual lots; or

(D) a combination of methods;

(6) if the anticipated method of water distribution for the proposed subdivision is from an expansion of an existing public water supply system or from a proposed public water supply system, evidence required under §290.39(c)(1) of this title (relating to Rules and Regulations for Public Water Systems) which must [shall] be provided demonstrating that written application for service was made to the existing water providers within a 1/2-mile radius of the subdivision; and

(7) any additional information required by the municipal or county authority as part of the plat application.

§230.6. Projected Water Demand Estimate.

(a) Residential water demand estimate. Residential water demand estimates at full build out must [shall] be provided [as specified in §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting)]. Residential demand estimates must [shall], at a minimum, be based on the current demand of any existing residential well including those identified under §230.8(b) of this title (relating to Obtaining Site-Specific Groundwater Data), or §290.41(c) of this title (relating to Rules and Regulations for Public Water Systems), and:

(1) the number of proposed housing units at full build out;

(2) the average number of persons per housing unit;

(3) the gallons of water required per person per day;

(4) the water demand per housing unit per year (acre feet per year); and

(5) the total expected residential water demand per year for the proposed subdivision (acre feet per year).

(b) Non-residential water demand estimate. Water demand estimates at full build out must [~~shall~~] be provided for all non-residential uses [~~as specified in §230.3(c) of this title~~]. Non-residential uses must [~~shall~~] be specified by type of use and groundwater demand per year (acre feet per year) for each type of use. The estimate must [~~shall~~] also include the existing non-residential demand of any well including those identified under §230.8(b) of this title or §290.41(c) of this title.

(c) Total annual water demand estimate. An estimate of the total expected annual groundwater demand, including residential and non-residential estimates at full build out (acre feet per year), must [~~shall~~] be provided [~~as specified in §230.3(c) of this title~~].

(d) Submission of information. The sources of information used and calculations performed to determine the groundwater demand estimates as required by this section must [~~shall~~] be made available to the municipal or county authority if requested. The plat applicant must [~~shall~~] provide any additional groundwater demand information required by the municipal or county authority as part of the plat application.

§230.7. General Groundwater Resource Information.

(a) Aquifer identification. Using Texas Water Development Board aquifer names, the aquifer(s) underlying the proposed subdivision which is planned to be used as the source of water for the subdivision must [~~shall~~] be identified and generally described [~~as specified in §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting)~~].

(b) Geologic and groundwater information. To meet the requirements of this chapter, the following geologic and groundwater information must [~~shall~~] be considered in planning and designing the aquifer test [~~under §230.8(c) of this title (relating to Obtaining Site-Specific Groundwater Data)~~]:

(1) the stratigraphy of the geologic formations underlying the subdivision;

(2) the lithology of the geologic strata;

(3) the geologic structure;

(4) the characteristics of the aquifer(s) and their hydraulic relationships;

(5) the recharge to the aquifer(s), and movement and discharge of groundwater from the aquifer(s); and

(6) the ambient quality of water in the aquifer(s).

§230.8. Obtaining Site-Specific Groundwater Data.

(a) Applicability of section. This section is applicable only if the proposed method of water distribution for the proposed subdivision is individual water wells on individual lots. If expansion of an existing public water supply system or installation of a new public water supply system is the proposed method of water distribution for the proposed subdivision, site-specific groundwater data must [~~shall~~] be developed under the requirements of Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems) and the information developed in meeting these requirements must [~~shall~~] be attached to the [~~form required under §230.3 of this title (relating to~~] Certification of Groundwater Availability for Platting Form [~~)~~].

(b) Location of existing wells. All known existing, abandoned, and inoperative wells within the proposed subdivision must [~~shall~~] be identified, located, and mapped by on-site surveys. Existing well locations must [~~shall~~] be illustrated on the plat required by the municipal or county authority.

(c) Aquifer testing. Utilizing the information considered under §230.7(b) of this title (relating to General Groundwater Resource Information), an aquifer test must [~~shall~~] be conducted to characterize the aquifer(s) underlying the proposed subdivision. The aquifer test must provide sufficient information to allow evaluation of each aquifer that is being considered as a source of residential and non-residential water supply for the proposed subdivision. Appropriate aquifer testing must [~~shall~~] be based on typical well completions. An aquifer test conducted under this section utilizing established methods must [~~shall~~] be reported [~~as specified in §230.3(c) of this title~~] and must [~~shall~~] include, but not be limited to, the following items.

(1) Test well and observation well(s). At a minimum, one test well (i.e., pumping well) and one observation well, must [~~shall~~] be required to conduct an adequate aquifer test under this section. Additional observation wells must [~~shall~~] be used for the aquifer test if it is practical or necessary to confirm the results of the test. The observation well(s) must [~~shall~~] be completed in the same aquifer or aquifer production zone as the test well. The locations of the test and observation well(s) must [~~shall~~] be shown on the plat required by the municipal or county authority.

(2) Location of wells. The test and observation well(s) must be placed within the proposed subdivision and must [~~shall~~] be located by latitude and longitude. The observation well(s) must [~~shall~~] be located at a radial distance such that the time-drawdown data collected during the planned pumping period fall on a type curve of unique curvature. In general, observation wells in unconfined aquifers should be placed no farther than 300 feet from the test well, and no farther than 700 feet in thick, confined aquifers. The observation well should also be placed no closer to the test well than two times the thickness of the aquifer's production zone. The optimal location for the observation well(s) can be determined by best professional judgement after completion and evaluation of the test well as provided in paragraph (4) of this subsection.

(3) Lithologic and geophysical logs. The test and observation wells must [~~shall~~] be lithologically and geophysically logged to map and characterize the geologic formation(s) and the aquifer(s) in which the aquifer test(s) is to be performed.

(A) A lithologic log must [~~shall~~] be prepared showing the depth of the strata, their thickness and lithology (including size, range, and shape of constituent particles as well as smoothness), occurrence of water bearing strata, and any other special notes that are relevant to the drilling process and to the understanding of subsurface conditions.

(B) Geophysical logs must [~~shall~~] be prepared which provide qualitative information on aquifer characteristics and groundwater quality. At a minimum, the geophysical logs must [~~shall~~] include an electrical log with shallow and deep-investigative curves (e.g., 16-inch short normal/64-inch long normal resistivity curves or induction log) with a spontaneous potential curve.

(C) The municipal or county authority may, on a case-by-case basis, waive the requirement of geophysical logs as required under this section if it can be adequately demonstrated that the logs are not necessary to characterize the aquifer(s) for testing purposes.

(4) Well development and performance. The test and observation well(s) must [~~shall~~] be developed prior to conducting the

aquifer test to repair damage done to the aquifer(s) during the drilling operation. Development must [~~shall~~] ensure [~~insure~~] that the hydraulic properties of the aquifer(s) are restored as much as practical to their natural state.

(A) Well development procedures applied to the well(s) may vary depending on the drilling method used and the extent of the damage done to the aquifer(s).

(B) During well development, the test well must [~~shall~~] be pumped for several hours to determine the specific capacity of the well, the maximum anticipated drawdown, the volume of water produced at certain pump speeds and drawdown, and to determine if the observation well(s) are suitably located to provide useful data.

(C) Water pumped out of the well during well development must [~~shall~~] not be allowed to influence initial well performance results.

(D) Aquifer testing required by this section must [~~shall~~] be performed before any acidization or other flow-capacity enhancement procedures are applied to the test well.

(5) Protection of groundwater. All reasonably necessary precautions must [~~shall~~] be taken during construction of test and observation wells to ensure that surface contaminants do not reach the subsurface environment and that undesirable groundwater (water that is injurious to human health and the environment or water that can cause pollution to land or other waters) if encountered, is sealed off and confined to the zone(s) of origin.

(6) Duration of aquifer test and recovery. The duration of the aquifer test depends entirely on local and geologic conditions. However, the test must [~~shall~~] be of sufficient duration to observe a straight-line trend on a plot of water level versus the logarithm of time pumped. Water pumped during the test must [~~shall~~] not be allowed to influence the test results. Aquifer testing must [~~shall~~] not commence until water levels (after well development) have completely recovered to their pre-development level or at least to 90% of that level.

(A) At a minimum, a 24-hour uniform rate aquifer test must [~~shall~~] be conducted. Testing must [~~shall~~] continue long enough to observe a straight-line trend on a plot of water level versus the logarithm of time pumped. If necessary, the duration of the test should be extended beyond the 24-hour minimum limit until the straight-line trend is observed.

(i) If it is impractical to continue the test until a straight-line trend of water level versus the logarithm of time pumped is observed within the 24-hour limit, the test must [~~shall~~] continue at least until a consistent pumping-level trend is observed. In such instances, failure to observe the straight-line trend must [~~shall~~] be recorded.

(ii) If the pumping rates remain constant for a period of at least four hours and a straight-line trend is observed on a plot of water level versus the logarithm of time pumped before the 24-hour limit has been reached, the pumping portion of the test may be terminated.

(iii) The frequency of water level measurements during the aquifer test must [~~shall~~] be such that adequate definition of the time-drawdown curve is made available. As much information as possible must [~~shall~~] be obtained in the first ten minutes of testing (i.e., pumping).

(B) Water-level recovery data must [~~shall~~] be obtained to verify the accuracy of the data obtained during the pumping portion of the test. Recovery measurements must [~~shall~~] be initiated immediately at the conclusion of the pumping portion of the aquifer test and must [~~shall~~] be recorded with the same frequency as those taken during the pumping portion of the aquifer test. Time-recovery measurements must [~~shall~~] continue until the water levels have recovered to pre-pumping levels or at least to 90% of that level. If such recovery is not possible, time-recovery measurements should continue until a consistent trend of recovery is observed.

(7) Use of existing wells and aquifer test data.

(A) An existing well may be utilized as an observation well under this section if sufficient information is available for that well to demonstrate that it meets the requirements of this section.

(B) The municipal or county authority may accept the results of a previous aquifer test in lieu of a new test if:

(i) the previous test was performed on a well located within a 1/4-mile radius of the subdivision;

(ii) the previous test fully meets all the requirements of this section;

(iii) the previous test was conducted on an aquifer which is being considered as a source of water supply for the proposed subdivision; and

(iv) aquifer conditions (e.g., water levels, gradients, etc.) during the previous test were approximately the same as they are presently.

(8) Need for additional aquifer testing and observation wells. Best professional judgement must [~~shall~~] be used to determine if additional observation wells or aquifer tests are needed to adequately demonstrate groundwater availability. The Theis and Cooper-Jacob nonequilibrium equations, and acceptable modifications thereof, are based on well documented assumptions. To determine if additional information is needed, best professional judgement must [~~shall~~] be used to consider these assumptions, the site-specific information derived from the aquifer test required by this section, the size of the proposed subdivision, and the proposed method of water delivery.

(d) Submission of information. The information, data, and calculations required by this section must [~~shall~~] be made available to the municipal or county authority, if requested, to document the requirements of this section as part of the plat application.

§230.9. Determination of Groundwater Quality.

(a) Water quality analysis. Water samples must [~~shall~~] be collected near the end of the aquifer test for chemical analysis. Samples must [~~shall~~] be collected from each aquifer being considered for water supply for the proposed subdivision and reported on or attached to the Certification of Groundwater Availability Form (TCEQ-20982) [~~as specified in §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting)~~].

(1) For proposed subdivisions where the anticipated method of water delivery is from an expansion of an existing public water supply system or a new public water supply system, the samples must [~~shall~~] be submitted for bacterial and chemical analysis as required by Chapter 290, Subchapter F of this title (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements For Public Water Systems).

(2) For proposed subdivisions where the anticipated method of water delivery is from individual water supply wells on individual lots, samples must [~~shall~~] be analyzed for the following:

(A) chloride;

(B) conductivity;

(C) fluoride;

(D) iron;

(E) nitrate (as nitrogen);

(F) manganese;

(G) pH;

(H) sulfate;

(I) total hardness;

(J) total dissolved solids; and

(K) presence/absence of total coliform bacteria.

(3) Conductivity and pH values may be measured in the field, and the other constituents must [~~shall~~] be analyzed in a laboratory accredited by the agency according to Chapter 25, Subchapters A and B of this title (relating to General Provisions and Environmental Testing Laboratory Accreditation, respectively) or certified by the agency according to Chapter 25, Subchapters A and C of this title (relating to General Provisions and Environmental Testing Laboratory Certification, respectively).

(b) Submission of information. The information, data, and calculations required by this section must [~~shall~~] be made available to the municipal or county authority, if requested, to document the requirements of this section as part of the plat application.

§230.10. Determination of Groundwater Availability.

(a) Time frame for determination of groundwater availability. At a minimum, both a short- and long-term determination of groundwater availability must [~~shall~~] be made, each considering the estimated total water demand at full build out of the proposed subdivision. Groundwater availability must [~~shall~~] be determined for ten years and 30 years and for any other time frame(s) required by the municipal or county authority.

(b) Other considerations in groundwater availability determination. Groundwater availability determinations must [~~shall~~] take into account the anticipated method of water delivery as identified under §230.5 of this title (relating to Proposed Subdivision Information) and will be compared to annual demand estimates at full build out as determined under §230.6 of this title (relating to Projected Water Demand Estimate).

(c) Determination of aquifer parameters. The parameters of the aquifer(s) being considered to supply water to the proposed subdivision must [~~shall~~] be determined utilizing the information considered under §230.7 of this title (relating to General Groundwater Resource Information) and data obtained during the aquifer test required under §230.8 of this title (relating to Obtaining Site-Specific Groundwater Data) for individual water wells or under Chapter 290, Subchapter D of this title (relating to Rules and Regulations for Public Water Systems) and reported on or attached to the Certification of Groundwater Availability Form (TCEQ-20982) [~~as specified in §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting)~~]. The time-drawdown and time-recovery data obtained during the aquifer test must [~~shall~~] be used to determine aquifer parameters utilizing the nonequilibrium equations developed by Theis or Cooper-Jacob, or acceptable modifications thereof. The following aquifer parameters must [~~shall~~] be determined:

(1) rate of yield and drawdown;

(2) specific capacity;

(3) efficiency of the pumped (test) well;

(4) transmissivity;

(5) coefficient of storage;

(6) hydraulic conductivity;

(7) recharge or barrier boundaries, if any are present; and

(8) thickness of the aquifer(s).

(d) Determination of groundwater availability. Using the information and data identified and determined in subsections (b) and (c) of this section, the following calculations must [~~shall~~] be made.

(1) Time-drawdown. The amount of drawdown at the pumped well(s) and at the boundaries of the proposed subdivision must [~~shall~~] be determined for the time frames identified under subsection (a) of this section.

(2) Distance-drawdown. The distance(s) from the pumped well(s) to the outer edges of the cone(s)-of-depression must [~~shall~~] be determined for the time frames identified under subsection (a) of this section.

(3) Well interference. For multiple wells in a proposed subdivision, calculations must [~~shall~~] be made to:

(A) determine how pumpage from multiple wells will affect drawdown in individual wells for the time frames identified under subsection (a) of this section; and

(B) determine a recommended minimum spacing limit between individual wells and well yields from the wells that will allow for the continued use of the wells for the time frames identified under subsection (a) of this section.

(e) Determination of groundwater quality. The water quality analysis required under §230.9 of this title (relating to Determination of Groundwater Quality) must [~~shall~~] be compared to primary and secondary public drinking water standards and the findings documented on or attached to the Certification of Groundwater Availability Form (TCEQ-20982) [~~as specified in §230.3(c) of this title~~].

(f) Submission of information. The information, data, and calculations required by this section must [~~shall~~] be made available to the municipal or county authority, if requested [~~required~~], to document the requirements of this section as part of the plat application.

§230.11. Groundwater Availability and Usability Statements and Certification.

(a) Groundwater availability and usability statements. Based on the information developed under §230.10 of this title (relating to Determination of Groundwater Availability), the following information must [~~shall~~] be provided on or attached to the Certification of Groundwater Availability Form (TCEQ-20982) [~~as specified in §230.3(c) of this title (relating to Certification of Groundwater Availability for Platting)~~]:

(1) the estimated drawdown of the aquifer at the pumped well(s) over a ten-year period and over a 30-year period;

(2) the estimated drawdown of the aquifer at the subdivision boundary over a ten-year period and over a 30-year period;

(3) the estimated distance from the pumped well(s) to the outer edges of the cone(s)-of-depression over a ten-year period and over a 30-year period;

(4) the recommended minimum spacing limit between wells and the recommended well yield; and

(5) the sufficiency of available groundwater quality to meet the intended use of the platted subdivision.

(b) Groundwater availability determination conditions. The assumptions and uncertainties that are inherent in the determination of groundwater availability must [~~should~~] be clearly identified [~~as spec-~~

~~ified in §230.3(c) of this title~~]. These conditions must be identified to adequately define the basis [~~bases~~] for the availability and usability statements. These basis [~~bases~~] may include, but are not limited to, uncontrollable and unknown factors such as:

(1) future pumpage from the aquifer or from interconnected aquifers from area wells outside of the subdivision or any other factor that cannot be predicted that will affect the storage of water in the aquifer;

(2) long-term impacts to the aquifer based on climatic variations; and

(3) future impacts to usable groundwater due to unforeseen or unpredictable contamination.

(c) Certification. Based on best professional judgement, current groundwater conditions, and the information developed and presented on or attached to the Certification of Groundwater Availability Form (TCEQ-20982), [~~in the form specified by §230.3(c) of this title~~], the licensed professional engineer or licensed professional geoscientist must certify [~~certifies~~] by signature, seal, and date that adequate groundwater is available from the underlying aquifer(s) to supply the estimated demand of the proposed subdivision.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402130
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-6087

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CHAPTER 281. APPLICATIONS PROCESSING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendment of §§281.1, 281.5, and 281.22; and the repeal of §§281.30, 281.31, and 281.32.

Background and Summary of the Factual Basis for the Proposed Rules

Electronic Application Submittal

The rulemaking would implement Senate Bill (SB) 1397, 88th Legislature, 2023, by requiring a person who submits an application under §281.5(a) to submit an accurate duplicate of the application in electronic format. SB 1397 enacted Texas Water Code (TWC), §5.1734, which requires the commission to post an electronic copy of a permit application at the time the application is declared administratively complete. Application forms will provide detailed information regarding submitting a copy of the application in electronic format such as formatting, frequency, and timing of the submittal.

Obsolete Rule Repeal

The rulemaking would also delete one subsection, §281.22(c), and repeal three sections that the commission identified as obsolete during the quadrennial rule review of Chapter 281 (44 TexReg 7717): §281.30 (Applicability of Prioritization Procedures for Commercial Hazardous Waste Management Facility Permit Applications); §281.31 (Definitions); and §281.32 (Prioritization Process). These sections implemented Texas Health and Safety Code (THSC), §361.0232 and §361.0871(c) enacted by SB 1099, 72nd Legislature, 1991, and subsequently repealed by House Bill (HB) 7, 78th Legislature, 2003, Third Called Session.

As part of this rulemaking, the commission is also proposing revisions to 30 Texas Administrative Code (TAC) Chapter 328, Waste Minimization and Recycling; Chapter 330, Municipal Solid Waste; and Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, concurrently in this issue of the *Texas Register.*

Section by Section Discussion

§281.1, Purpose

The commission proposes to amend §281.1 to replace the name of the commission's predecessor agency, Texas Natural Resource Conservation Commission, with the commission's current name, Texas Commission on Environmental Quality, and to remove obsolete rule sections regarding the prioritization procedure for commercial hazardous waste management facility permit applications under §§281.30 - 281.32 by repealing §§281.30 - 281.32.

§281.5, Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits

The commission proposes new §281.5(b) to require a person who submits an application under §281.5(a) to submit an accurate duplicate of the application in electronic format to implement SB 1397. The commission also proposes to revise §281.5(a)(4) to conform with drafting standards by removing the term "agency" and replacing it with the term "commission."

§281.22, Referral to Commission

The commission proposes to delete §281.22(c). The statutory basis for this subsection was repealed.

§281.30, Applicability of Prioritization Procedures for Commercial Hazardous Waste Management Facility Permit Applications

The commission proposes to repeal §281.30. The statutory basis for this section was repealed.

§281.31, Definitions

The commission proposes to repeal §281.31. The statutory basis for this section was repealed.

§281.32, Prioritization Process

The commission proposes to repeal §281.32. The statutory basis for this section was repealed.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no costs are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistency with state law, specifically SB 1397, 88th Texas Leg-

islature, 2023, which enacted TWC, §5.1734. Additionally, the public will benefit from the repeal of obsolete rules.

The proposed rulemaking is unlikely to result in fiscal implications to businesses and industries. Entities with applicable permits would now be required to submit an electronic copy of permit applications (§281.5). No fiscal impacts are anticipated because it is likely that all such businesses already have the means to convert applications into electronic format and upload files.

The proposed rulemaking is not anticipated to result in fiscal implications for individuals.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation to be consistent with state law, and it does not create, expand, repeal, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to require a person who submits an application under §281.5(a) to submit an accurate duplicate of the application in electronic format and to amend and repeal obsolete TCEQ rules in Chapter 281 relating to the referral of applications to the commission and the implementation of the prioritization procedure for commercial hazardous waste management facility permit applications.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements.

This proposed rulemaking does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules in

accordance with Texas Government Code, §2007.043. The commission's preliminary

assessment is that implementation of these proposed rules would not constitute a taking

of real property. The commission proposes this rulemaking for the purpose of implementing SB 1397 and for the purpose of amending and repealing obsolete TCEQ rules in Chapter 281 that the commission identified during the quadrennial rule review.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon exceptions to applicability in Texas Government Code, §2007.003(b)(4) and (5). First, the proposed rulemaking would implement SB 1397 by creating new §281.5(b) to require a person who submits an application under §281.5(a) to submit an accurate duplicate of the application in electronic format. This action is reasonably taken to fulfill an obligation mandated by state law; therefore, Texas Government Code, Chapter 2007, does not apply to this proposed rule based upon the exception to applicability in Texas Government Code, §2007.003(b)(4). Second, the proposed rulemaking would delete one subsection, §281.22(c), and repeal three sections that the commission identified as obsolete during the quadrennial rule review of Chapter 281 (44 TexReg 7717): §281.30 (Applicability of Prioritization Procedures for Commercial Hazardous Waste Management Facility Permit Applications); §281.31 (Definitions); and §281.32 (Prioritization Process). These sections implemented Texas Health and Safety Code (THSC) §361.0232 and §361.0871(c) enacted by SB 1099, 72nd Legislature, 1991, and subsequently repealed by HB 778th Legislature, 2003, Third Called Session. The proposed repeal of §281.22(c) and §281.30 through §281.32 reflect TCEQ having discontinued the prioritization procedure for commercial hazardous waste management facility permit applications which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these proposed rule changes because the proposed rulemaking falls within the exception under Texas Government Code, §2007.003(b)(5).

Further, the commission determined that promulgation of these proposed rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. Therefore, the proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the rulemaking will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on June 20, 2024, at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by June 14, 2024. To register for the hearing, please email, Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on June 18, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at: https://teams.microsoft.com/l/meetup-join/19%3ameeting_Zjg1MDI0YmYtNGYwYi00ZWU4LTg5MWYtMDg3MTBiNTc1ODc4%40thread.v2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-135-330-WS. The comment period closes at 11:59 p.m. on June 25, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §§281.1, 281.5, 281.22

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general

jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; TWC, §5.128, which authorizes the commission to utilize electronic means of transmission of information, including notices, orders, and decisions issued or sent by the commission; TWC, §5.1734, which requires the commission to post permit applications and associated materials on its website; TWC, §27.012, which requires the commission to prescribe forms for permit applications to authorize injection wells under its jurisdiction; TWC, §27.019, which requires the commission to adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under TWC, Chapter 27; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Government Code, §2001.039 and 1 Texas Administrative Code, Chapter 91, Subchapter D, which authorize the commission as a state agency to review and consider for readoption each of its rules not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date; Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over the regulation, management, and control of municipal solid waste; THSC, §361.015, which authorizes the commission to license and regulate radioactive waste-storage, processing and disposal activities; THSC, §361.017, which establishes the commission's jurisdiction over the regulation, management, and regulation and control of industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act in accordance with the Administrative Procedures Act; THSC, §361.061, which authorizes the commission to issue permits authorizing facilities for the storage, processing and disposal of industrial solid waste; THSC, §361.064, which requires the commission to prescribe the form of, requirements and procedures for a permit application for a solid waste facility; and THSC, §401, which grants the commission authority over licenses for the disposal of radioactive substances.

The proposed amendment to §281.5 would implement Senate Bill (SB) 1397, 88th Legislature, 2023, which enacted TWC, §5.1734. The proposed amendments would also delete one subsection, §281.22(c), that the commission identified as obsolete during the quadrennial rule review of Chapter 281 (44 TexReg 7717). These sections implemented THSC, §361.0232 and §361.0871(c), SB 1099, 72nd legislature, 1991, and subsequently repealed by House Bill 7, 78th Legislature, 2003, Third Called Session.

§281.1. Purpose.

It is the intent of the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~] to establish a general policy for the processing of applications for permits, licenses and other types of approvals in order to achieve the greatest efficiency and effectiveness possible. To this end, it is the policy of the commission that applications for permits, licenses, and other types of approvals listed in §281.2 of this title (relating to Applicability) be processed by the executive director according to the schedule established in this chapter [~~, except as provided by implementation of the prioritization procedure for commercial hazardous waste management facility permit applications under §§281.30-281.32 of this title (relating to Applicability of Prioritization Procedure for Commercial Hazardous Waste; Definitions; Prioritization Process)~~].

§281.5. Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits.

(a) Except as provided by §305.48 of this title (relating to Additional Contents of Applications for Wastewater Discharge Permits), applications for wastewater discharge including subsurface area drip dispersal systems, underground injection, municipal solid waste, radioactive material, hazardous waste and industrial solid waste management permits must include:

(1) complete application form(s), signed and notarized, and appropriate copies provided;

(2) the payment of fees, if applicable;

(3) the verified legal status of the applicant;

(4) the signature of the applicant, checked against commission [~~agency~~] requirements;

(5) the attachment of technical reports and supporting data required by the application;

(6) a list of adjacent and potentially affected landowners and their addresses along with a map locating the property owned by these persons; and

(7) any other information as the executive director or the commission may reasonably require.

(b) A person submitting an application under subsection (a) of this section shall also submit an accurate duplicate of the application in electronic format.

§281.22. Referral to Commission.

(a) When administrative and technical review has been completed, the application shall be forwarded to the commission for filing and setting. For the purpose of providing adequate notice, the executive director shall include a recommendation to the commission of the area wherein the application, if granted, would have a potential impact, and a mailing list of persons who may be affected. For applications for radioactive material licenses, upon completion of technical review, the executive director shall forward the draft license, technical summary, compliance summary, and, if applicable, the environmental analysis to the chief clerk for public notice, or shall forward a recommendation to deny the license.

(b) For applications involving hazardous waste or an injection well, the commission shall not issue a permit before receiving a complete application for a permit. For underground injection wells, an application for a permit is complete when the executive director receives an application form and any supplemental information which are completed to his or her satisfaction. For underground injection wells, the completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. However, a facility may be eligible for a permit by rule or may be subject to an emergency order.

[~~(c) After an application under this section for a permit authorizing proposed commercial hazardous waste management units providing new or previously unpermitted capacity is determined by the executive director to be technically complete, the executive director shall prepare a summary of the most recent information on the need for the proposed processing or disposal technology, including the following information:~~]

[(1) estimated current statewide capacity for the technology;]

[(2) projected estimated statewide demand from the most recent Needs Assessment, as defined under §281.31 of this title (relating to Definitions);]

[(3) regional factors documented by the applicant if a regional need has been demonstrated; and]

[(4) any other waste management information deemed relevant by the executive director.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402102
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER A. APPLICATIONS PROCESSING

30 TAC §§281.30 - 281.32

Statutory Authority

The repeals are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Government Code, §2001.039 and 1 Texas Administrative Code, Chapter 91, Subchapter D, which authorize the commission as a state agency to review and consider for readoption each of its rules not later than the fourth anniversary of the date on which the rule takes effect and every four years after that date; Texas Health and Safety Code (THSC), §361.011, which establishes the commission's jurisdiction over the regulation, management, and control of municipal solid waste; THSC, §361.017, which establishes the commission's jurisdiction over the regulation, management, and regulation and control of industrial; solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act in accordance with the Administrative Procedures Act; THSC, §361.061, which authorizes the commission to issue permits authorizing facilities for the storage, processing and disposal of industrial solid waste; and THSC, §361.064, which requires the commission to prescribe the form of, requirements and procedures for a permit application for a solid waste facility. The proposed repeals would repeal three sections, §§281.30 - 281.32, that the commission identified as obsolete during the quadrennial rule review of Chapter 281 (44 TexReg 7717). These sections implemented THSC, §361.0232 and §361.0871(c) which were enacted by SB 1099, 72nd Texas legislature, 1991, and subsequently repealed by House Bill 7, 78th Texas Legislature, 2003, Third Called Session.

§281.30. Applicability of Prioritization Procedure for Commercial Hazardous Waste Management Facility Permit Applications.

§281.31. Definitions.

§281.32. Prioritization Process.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402103
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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CHAPTER 328. WASTE MINIMIZATION AND RECYCLING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §328.7; and new §§328.301 - 328.304.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes this rulemaking to implement House Bill (HB) 3060, 88th Texas Legislature, 2023. HB 3060 amended Texas Health and Safety Code (THSC), §361.0151 (Recycling), §361.421 (Definitions), and §361.427 (Specifications for Recycled Products); and added §361.4215 (Mass Balance Attribution). These statutory enactments require the commission to promulgate rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of "recycled material" and "recycled plastics" in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427.

As part of this rulemaking, the commission is proposing revisions to 30 Texas Administrative Code (TAC) Chapter 281, Applications Processing; Chapter 330, Municipal Solid Waste; and Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, concurrently in this issue of the *Texas Register.*

Section by Section Discussion

Subchapter B: Recycling, Reuse, and Materials Recovery Goals and Rates

§328.7, Definitions of Terms and Abbreviations

The commission proposes to amend §328.7(4) by replacing existing subparagraphs (A) - (H) with clauses (i) - (viii) in subparagraph (A) and adding clauses (ix) - (xii) to update the definition of "Recycled product" to reference current Environmental Protection Agency Comprehensive Procurement Guidelines and Recovered Materials Advisory Notices. The definition would also

be revised by reorganizing text in current subparagraph (H) under new subparagraph (B), by updating references to the Federal Trade Commission and the American Society for Testing Materials guidelines, and adding new subparagraph (C) to exclude a product sold as fuel from the definition. The amendments would implement HB 3060 which amended the definition of "Recycled product" in THSC, §361.421 by replacing the phrase "which meets the requirements for recycled material content as prescribed by" with the phrase "that is eligible to be considered a recycled product under," and by clarifying that the term does not include a product sold as fuel.

Subchapter L: Third-party Certification Systems for Mass Balance Attribution

§328.301, Purpose and Applicability

The commission proposes new §328.301 to establish the purpose and applicability of the subchapter.

§328.302, Definitions

The commission proposes new §328.302 to implement HB 3060 by adopting definitions of the terms "Recycled material," "Recycled plastics," and "Recycling" to implement the definitions in THSC, §361.421; and adopting definitions of the terms "Mass balance attribution," and "Third-party certification system" to implement §361.4215.

§328.303, Third-Party Certification Systems for Mass Balance Attribution

The commission proposes new §328.303 to implement THSC, §361.4215, as promulgated by HB 3060, which requires the commission to adopt rules to identify third-party mass balance attribution certification systems.

§328.304, Recycled Products

The commission proposes new §328.304 to implement THSC, §361.427, as amended by HB 3060. HB 3060 amended THSC, §361.427 by clarifying that the guidelines the commission establishes in rule for determining whether a product is eligible to be considered to be a recycled product must be based on the percent of the total content of a product that consists of recycled material or the portion determined to consist of recycled material according to a third-party certification system for mass balance attribution, and by clarifying that post-use polymers be included among recycled material in these guidelines.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no costs are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistency with state law, specifically HB 3060 from the 88th Regular Legislative Session (2023). The proposed rulemaking is not anticipated to result in costs to businesses and individuals. The proposed rulemaking provides an alternate approach to classify materials as "recycled products" (§328.303). The public may benefit from this rulemaking if more plastic wastes and potentially other materials are diverted from disposal because of increased recycling.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation to be consistent with state law, and it does not create, expand, repeal, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to promulgate rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of "recycled material" and

"recycled plastics" in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules would be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rulemaking would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements.

This proposed rulemaking does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property. The commission proposes this rulemaking for the purpose of promulgating rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of "recycled material" and "recycled plastics" in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). HB 3060 amended THSC, §361.0151 (Recycling), §361.421 (Definitions), and §361.427 (Specifications for Recycled Products); and added §361.4215 (Mass Balance Attribution). These statutory enactments require the commission promulgate rules to: 1) identify third-party certification systems for mass balance attribution that may be used for the purposes of the definitions of "recycled material" and "recycled plastics" in THSC, §361.421(6) and §361.421(6-a), respectively; and 2) establish guidelines by which a product is eligible to be considered a recycled product in accordance with THSC, §361.4215 and §361.427, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these proposed rule changes because the proposed rulemaking falls within the exception under Texas Government Code, §2007.003(b)(4).

Further, the commission determined that promulgation of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there would be no reduction in property value as a result of these rules. Therefore, the proposed rules would not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the rulemaking would not have direct or significant adverse effect on any coastal natural resource areas; would not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments would not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on June 20, 2024, at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by June 14, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral com-

ments during the hearing. Instructions for participating in the hearing will be sent on June 18, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_Zjg-1MDI0YmYtNGYwYi00ZWU4LTg5MWYtMDg3MTBiNTc1ODc4%40thread.v2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-135-330-WS. The comment period closes at 11:59 p.m. on June 25, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

SUBCHAPTER B. RECYCLING, REUSE, AND MATERIALS RECOVERY GOALS AND RATES

30 TAC §328.7

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; THSC, §361.0151, which requires the commission to base its goals or requirements for recycling or the use of recycled materials on the definitions and principles established by Subchapter N, THSC, §§361.421 through 361.431; THSC, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste; THSC, §361.041, which conditionally excludes post-use polymers and recoverable feedstock from classification as solid waste when are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials, valuable intermediate products or valuable final products, that include plastic monomers, chemicals, waxes, lubricants, and chemical feedstocks; THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; THSC, §361.4215 which authorizes the commission to identify third-party certification systems for mass balance attribution that may be used for the purposes of THSC, §361.421(6) and (6-a); THSC, §361.425 which provides that the commission shall adopt rules for administering governmental entity recycling programs; THSC, §361.426, which provides that the commission shall adopt rules for administering governmental entity preferences for recycled products; and THSC, §361.427 which authorizes the commission to promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product.

The proposed amendments to §328.302 would implement House Bill (HB) 3060, 88th Texas Legislature, 2023, by adding the definitions of "Recycled material," "Recycled plastics," and "Recycling" so that they are consistent with the definitions under THSC, §361.421. The proposed amendments to §328.302 would also implement HB 3060 by adding the definitions of "Recycled product" and "Third-party certification system" so that they are consistent with the definitions under THSC, §361.427 and §361.4215, respectively.

§328.7. Definitions of Terms and Abbreviations.

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

(1) Base year--The year 1990 used as a reference for recycling credit limits and for determining the amount of waste reduced at the source.

(2) Municipal sludge--Any solid, semisolid, or liquid waste generated from a municipal wastewater treatment plant, water supply treatment plant, or any other such waste having similar characteristics and effect, exclusive of the treated effluent from a wastewater treatment plant.

(3) Net tons of waste exported--The difference between that portion of the municipal waste stream generated within specific geographic boundaries and exported for disposal and that portion which is generated outside the boundaries and imported for disposal during a specified time period.

(4) Recycled product--

(A) A product which conforms to the minimum content of recycled material as specified in the Comprehensive Procurement Guidelines (CPG) and the Recovered Materials Advisory Notice (RMAN) published by the Environmental Protection Agency (EPA). The following is a list of the EPA guidelines:

(i) [~~(A)~~] CPG I, as amended through May 1, 1995, at 60 Federal Register (FR) 21370;

(ii) [~~(B)~~] RMAN I, as amended through May 1, 1995, at 60 FR 21386;

(iii) [~~(C)~~] RMAN (update), as amended through May 29, 1996, at 61 FR 26985;

(iv) [~~(D)~~] CPG II, as amended through November 13, 1997, at 62 FR 60962;

(v) [~~(E)~~] RMAN II, as amended through November 13, 1997, at 62 FR 60975;

(vi) [~~(F)~~] RMAN (update), as amended through June 8, 1998, at 63 FR 31214;

(vii) [~~(G)~~] CPG III, as amended through January 19, 2000, at 65 FR 3069;

(viii) [~~(H)~~] RMAN III, as amended through January 19, 2000, 65 FR 3082;

(ix) CPG IV, as amended through April 30, 2004, at 69 FR 24028;

(x) RMAN IV, as amended through April 30, 2004, at 69 FR 24039;

(xi) CPG V, as amended through September 14, 2007, at 72 FR 52475; and

(xii) RMAN V, as amended through September 14, 2007, at 72 FR 52561.

(B) For products for which no EPA guidelines exist, states may use guidelines from the Federal Trade Commission (FTC), or the American Society for Testing Materials (ASTM) for those products for which FTC or ASTM guidelines exist. The FTC guideline is found in 16 Code of Federal Regulations Part 260 and 16 CFR §260.13 [~~Code of Federal Regulations, Title 16, Volume 1, Parts 0 to 999, Revised January 1, 1999~~]. The ASTM guidelines are available online at ASTM's website, www.astm.org [~~guideline can be found in the 1999 Annual Book of ASTM Standards, Volumes 1-15~~].

(C) The term does not include a product sold as fuel.

(5) Recycling rate--That percentage of the municipal solid waste stream which is recovered or diverted for recycling.

(6) Source-reduced waste--A material or product, previously or typically entering the municipal solid waste stream, which has been prevented from entering that stream through source reduction.

(7) Source reduction--Any action that averts the discarding of products or materials by reducing material use or waste at the source, including redesigning products or packaging so that less material is used, voluntary or imposed behavioral changes in the use and reuse on site of materials or products, or increasing durability or reusability of materials or products.

(8) Total municipal solid waste stream--The sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(9) Waste stream reduction rate--That percentage of the municipal solid waste stream which is source-reduced or recovered or diverted for recycling.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402104
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER L. THIRD-PARTY CERTIFICATION SYSTEMS FOR MASS BALANCE ATTRIBUTION

30 TAC §§328.301 - 328.304

Statutory Authority

The new sections are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; the Administrative Procedures Act under Texas Government Code, Chapter 2001, which authorizes the commission as a state agency to adopt rules pursuant to the rulemaking process; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; THSC, §361.0151, which requires the commission to base its goals or requirements for recycling or the use of recycled materials on the definitions and principles established by Subchapter N, THSC, §§361.421 through 361.431; THSC, §361.022 and §361.023, which set public policy in the management of municipal solid waste and hazardous waste to include reuse or recycling of waste; THSC, §361.041, which conditionally excludes post-use polymers and recoverable feedstock from classification as solid waste when are converted using pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials, valuable intermediate products or valuable final products, that include plastic monomers, chemicals, waxes, lubricants, and chemical feedstocks; THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; THSC,, §361.4215 which authorizes the commission to identify third-party certification systems for mass balance attribution that may be used for the purposes of THSC, §361.421(6) and (6)(a); THSC, §361.425 which provides that the commission shall adopt rules for administering governmental entity recycling programs; THSC, §361.426, which provides that the commission shall adopt rules for administering gov-

ernmental entity preferences for recycled products; and THSC, §361.427 which authorizes the commission to promulgate rules to establish guidelines by which a product is eligible to be considered a recycled product.

The proposed new §328.302 would implement House Bill (HB) 3060, 88th Texas Legislature, 2023, by adding the definitions of "Recycled material." "Recycled plastics." And "Recycling." so that they are consistent with the definitions under THSC, §361.421. The proposed new §328.302 would also implement HB 3060 by adding the definitions of "Recycled product" and "Third-party certification system" so that they are consistent with the definitions under THSC, §361.427 and §361.4215, respectively.

§328.301. Purpose and Applicability.

(a) Purpose. The purpose of this subchapter is to:

(1) establish guidelines by which a product is eligible to be considered a recycled product;

(2) identify what is not eligible to be considered a recycled product; and

(3) identify third-party certification systems for mass balance attribution to certify:

(A) "Recycled material";

(B) "Recycled plastics"; and

(C) the portion of the total content of a product that consists of recycled material.

(b) Applicability. This subchapter is applicable to determining that a product is eligible to be considered a recycled product and third-party certification systems for mass balance attribution.

§328.302. Definitions.

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

(1) Mass balance attribution--A chain of custody accounting methodology with rules defined by a "Third-party certification system" that enables the attribution of "Recycled material" and "Recycled plastics," as those terms are defined in this section, to a "Recycled product," as described in §328.304 of this title (relating to Recycled Products).

(2) Recycled material--Materials, goods, or products that consist of recovered "Recyclable material," as defined in §330.3 of this title (relating to Definitions), materials derived from "Recoverable feedstocks" or "Post-use polymers" as those terms are defined in §330.3 of this title, or postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product or that are certified under a "Third-party certification system" for "Mass balance attribution," as those terms are defined in this section. The term includes "Recycled plastics" as defined in this section.

(3) Recycled plastics--Products that are produced from:

(A) mechanical recycling of post-use polymers; or

(B) nonmechanical recycling of "Recoverable feedstocks" or "Post-use polymers" as those terms are defined in §330.3 of this title, that are certified under a "Third-party certification system" for "Mass balance attribution," as those terms are defined in this section.

(4) Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials or feedstocks used in the manufacture of new products. The term includes the conversion of post-use polymers and recoverable feedstocks through pyrolysis, gasification, solvolysis, or depolymerization, but does not include waste-to-energy processes or incineration of plastics in an incinerator as defined in §335.1 of this title (relating to Definitions).

(5) Third-party certification system--An international or multinational third-party certification system that consists of a set of rules to implement "Mass balance attribution" approaches for attribution of "Recycled material" to a "Recycled product" as these terms are defined in this section.

§328.303. Third-Party Certification Systems for Mass Balance Attribution.

(a) The commission shall:

(1) maintain a list that identifies third-party certification systems for mass balance attribution; and

(2) provide a copy of that list to any person on request.

(b) Recyclable materials, as defined in §330.3 of this title (relating to Definitions), converted to fuels may not be considered for mass balance attribution for the purpose of this subchapter.

§328.304. Recycled Products.

(a) A product is eligible to be considered a recycled product when it conforms with the minimum content of recycled material as specified in the Comprehensive Procurement Guidelines (CPG) and the Recovered Materials Advisory Notice (RMAN) published by the Environmental Protection Agency (EPA) as described in §328.7(4) of this title (relating to Definitions of Terms and Abbreviations).

(b) Manufacturers may use a third-party certification system for mass balance attribution as identified under §328.303 of this title (relating to Third-party Certification Systems for Mass Balance Attribution) to identify the portion of the total content of a product which consists of recycled material and recycled plastics.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402105
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §§330.1, 330.3, 330.5, 330.7, 330.13, 330.15, 330.23, 330.57, 330.63, 330.65, 330.69, 330.103, 330.125, 330.147, 330.165, 330.171, 330.173, 330.217, 330.421, 330.545, 330.613, 330.615, 330.633, 330.635, 330.951, 330.953, 330.954, 330.959, 330.987, 330.991, 330.993, and 330.995.

Background and Summary of the Factual Basis for the Proposed Rules

Promulgation of House Bill 3060

The commission proposes this rulemaking to implement House Bill (HB) 3060, 88th Texas Legislature, 2023. HB 3060 amended Texas Health and Safety Code (THSC), §361.003 (Definitions), §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste), and §361.119 (Regulation of Certain Facilities as Solid Waste Facilities). These statutory enactments expanded existing conditional exclusions from the definition of solid waste and regulations applicable to owners and operators of facilities that convert plastics and certain other nonhazardous recyclable material through pyrolysis and gasification to include the processes of depolymerization and solvolysis. The conditional exclusion is dependent upon two conditions being satisfied: (1) an advanced recycling facility owner or operator must demonstrate that the primary function of the facility is to convert materials into products for subsequent beneficial use; and (2) that all solid waste generated from converting the materials is disposed of at a solid waste management facility authorized by the commission. The commission's proposed implementation of HB 3060 in Chapter 330 would only be applicable to material that would be classified as nonhazardous municipal solid waste if discarded. Implementation of provisions enacted by HB 3060 applicable to material that would be classified as industrial solid waste if discarded is proposed in Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste).

Electronic Application Submittal

The commission also proposes this rulemaking to implement Senate Bill (SB) 1397, 88th Texas Legislature, 2023. SB 1397 enacted Texas Water Code (TWC), §5.1734 which requires the commission to post on its website an electronic copy of an administratively complete permit application and subsequent revisions to the application. The commission proposes to amend §330.57 to reduce the number of paper applications an applicant is required to submit from four to two, and replace the requirement for the applicant to post the initial application on a publicly accessible website with the requirement that the commission will post an electronic copy of the application on the commission's website.

Rule Citation Corrections

This rulemaking would make minor and non-substantive updates to incorrect rule citations or references.

Correcting use of and reference to Conditionally Exempt Small Quantity Generator which has changed to Very Small Quantity Generator

The commission proposes to correct the name of the lowest tier hazardous waste generator category which the Environmental Protection Agency (EPA) changed from "conditionally exempt small quantity generator" (CESQG) to "very small quantity generator" (VSQG) as part of the Hazardous Waste Generator Improvements Rule promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85732). The commission adopted the Generator Improvements Rule in Chapter 335 of this title effective February 3, 2022. The Generator Improvements Rule also introduced alternative standards applicable to VSQGs who generate greater amounts of hazardous waste during an "episodic event" as defined in 40 Code of Federal Regulations (CFR) Part 262, Subpart L. The commission adopted by reference in 30 Texas Administrative Code (TAC) §335.60 the alternative standards applicable to VSQGs who generate hazardous waste during an "episodic event" (47 TexReg 318). Under the new conditional exclusion, a VSQG may generate greater than a VSQG quantity of hazardous waste in a calendar month during an episodic event, manage the hazardous waste as regulated hazardous waste, and avoid being up-classified to a small quantity generator or a large quantity generator by complying with all of the conditions for exclusion for an episodic event which among other things include consigning the hazardous waste to be transported by a registered hazardous waste transporter accompanied by a manifest to an authorized hazardous waste facility. A VSQG may qualify for up to two episodic events per year. A second episodic event must be approved by the executive director. If a VSQG complies with the conditional exclusion for an episodic event, hazardous waste generated during a month in which a VSQG has an episodic event is classified as regulated hazardous waste and is not authorized to be disposed of in any Type of Class I Municipal Solid Waste (MSW) landfill. Additionally, delivery to a Type I MSW landfill of hazardous waste generated during a month in which a VSQG has an episodic event is prohibited for the landfill operator, the generator, and the transporter, would defeat the VSQG's conditional exclusion, and result in the VSQG being up-classified to a small quantity generator or a large quantity generator.

As part of this rulemaking, the commission is also proposing amendments of 30 TAC Chapter 281 (Applications Processing); Chapter 328 (Waste Minimization and Recycling); and Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste), concurrently in this issue of the *Texas Register.*

Section by Section Discussion

Subchapter A: General Information

§330.1, Purpose and Applicability

The commission proposes to amend §330.1(c) by revising the 30 TAC §312.121 title to read "Purpose and Applicability." The title was revised in a separate rulemaking (45 TexReg 2542).

§330.3, Definitions

The commission proposes to amend §330.3 to add four new definitions as paragraphs in alphabetical order, remove two definition paragraphs, and renumber the subsequent definition paragraphs accordingly to account for these amendments.

The commission proposes §330.3(5) to add the definition of "Advanced recycling facility." This amendment would implement HB 3060 by adding the definition of "Advanced recycling facility" to implement the new definition of "Advanced recycling facility" in THSC, §361.003.

The commission proposes to amend renumbered §330.3(11)(A) and (B), the definition of "Asbestos-containing materials," by replacing the citation to Appendix A, Subpart F in 40 CFR Part 763 with a reference to Appendix E, Subpart E in 40 CFR Part 763. The appendix was moved in a federal rulemaking (60 FR 31917).

The commission proposes to amend renumbered §330.3(33), the definition of "Conditionally exempt small-quantity generator," by replacing the definition with a reference to the definition of "Very small quantity generator" in this section. EPA changed the name of the lowest tier hazardous waste generator category from "conditionally exempt small quantity generator" to "very small quantity generator" in the Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016 (81 FR 85732). This change would be consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318). Additional information is available under the Background and Summary of the Factual Basis for the Proposed Rules.

The commission proposes §330.3(39) to add the definition of "Depolymerization." This amendment would implement HB 3060 by adding the definition of "Depolymerization" to implement with the definition of "Depolymerization" in THSC, §361.003.

The commission proposes to amend renumbered §330.3(60) to revise the definition of "Gasification" to implement the definition of "Gasification" in THSC, §361.003, as amended by HB 3060. The definition of "Gasification" in §361.003 was amended to remove crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or other fuels from the list of valuable raw materials, valuable intermediate products, and valuable final products that the process of gasification may convert recoverable feedstocks into.

The commission proposes to delete existing §330.3(59) to remove the definition of "Gasification facility." This amendment would implement HB 3060 which removed the definition of "Gasification facility" from THSC, §361.003.

The commission proposes to amend renumbered §330.3(93), the definition of "Municipal solid waste landfill unit," by replacing the reference to a conditionally exempt small-quantity generator with hazardous waste generated by a very small quantity generator not experiencing an episodic event. This change is necessary to conform with the commission's adoption of EPA's Hazardous Waste Generator Improvements Rule promulgated in the *Federal Register* on November 28, 2016, (81 FR 85732) in Chapter 335 of this title (47 TexReg 318). Additional information is available under the Background and Summary of the Factual Basis for the Proposed Rules.

The commission proposes to amend renumbered §330.3(118) to revise the definition of "Post-use polymers" to implement the definition of "Post-use polymers" in THSC, §361.003, as amended by HB 3060, and clarify that post-use polymers would be classified as nonhazardous waste if discarded. HB 3060 amended the definition of "Post-use polymers" in §361.003 by: replacing the term plastic polymers with the term plastics; adding agricultural, preconsumer recovered materials and postconsumer materials to the sources of plastics that post-use polymers may be derived from; removing a list of wastes, medical waste, electronic waste, tires, and construction or demolition debris, that when mixed with used polymers would not meet the definition of post-use polymers; identifying that post-use polymers are sorted from solid waste and other regulated waste and may contain residual amounts of organic material; specifying that plastics mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility do not meet the definition of post-use polymers; identifying that post-use polymers are used or intended for use as a feedstock or for the production of feedstocks, raw materials, intermediate products or final products using advanced recycling; and adding that post-use polymers are processed or held prior to processing at an advanced recycling facility.

The commission proposes to amend renumbered §330.3(121) to revise the definition of "Processing" consistent with the definition of "Processing" in THSC, §361.003, as amended by HB 3060. The definition of "Processing" in §361.003 was amended to except two additional activities, "Solvolysis" and "Depolymerization," from the definition.

The commission proposes to amend renumbered §330.3(124) to revise the definition of "Pyrolysis" to implement the definition of "Pyrolysis" in THSC, §361.003, as amended by HB 3060. The definition of "Pyrolysis" in §361.003 was amended to clarify which materials are included and excluded in the list of valuable raw materials, valuable intermediate products, and valuable final products that the process of pyrolysis converts post-use polymers into. The amended definition clarified this list by adding the term "polymers," and by removing a comma between the terms "plastic" and "monomer" which omitted "plastic" from the list; and by removing "crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel" from the list.

The commission proposes to delete existing §330.3(124) to remove the definition of "Pyrolysis facility." This amendment would implement HB 3060 which removed the definition of "Pyrolysis facility" from THSC, §361.003.

The commission proposes to amend §330.3(127) to revise the definition of "Recoverable feedstock" to implement the definition of "Recoverable feedstock" in THSC, §361.003, as amended by HB 3060, and clarify that recoverable feedstock may be derived from recoverable nonhazardous waste, including nonhazardous municipal solid waste and other post-industrial nonhazardous waste. The definition of "Recoverable feedstock" in §361.003 was amended to clarify that recoverable feedstock may be processed to be used as feedstock in an advanced recycling facility or through gasification and removing the term gasification facility, excluding materials and post-industrial wastes containing post-use polymers that have been processed into a fuel, and including post-industrial waste the commission or EPA has determined are feedstocks and not solid waste.

The commission proposes to amend §330.3(128) to revise the definition of "Recyclable material" to implement the definition of "Recyclable material" in THSC, §361.421, as amended by HB 3060.

The commission proposes to amend §330.3(129) to revise the definition of "Recycling" to implement the definition of "Recycling" in THSC, §361.421, as amended by HB 3060. The definition of "Recycling" in §361.421 was revised by adding the terms "feedstocks" to the materials used in the "manufacture" of new products, excluding applicability to incineration of plastics or waste-to-energy processes, and by adding the conversion of post-use polymers and recoverable feedstocks through solvolysis or depolymerization.

The commission proposes to amend §330.3(133), the definition of "Regulated hazardous waste," by replacing the reference to a conditionally exempt small-quantity generator with a very small quantity generator not experiencing an episodic event. This change is necessary to conform with EPA's Hazardous Waste Generator Improvements Rule and would be consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 of this title (47 TexReg 318). EPA introduced a new conditional exclusion applicable to the lowest and middle tier of hazardous waste generator categories, very small quantity generator (VSQG) and small quantity generator (SQG). The new conditional exemption for episodic events allows hazardous waste generators who comply with the conjunctive requirements of the conditional episodic exclusion to avoid being up-classified as the next highest category of hazardous waste generator. A VSQG and a SQG who manage hazardous waste generated during an episodic event must temporarily comply with the conditions for exclusion for the generator category that would be applicable if the generator were not taking advantage of the episodic exclusion. Such conditions for exclusion include packaging, placarding, and transporting the hazardous waste to an authorized hazardous

waste facility accompanied by a uniform hazardous waste manifest. Therefore, the exception from being classified as regulated hazardous waste that was previously applicable to hazardous waste generated by a conditionally exempt small quantity generator (CESQG) is now only applicable to hazardous waste generated by a VSQG during a calendar month during in which the VSQG did not generate hazardous waste from an episodic event. Hazardous waste generated by a VSQG during a calendar month that the VSQG generated hazardous waste from an episodic event must be managed as regulated hazardous waste and is not eligible to be managed as special waste, or to be disposed at a Type I MSW landfill authorized to accept hazardous waste as special waste, or a Type I AE MSW landfill authorized to accept hazardous waste as special waste.

The commission proposes to amend §330.3(151)(D) to revise the definition of "Solid waste" to implement revisions to the definition of "Solid waste" in THSC, §361.003, as amended by HB 3060. HB 3060 expanded the existing conditional exclusions from the definition of "Solid waste" applicable to post-use polymers and recovered feedstocks processed through pyrolysis and gasification that are not classified as hazardous waste to also include post-use polymers and recovered feedstocks processed through solvolysis or depolymerization that are not classified as hazardous waste. The conditional exclusion requires that post-use polymers and recovered feedstocks to be converted into products for subsequent beneficial reuse and that solid waste generated from converting the materials be disposed of in a solid waste management facility authorized by the commission under THSC, Chapter 361.

The commission proposes §330.3(153) to add the definition of "Solvolysis." This amendment would implement HB 3060 by adding a new definition of "Solvolysis" to implement the new definition of "Solvolysis" in THSC, §361.003. The proposed definition would also implement HB 3060 by clarifying that the conditional exclusions from classification and regulation as solid waste applicable to plastics recycling is not applicable to a solvolysis manufacturing process that produces fuel products.

The commission proposes to amend renumbered §330.3(155), the definition of "Special Waste," by replacing the reference in subparagraph (A) to conditionally exempt small-quantity generators with very small quantity generators not experiencing an episodic event. This change is necessary to conform with the commission's adoption of EPA's Hazardous Waste Generator Improvements Rule in Chapter 335 of this title (47 TexReg 318). Additional information is available under the Background and Summary for the Proposed rules.

The commission proposes §330.3(177) to add the definition of "Very small quantity generator" consistent with the commission's adoption in 30 TAC §335.1 of EPA's new term describing the lowest tier hazardous waste generator category (47 TexReg 318). EPA changed the name of the lowest tier hazardous waste generator category from "conditionally exempt small quantity generator" in 40 CFR §260.10 (81 FR 85732). Additional information is available under the Background and Summary for the Proposed rules.

§330.5, Classification of Municipal Solid Waste Facilities

The commission proposes to amend §330.5(a) and (a)(2) by replacing the reference to "conditionally exempt small quantity generators" in subsection (a), and "conditionally exempt small-quantity generator" in paragraph (a)(2) with "very small quantity generators" and "very small quantity generator" respectively. This change is necessary to conform with

EPA's Hazardous Waste Generator Improvements Rule and would be consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318). Additional information is available under the Background and Summary for the Proposed rules.

The commission proposes to amend §330.5(a)(1) - (3) by removing the reference to Chapter 330, Subchapter F. Subchapter F was determined to be obsolete in the Chapter 330 Quadrennial Rules Review (44 TexReg 6383) and subsequently repealed in a separate rulemaking (45 TexReg 7605). MSW facilities remain subject to National Environmental Laboratory Accreditation Conference (NELAC) standards.

The commission proposes to amend §330.5(a)(2) by removing §330.467 from the list of applicable design and operational standards and properly listing the section titles. Section 330.467 does not exist and the inclusion of the section in the list of applicable design and operational standards was a typographical error.

The commission proposes to amend §330.5(a)(7) by replacing the reference to §330.9(k) with §330.9(j). Subsection (k) was relettered in a separate rulemaking (41 TexReg 3735).

§330.7, Permit Required

The commission proposes to amend §330.7(e)(2) by revising the title for 30 TAC §106.494 to read "Non-commercial Incinerators and Crematories." The title was revised in a separate rulemaking (43 TexReg 4758).

The commission proposes to amend §330.7(i)(1)(E)(i) by replacing the reference to 25 TAC Chapter 295, Subchapter C with 25 TAC Chapter 296. The provisions from Chapter 295, Subchapter C were moved to Chapter 296 in a separate rulemaking (46 TexReg 3880).

§330.13, Waste Management Activities Exempt from Permitting, Registration, or Notification

The commission proposes to amend §330.13(g) by replacing "a gasification or pyrolysis facility" with "an advanced recycling facility," updating the conditions for exclusion in §330.13(g)(1) and (2) by removing the requirement that the facility must keep records on-site to demonstrate that the primary purpose of the facility is to convert materials into products "that have a resale value greater than the cost of converting the materials for beneficial use," adding that the facility must keep records on-site to demonstrate that the primary purpose of the facility is to convert materials "into products for beneficial use" and that "all solid waste generated from converting materials has been disposed of at a disposal facility authorized by the commission to accept and dispose of the solid waste, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner," and adding a list of information that must be included in such documentation. These revisions would implement revised THSC, §361.003 and §361.119(c-1), as amended by HB 3060.

§330.15, General Prohibitions

The commission proposes to amend §330.15(e)(5) by removing subsection (f) from the 40 CFR §82.156 reference. The federal regulations regarding air conditioning and refrigeration equipment were revised in a federal rulemaking (81 FR 82272).

§330.23, Relationships with Other Governmental Entities

The commission proposes to amend §330.23(c) by replacing the reference to FAA Advisory Circular 150/5200.33A with the most recent version of the document, FAA Advisory Circular 150/5200-33C, "Hazardous Wildlife Attractants on or near Airports," February 21, 2020.

Subchapter B: Permit and Registration Application Procedures

§330.57, Permit and Registration Applications for Municipal Solid Waste Facilities

The commission proposes to amend §330.57(e)(1) by replacing the requirement that an applicant provide four initial copies of an application with a requirement that an applicant provide two paper copies and one accurate duplicate in electronic format, and by removing the phrase "up to 18." Additional information about the proposed changes to §330.57 is available under the Background and Summary of the Factual Basis for the Proposed Rules.

The commission proposes new §330.57(e)(2) to require the electronic copy of the application to meet the formatting and drawing requirements of the paper copy. The commission proposes to renumber the subsequent paragraphs accordingly to account for the added paragraph.

The commission proposes to amend §330.57(g)(1) by clarifying paper applications shall be submitted in binders.

The commission proposes to amend renumbered §330.57(g)(9) by replacing the sentence "Dividers and tabs are encouraged" with the sentence "Use dividers and tabs."

The commission proposes to delete §330.57(i)(1) and renumber the subsequent paragraphs accordingly to account for the deleted paragraph, including the replacement of paragraphs "(3), (4), and (5)" with "(2), (3), and (4)" in renumbered §330.57(i)(5). Additionally, the exception applicable to Type IAE and Type IVAE landfill facilities would be removed under the proposed requirement and these facilities will be required to submit an accurate duplicate of an application in an electronic format.

The commission proposes to amend renumbered §330.57(i)(1) by adding that the commission will post the electronic accurate duplicate of applications on its website and removing the requirement that applicants post their identity and web address where the application is available. The commission's implementation of SB 1397 will replace the requirement that owners and operators post applications on a publicly accessible internet website.

The commission proposes to amend renumbered §330.57(i)(4) by replacing the reference to 30 TAC §39.405(h)(2) with §39.426. The provisions from §39.405(h) were moved to §39.426 in a separate rulemaking (46 TexReg 5784).

§330.63, Contents of Part III of the Application

The commission proposes to amend §330.63(e)(3)(A) by replacing the reference to §330.63(e)(2) with a reference to §330.63(e)(1)(B), the location of the provision related to regional geologic units. The reference to §330.63(e)(2) was made in error.

§330.65, Contents of Part IV of the Application

The commission proposes to amend §330.65(b) by replacing the reference to 30 TAC §90.32 with §90.30, replacing the reference to 30 TAC §90.36 with §90.31, and removing the reference to the National Environmental Performance Track (NEPT). The provisions from §90.32 and §90.36 were moved in a separate rulemaking (37 TexReg 5310), and the NEPT was terminated May 14, 2009.

§330.69, Public Notice for Registrations

The commission proposes to amend §330.69(b)(3) by replacing the reference to 30 TAC §39.405(h)(2) with §39.426. The provisions from §39.405(h) were moved to §39.426 in a separate rulemaking (46 TexReg 5784).

Subchapter C: Municipal Solid Waste Collection and Transportation

§330.103, Collection and Transportation Requirements

The commission proposes to amend §330.103(b)(4) by revising the 30 TAC Chapter 312, Subchapter B title to read "Land Application And Storage of Biosolids and Domestic Septage." The title was revised in a separate rulemaking (45 TexReg 5784).

Subchapter D: Operational Standards for Municipal Solid Waste Landfill Facilities

§330.125, Recordkeeping Requirements

The commission proposes to amend §330.125(h) by replacing the reference to 30 TAC §305.70(k) with §305.70(l) because annual waste acceptance rate exceedance is not listed in §305.70(k). Public notice will continue to be required for modifications to increase waste acceptance rates.

§330.147, Disposal of Large Items

The commission proposes to amend §330.147(c) by removing subsection (f) from the 40 CFR §82.156 reference. The federal regulations regarding air conditioning and refrigeration equipment were revised in a federal rulemaking (81 FR 82272).

§330.165, Landfill Cover

The commission proposes to amend §330.165(d) by replacing the reference to 30 TAC §305.70(m) with §305.62(k). The provisions from §305.70(m) were moved to §305.62(k) in a separate rulemaking (33 TexReg 4157).

§330.171, Disposal of Special Wastes

The commission proposes to amend §330.171(b)(2) by replacing "plan" with "Special Waste Management Plan" for clarity.

The commission proposes to amend §330.171(b)(2)(B) by replacing the reference to 30 TAC §335.6(c) with §335.504, the accurate location for the hazardous waste determination requirement.

The commission proposes to amend §330.171(c)(6) by replacing the reference to a "conditionally exempt small quantity generator" with "very small quantity generator" and by clarifying that the ability to accept hazardous waste is not applicable to regulated hazardous waste including hazardous waste generated by a VSQG during a calendar month in which the VSQG generated hazardous waste during an episodic event. This change is necessary to conform with EPA's Hazardous Waste Generator Improvements Rule and would be consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318). Additional information about this proposed amendment is available under the Background and Summary for the Proposed rules.

§330.173, Disposal of Industrial Wastes

The commission proposes to amend §330.173(b) by revising the 30 TAC §335.10 title to read "Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste." The title was revised in a separate rulemaking (45 TexReg 3780).

The commission proposes to amend §330.173(g) by deleting an outdated term "waste-shipping control ticket," and by requiring a facility operator to comply with the manifest requirements in §335.10(c) of this tile (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste) and in §335.15(1) and (3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Treatment, Storage, or Disposal Facilities). The commission has updated Class 1 industrial waste manifesting requirements to reflect current federal electronic manifest system and user fees requirements applicable when a Uniform Hazardous Waste Manifest accompanies shipments of state-regulated waste (47 TexReg 318).

Subchapter E: Operational Standards for Municipal Solid Waste Storage and Processing Units

§330.217, Pre-Operation Notice

The commission proposes to amend §330.217(a)(1) by replacing the reference to §330.207(h) with §330.207(g). This amendment would correct a typographical error.

Subchapter J: Groundwater Monitoring and Corrective Action

§330.421, Monitor Well Construction Specifications

The commission proposes to amend §330.421(a)(2)(A) by replacing the reference to "National Science Foundation-certified polyvinyl chloride" with "National Sanitation Foundation-certified polyvinyl chloride." This amendment would correct a typographical error.

The commission proposes to amend §330.421(g) by replacing the reference to 16 TAC §76.702 with 16 TAC §76.72, replacing the reference to 16 TAC §76.1004 with 16 TAC §76.104, and identifying the §76.104 title as "Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Injurious Water Zones." These revisions were made in a separate rulemaking (38 TexReg 1142).

Subchapter M: Location Restrictions

§330.545, Airport Safety

The commission proposes to amend §330.545(d) by removing the statement "Guidelines regarding location of landfills near airports can be found in Federal Aviation Administration Order 5200.5(A), January 31, 1990." This amendment would remove a reference to obsolete guidance cancelled on July 1, 1997.

Subchapter N: Landfill Mining

§330.613, Sampling and Analysis Requirements for Final Soil Product

The commission proposes to amend §330.613(c), (f), and (h) by replacing the reference to Chapter 330, Subchapter F with a reference to the NELAC standards. Subchapter F was repealed in a separate rulemaking (45 TexReg 7605), and MSW facilities remain subject to NELAC standards.

§330.615, Final Soil Product Grades and Allowable Uses

The commission proposes to amend §330.615(b) by replacing the reference to Chapter 330, Subchapter F with a reference to the NELAC standards. Subchapter F was repealed in a separate rulemaking (45 TexReg 7605), and MSW facilities remain subject to NELAC standards.

Subchapter O: Regional and Local Solid Waste Management Planning and Financial Assistance General Provisions

§330.633, Definitions of Terms and Abbreviations

The commission proposes to amend §330.633(3) by replacing the reference to a "conditionally exempt small-quantity generator" with "very small quantity generator." This change is necessary to conform with EPA's Hazardous Waste Generator Improvements Rule. Additional information about this proposed amendment is available under the Background and Summary of the Factual Basis for the Proposed Rules.

§330.635, Regional and Local Solid Waste Management Plan Requirements

The commission proposes to amend §330.635(a)(2)(C)(v) by replacing the reference to Texas Health and Safety Code (THSC) §363.0635 with §363.064(10). The reference to THSC §363.0635 was a typographical error.

Subchapter T: Use of Land Over Closed Municipal Solid Waste Landfills

§330.951, Definitions

The commission proposes to amend §330.951(8) by replacing the reference to a "conditionally exempt small-quantity generator" with "very small quantity generator." This change is necessary to conform with EPA's Hazardous Waste Generator Improvements Rule. Additional information regarding this proposed amendment is available under the Background and Summary of the Factual Basis for the Proposed Rules.

The commission proposes to further amend §330.951(8) by replacing "§330.3 (relating to Definitions)" with "40 Code of Federal Regulations §257.2." The reference to §330.3 was a typographical error.

§330.953, Soil Test Required before Development

The commission proposes to amend §330.953(e) by replacing the reference to 22 TAC §131.166 with 22 TAC §137.33. The provisions regarding sealing procedures were reorganized to 22 TAC Chapter 137 in a separate rulemaking (29 TexReg 4878).

§330.954, Development Permit, Development Authorization, and Registration Requirements, Procedures, and Processing

The commission proposes to amend §330.954(c)(1), (2), and (3) by replacing the reference to 30 TAC §305.70(j)(6) with §305.70(k)(12). Section 305.70 was revised in a separate rulemaking (33 TexReg 4157).

§330.959, Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit

The commission proposes to amend §330.959(b)(1) by replacing the reference to §330.957(e) with §330.957(h). The reference to §330.957(e) was a typographical error.

Subchapter U: Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations

§330.987, Certification Requirements

The commission proposes to amend §330.987(e) by removing paragraph (1) and renumbering the remaining paragraphs. The

provisions from §116.621 were replaced with Chapter 330, Subchapter U in a separate rulemaking (31 TexReg 2490).

§330.991, Technical and Operational Requirements for all Municipal Solid Waste Landfill Sites

The commission proposes to amend §330.991(a)(11)(E) by revising the 30 TAC §116.617 title to read "State Pollution Control Project Standard Permit." The title was revised in a separate rulemaking (31 TexReg 516).

§330.993, Additional Requirements for Owners or Operators of Category 3 Municipal Solid Waste Landfills

The commission proposes to amend §330.993(a)(2) by replacing the reference to 40 CFR §60.752(2)(b)(v) with §60.752(b)(2)(v). The reference to §60. 752(2)(b)(v) was a typographical error.

§330.995, Recordkeeping and Reporting Requirements for all Municipal Solid Waste Landfill Sites

The commission proposes to amend §330.995(d) by replacing the reference to 40 CFR §63.1980 with §63.1981. The provisions from §63.1980 were replaced by §63.1981 in a separate rulemaking (85 FR 17261).

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no costs are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be consistency and compliance with state law, specifically SB 1397 and HB 3060 from the 88th Regular Legislative Session (2023). Additionally, the public will benefit from the update of citations or references of other federal and state rules.

The proposed rulemaking is not anticipated to result in costs to businesses and individuals. Entities that submit applications for municipal solid waste permits will have reduced costs associated with printing and submitting paper applications and will no longer have any costs associated with posting applications on publicly accessible internet websites (§330.57). These cost reductions are expected to be minimal.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation to be consistent with state law, and it does not create, expand, repeal, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to add, remove, revise, and renumber definitions in Chapter 330 so that they are consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318) and the definitions in THSC Chapter 361 and to make minor and non-substantive updates to incorrect rule citations or references in Chapter 330. Therefore, the intent is not to protect the environment or reduce risks to human health from environmental exposure.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements.

This proposed rulemaking does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property. The commission proposes this rulemaking for the purpose of adding, removing, revising, and renumbering definitions in Chapter 330 so that they are consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318) and the definitions in THSC Chapter 361 and making minor and non-substantive updates to incorrect rule citations or references in Chapter 330.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in Texas Government Code, §2007.003(b)(5). The proposed rules would add, remove, revise, and renumber definitions in Chapter 330 so that they are consistent with the commission's adoption of the Hazardous Waste Generator Improvements Rule in Chapter 335 (47 TexReg 318) and the definitions in THSC Chapter 361 and to make minor and non-substantive updates to incorrect rule citations or references in Chapter 330., which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these proposed rule changes because the proposed rulemaking falls within the exception under Texas Government Code, §2007.003(b)(5).

Further, the commission determined that promulgation of these proposed rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. Therefore, the proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the rulemaking will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on June 20, 2024, at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by June 14, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on June 18, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_Zjg1MDI0YmYtNGYwYi00ZWU4LTg5MWYtMDg3MTBiNTc1ODc4%40thread.v2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-135-330-WS. The comment period closes at 11:59 p.m. on June 25, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §§330.1, 330.3, 330.5, 330.7, 330.13, 330.15, 330.23

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The proposed amendments implement House Bill 3060, 88th Texas Legislature, 2023.

§330.1. Purpose and Applicability.

(a) The regulations promulgated in this chapter cover aspects of municipal solid waste (MSW) management and air emissions from MSW landfills and transfer stations under the authority of the commission and are based primarily on the stated purpose of Texas Health and Safety Code, Chapter 361 and Chapter 382. The provisions of this chapter apply to any person as defined in §3.2 of this title (relating to Definitions) involved in any aspect of the management and control of MSW and MSW facilities including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person that by contract, agreement, or otherwise arranges to process, store, or dispose of, or arranges with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity. The comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) are effective 20 days after they are filed with the Office of the Secretary of State.

(1) Permits and registrations, issued by the commission and it predecessors, that existed before the 2006 Revisions became effective, remain valid until suspended or revoked except as expressly provided otherwise in this chapter. Facilities may operate under existing permits and registrations subject to: requirements in the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require revisions to existing authorizations; and those requirements mandated by the United States Environmental Protection Agency in 40 Code of Federal Regulations (CFR) Parts 257 and 258, as amended, which implement certain requirements of Resource Conservation and Recovery Act, Subtitle D. For those federally mandated requirements and the equivalent state requirements, the effective dates listed in 40 CFR Parts 257 and 258, as amended, shall apply. For those federally mandated requirements, the permittee is under an obligation to apply for a permit change in accordance with §305.62 of this title (relating to Amendments) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the required standard. The application shall be submitted no later than six months from the effective date of the required standard.

(2) Applications for new permits and major amendments to existing permits that are administratively complete and registration applications for which the executive director has completed a technical review, as of the effective date of the 2006 Revisions, shall be considered under the former rules of this chapter unless the applicant elects otherwise. Existing authorizations are subject to the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require modifications of existing authorizations regardless of whether a major amendment is being considered for the same facility under the former rules. For new permits and major amendments to increase solid waste disposal capacity, only complete applications (Parts I - IV), which are submitted and declared administratively complete before the effective date of the 2006 Revisions, may be considered under existing Chapter 330 rules. Such applications are not subject to §305.127(4)(B) of this title (relating to Conditions to be Determined for Individual Permits) and the owner or operator must submit the modifications required by the 2006 Revisions within one year after the commission's decision on the application has become final and appealable, unless a longer period of time is specified in the rules.

(3) Authorizations, other than permits and registrations, that existed before the 2006 Revisions became effective shall comply with the 2006 Revisions within 120 days of the 2006 Revisions becoming effective unless expressly provided otherwise in this chapter. These authorizations include notifications, exemptions, permits by rule, and registrations by rule.

(4) Authorizations, other than permits and registrations, that had not been claimed or did not exist before the 2006 Revisions became effective shall comply with the 2006 Revisions.

(5) Applications for modifications or for amendments that do not increase solid waste disposal capacity that are filed before the 2006 Revisions become effective, or filed within 180 days after the 2006 Revisions become effective, are subject to the former rules. Such applications are not subject to §305.127(4)(B) of this title, and the owner or operator must submit the modifications required by the 2006 Revisions within 180 days after the effective date of the 2006 Revisions, unless a longer period of time is specified in the rules.

(b) The commission at its discretion, may include one or more different types of units in a single permit if the units are located at the same facility with the exception of a facility authorized by an MSW permit by rule. Persons shall seek separate authorizations at a facility that qualifies for an MSW permit by rule.

(c) This chapter does not apply to any person that prepares sewage sludge or domestic septage, fires sewage sludge in a sewage sludge incinerator, applies sewage sludge or domestic septage to the land, or to the owner/operator of a surface disposal site as applicable under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); to sewage sludge or domestic septage applied to the land or placed on a surface disposal site, to sewage sludge fired in a sewage sludge incinerator, to land where sewage sludge or domestic

septage is applied to a surface disposal site or to a sewage sludge incinerator as applicable under Chapter 312 of this title; any person that transports sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste; to any person that applies water treatment sludge for disposal in a land application unit, as defined in §312.121 of this title (relating to Purpose and Applicability) [(~~relating to Purpose, Scope, and Standards~~)] to water treatment sludge that is disposed of in a land application unit, as defined in §312.121 of this title. Persons managing such wastes shall comply with the requirements of Chapter 312 of this title.

(d) This chapter does not apply to any person that composts MSW in accordance with the requirements of Chapter 332 of this title (relating to Composting), except for those persons that must apply for a permit in accordance with §332.3(a) of this title (relating to Applicability). Those persons that must submit a permit application for a compost operation shall follow the applicable requirements of Subchapter B of this chapter (relating to Permit and Registration Application Procedures).

(e) This chapter does not apply to any person that manages medical waste in accordance with the requirements of Chapter 326 of this title (relating to Medical Waste Management). Persons disposing of medical waste at municipal solid waste landfills shall comply with applicable provisions of this chapter. The medical waste provisions being relocated from this chapter to Chapter 326 of this title will remain in effect and continue to apply to permits, registrations, and registrations by rule issued under this chapter until the later of two years from the effective date of Chapter 326 of this title or until a final decision is made on a timely request for an authorization to be updated to comply with Chapter 326 of this title. Permits, registrations, and registrations by rule issued under the existing Chapter 330 rules must be updated by filing a new application within two years or upon renewal to comply with Chapter 326 of this title. The executive director is authorized to extend this deadline based on an authorized entity making a request supported by good cause. A person who has an application for the management of medical waste pending before the effective date of Chapter 326 of this title shall be considered under the former Chapter 330 rules unless the applicant elects otherwise.

§330.3. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) 100-year flood--A flood that has a 1.0% or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(2) Active disposal area--All landfill working faces and areas covered with daily and alternative daily cover.

(3) Active life--The period of operation beginning with the initial receipt of solid waste and ending at certification/completion of closure activities in accordance with §§330.451, 330.453, 330.455, 330.457, and 330.459 of this title (relating to Applicability; Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites; Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993; Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993; and Closure Requirements for Municipal Solid Waste Storage and Processing Units).

(4) Active portion--That part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with §§330.451, 330.453, 330.455, 330.457, and 330.459 of this title (relating to Applicability; Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites; Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993; Closure Requirements for Municipal Solid Waste Landfill Units that Receive Waste on or after October 9, 1993; and Closure Requirements for Municipal Solid Waste Storage and Processing Units).

(5) Advanced recycling facility--A manufacturing facility that receives, stores, and converts post-use polymers and recoverable feedstocks using advanced recycling technologies and processes including pyrolysis, gasification, solvolysis, and depolymerization. An advanced recycling facility is not a solid waste facility, final disposal facility, waste-to-energy facility, or incinerator.

(6) [(~~5~~)] Airport--A public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(7) [(~~6~~)] Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste from its point of generation to a storage or processing tank(s), between solid waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(8) [(~~7~~)] Animal crematory--A facility for the incineration of animal remains that meets the following criteria:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(9) [(~~8~~)] Aquifer--A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

(10) [(~~9~~)] Areas susceptible to mass movements--Areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the municipal solid waste landfill unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluctuation, block sliding, and rock fall.

(11) [(~~10~~)] Asbestos-containing materials--Include the following.

(A) Category I nonfriable asbestos-containing material means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1.0% asbestos as determined using the method specified in Appendix E to Subpart E of [~~Appendix A, Subpart F,~~] 40 Code of Federal Regulations (CFR) Part 763, §1, Polarized Light Microscopy.

(B) Category II nonfriable asbestos-containing material means any material, excluding Category I nonfriable asbestos-containing material, containing more than 1.0% asbestos as determined using the methods specified in Appendix E to Subpart E of [~~Appendix A, Subpart F,~~] 40 CFR Part 763, §1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(C) Friable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

(D) Nonfriable asbestos-containing material means any material containing more than 1.0% asbestos that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

(12) [~~(11)~~] ASTM--The American Society for Testing and Materials.

(13) [~~(12)~~] Battery--An electrochemical device that generates electric current by converting chemical energy. Its essential components are positive and negative electrodes made of more or less electrically conductive materials, a separate medium, and an electrolyte. There are four major types:

(A) primary batteries (dry cells);

(B) storage or secondary batteries;

(C) nuclear and solar cells or energy converters; and

(D) fuel cells.

(14) [~~(13)~~] Battery acid (also known as electrolyte acid)--A solution of not more than 47% sulfuric acid in water suitable for use in storage batteries, which is water white, odorless, and practically free from iron.

(15) [~~(14)~~] Battery retailer--A person or business location that sells lead-acid batteries to the general public, without restrictions to limit purchases to institutional or industrial clients only.

(16) [~~(15)~~] Battery wholesaler--A person or business location that sells lead-acid batteries directly to battery retailers, to government entities by contract sale, or to large-volume users, either directly or by contract sale.

(17) [~~(16)~~] Bird hazard--An increase in the likelihood of bird/aircraft collisions that may cause damage to an aircraft or injury to its occupants.

(18) [~~(17)~~] Boiler--An enclosed device using controlled flame combustion and having the following characteristics.

(A) The unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases.

(B) The unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units.

(C) While in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel.

(D) The unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps.

(19) [~~(18)~~] Brush--Cuttings or trimmings from trees, shrubs, or lawns and similar materials.

(20) [~~(19)~~] Buffer zone--A zone free of municipal solid waste processing and disposal activities within and adjacent to the facility boundary on property owned or controlled by the owner or operator.

(21) [~~(20)~~] Citizens' collection station--A facility established for the convenience and exclusive use of residents (not commercial or industrial users or collection vehicles), except that in small communities where regular collections are not available, small quantities of commercial waste may be deposited by the generator of the waste. The facility may consist of one or more storage containers, bins, or trailers.

(22) [~~(21)~~] Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes that because of its concentration, or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(23) [~~(22)~~] Class 2 wastes--Any individual solid waste or combination of industrial solid waste that are not described as Hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(24) [~~(23)~~] Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(25) [~~(24)~~] Collection--The act of removing solid waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

(26) [~~(25)~~] Collection system--The total process of collecting and transporting solid waste. It includes storage containers; collection crews, vehicles, equipment, and management; and operating procedures. Systems are classified as municipal, contractor, or private.

(27) [~~(26)~~] Commence physical construction--The initiation of physical on-site construction on a site for which an application to authorize a municipal solid waste management unit is pending, the construction of which requires approval of the commission. Construction of actual waste management units and necessary appurtenances requires approval of the commission, but other features not specific to waste management are allowed without commission approval.

(28) [~~(27)~~] Commercial solid waste--All types of solid waste generated by stores, offices, restaurants, warehouses, and other

nonmanufacturing activities, excluding residential and industrial wastes.

(29) [~~(28)~~] Compacted waste--Waste that has been reduced in volume by a collection vehicle or other means including, but not limited to, dewatering, composting, incineration, and similar processes, with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

(30) [~~(29)~~] Composite liner--A liner system consisting of two components: the upper component must consist of a minimum 30-mil geomembrane liner or minimum 60-mil high-density polyethylene, and the lower component must consist of at least a two-foot layer of re-compacted soil deposited in lifts with a hydraulic conductivity of no more than 1 x 10-7 centimeters/second. The geomembrane liner component must be installed in direct and uniform contact with the compacted soil component.

(31) [~~(30)~~] Compost--The stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(32) [~~(31)~~] Composting--The controlled biological decomposition of organic materials through microbial activity.

(33) [~~(32)~~] Conditionally exempt small-quantity generator--A conditionally exempt small quantity generator (CESQG) is a very small quantity generator (VSQG) as defined in this section that meets the independent requirements and the conditions for exemption for a VSQG under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste). A reference to a conditionally exempt small quantity generator, "CESQG", or a person who generates no more than 100 kilograms (220 pounds) of non-acute hazardous waste or no more than 1 kilogram (2.2 pounds) of acute hazardous waste in a calendar month is a reference to a VSQG [~~A person that generates no more than 220 pounds of hazardous waste in a calendar month~~].

(34) [~~(33)~~] Construction or demolition waste--Waste resulting from construction or demolition projects; includes all materials that are directly or indirectly the by-products of construction work or that result from demolition of buildings and other structures, including, but not limited to, paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(35) [~~(34)~~] Container--Any portable device in which a material is stored, transported, or processed.

(36) [~~(35)~~] Contaminate--To alter the chemical, physical, biological, or radiological integrity of ground or surface water by man-made or man-induced means.

(37) [~~(36)~~] Contaminated water--Leachate, gas condensate, or water that has come into contact with waste.

(38) [~~(37)~~] Controlled burning--The combustion of solid waste with control of combustion air to maintain adequate temperature for efficient combustion; containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and control of the emission of the combustion products, i.e., incineration in an incinerator.

(39) Depolymerization--A manufacturing process through which post-use polymers are broken down into:

(A) smaller molecules, including monomers and oligomers; or

(B) raw materials, intermediate products, or final products, including plastic feedstocks, chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, or coatings; and

(C) does not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel.

(40) [~~(38)~~] Discard--To abandon a material and not use, re-use, reclaim, or recycle it. A material is abandoned by being disposed of; burned or incinerated (except where the material is being burned as a fuel for the purpose of recovering usable energy); or physically, chemically, or biologically treated (other than burned or incinerated) in lieu of or prior to being disposed.

(41) [~~(39)~~] Discharge--Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

(42) [~~(40)~~] Discharge of dredged material--Any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified disposal site located in waters of the United States and the runoff or overflow from a contained land or water disposal area.

(43) [~~(41)~~] Discharge of fill material--The addition of fill material into waters of the United States. The term generally includes placement of fill necessary to the construction of any structure in waters of the United States: the building of any structure or improvement requiring rock, sand, dirt, or other inert material for its construction; the building of dams, dikes, levees, and riprap.

(44) [~~(42)~~] Discharge of pollutant--Any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source.

(45) [~~(43)~~] Displacement--The measured or estimated distance between two formerly adjacent points situated on opposite walls of a fault (synonymous with net slip).

(46) [~~(44)~~] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(47) [~~(45)~~] Dredged material--Material that is excavated or dredged from waters of the United States.

(48) [~~(46)~~] Drinking-water intake--The point at which water is withdrawn from any water well, spring, or surface water body for use as drinking water for humans, including standby public water supplies.

(49) [~~(47)~~] Elements of nature--Rainfall, snow, sleet, hail, wind, sunlight, or other natural phenomenon.

(50) [~~(48)~~] Endangered or threatened species--Any species listed as such under the Federal Endangered Species Act, §4, 16 United States Code, §1536, as amended or under the Texas Endangered Species Act.

(51) [~~(49)~~] Essentially insoluble--Any material that, if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of the maximum contaminant levels in 40 Code of Federal Regulations (CFR) Part 141, Subparts B and G, and 40 CFR Part 143 for total dissolved solids.

(52) [~~(50)~~] Existing municipal solid waste landfill unit--Any municipal solid waste landfill unit that received solid waste as of October 9, 1993.

(53) [~~(51)~~] Experimental project--Any new proposed method of managing municipal solid waste, including resource and energy recovery projects, that appears to have sufficient merit to warrant commission approval.

(54) [~~(52)~~] Facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the storage, processing, or disposal of solid waste.

(55) [~~(53)~~] Fault--A fracture or a zone of fractures in any material along which strata, rocks, or soils on one side have been displaced with respect to those on the other side.

(56) [~~(54)~~] Fill material--Any material used for the primary purpose of filling an excavation.

(57) [~~(55)~~] Floodplain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(58) [~~(56)~~] Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(59) [~~(57)~~] Gas condensate--The liquid generated as a result of any gas recovery process at a municipal solid waste facility.

(60) [~~(58)~~] Gasification--A process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw materials, valuable intermediate products, or valuable final products, which include plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks; and do not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel. [~~a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.~~] The term does not include incineration.

[~~(59) Gasification facility--A facility that receives, separates, stores, and converts post-use polymers and recoverable feedstocks using gasification. The commission may not consider a gasification facility to be a hazardous waste management facility, a solid waste management facility, or an incinerator.~~]

(61) [~~(60)~~] Generator--Any person, by site or location, that produces solid waste to be shipped to any other person, or whose act or process produces a solid waste or first causes it to become regulated.

(62) [~~(61)~~] Grease trap waste--Material collected in and from a grease interceptor in the sanitary sewer service line of a commercial, institutional, or industrial food service or processing establishment, including the solids resulting from dewatering processes.

(63) [~~(62)~~] Grit trap waste--Grit trap waste includes waste from interceptors placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments.

(64) [~~(63)~~] Groundwater--Water below the land surface in a zone of saturation.

(65) [~~(64)~~] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 et seq. , as amended.

(66) [~~(65)~~] Holocene--The most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

(67) [~~(66)~~] Household waste--Any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas); does not include brush.

(68) [~~(67)~~] Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace, as defined in §335.1 of this title (relating to Definitions); or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(69) [~~(68)~~] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(70) [~~(69)~~] Inert material--A natural or man-made nonputrescible, nonhazardous material that is essentially insoluble, usually including, but not limited to, soil, dirt, clay, sand, gravel, brick, glass, concrete with reinforcing steel, and rock.

(71) [~~(70)~~] Infrared incinerator--Any enclosed device that uses electric-powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and is not listed as an industrial furnace as defined in §335.1 of this title (relating to Definitions).

(72) [~~(71)~~] Injection well--A well into which fluids are injected.

(73) [~~(72)~~] In situ--In natural or original position.

(74) [~~(73)~~] Karst terrain--An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(75) [~~(74)~~] Lateral expansion--A horizontal expansion of the waste boundaries of an existing municipal solid waste landfill unit.

(76) [~~(75)~~] Land application of solid waste--The disposal or use of solid waste (including, but not limited to, sludge or septic tank pumpings or mixture of shredded waste and sludge) in which the solid waste is applied within three feet of the surface of the land.

(77) [~~(76)~~] Land treatment unit--A solid waste management unit at which solid waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such units are disposal units if the waste will remain after closure.

(78) [~~(77)~~] Landfill--A solid waste management unit where solid waste is placed in or on land and which is not a pile, a land treatment unit, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(79) [~~(78)~~] Landfill cell--A discrete area of a landfill.

(80) [~~(79)~~] Landfill mining--The physical procedures associated with the excavation of buried municipal solid waste and processing of the material to recover material for beneficial use.

(81) [~~(80)~~] Leachate--A liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

(82) [~~(81)~~] Lead acid battery--A secondary or storage battery that uses lead as the electrode and dilute sulfuric acid as the electrolyte and is used to generate electrical current.

(83) [~~(82)~~] License--

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a municipal solid waste facility used to process, treat, store, or dispose of municipal solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(84) [~~(83)~~] Liquid waste--Any waste material that is determined to contain "free liquids" as defined by United States Environmental Protection Agency (EPA) Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(85) [~~(84)~~] Litter--Rubbish and putrescible waste.

(86) [~~(85)~~] Low volume transfer station--A transfer station used for the storage of collected household waste limited to a total storage capacity of 40 cubic yards located in an unincorporated area that is not within the extraterritorial jurisdiction of a city.

(87) [~~(86)~~] Lower explosive limit--The lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25 degrees Celsius and atmospheric pressure.

(88) [~~(87)~~] Medical waste--Treated and untreated special waste from health care-related facilities that is comprised of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions) from the sources specified in 25 TAC §1.134 (relating to Application), as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5), except that the term does not include medical waste produced on a farm or ranch as defined in 34 TAC §3.296(f) (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants. Health care-related facilities do not include:

(A) single or multi-family dwellings; and

(B) hotels, motels, or other establishments that provide lodging and related services for the public.

(89) [~~(88)~~] Monofill--A landfill or landfill cell into which only one type of waste is placed.

(90) [~~(89)~~] Municipal hazardous waste--Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator, United States Environmental Protection Agency.

(91) [~~(90)~~] Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(92) [~~(91)~~] Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(93) [~~(92)~~] Municipal solid waste landfill unit--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste (MSW) landfill unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, hazardous waste generated by a very small quantity generator (VSQG) during a month in which the VSQG did not generate hazardous waste during an episodic event[~~conditionally exempt small-quantity generator waste~~], and industrial solid waste. Such a landfill may be publicly or privately owned. An MSW landfill unit may be a new MSW landfill unit, an existing MSW landfill unit, a vertical expansion, or a lateral expansion.

(94) [~~(93)~~] New facility--A municipal solid waste facility that has not begun construction.

(95) [~~(94)~~] Nonpoint source--Any origin from which pollutants emanate in an unconfined and unchanneled manner, including, but not limited to, surface runoff and leachate seeps.

(96) [~~(95)~~] Non-regulated asbestos-containing material--Non-regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61. This is asbestos material in a form such that potential health risks resulting from exposure to it are minimal.

(97) [~~(96)~~] Notification--The act of filing information with the commission for specific solid waste management activities that do not require a permit or a registration, as determined by this chapter.

(98) [~~(97)~~] Nuisance--Municipal solid waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare. A nuisance is further set forth in Texas Health and Safety Code, Chapters 341 and 382; Texas Water Code, Chapter 26; and any other applicable regulation or statute.

(99) [~~(98)~~] Open burning--The combustion of solid waste without:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of the emission of the combustion products.

(100) [~~(99)~~] Operate--To conduct, work, run, manage, or control.

(101) [~~(100)~~] Operating hours--The hours when the facility is open to receive waste, operate heavy equipment, and transport materials on- or off-site.

(102) [~~(101)~~] Operating record--All plans, submittals, and correspondence for a municipal solid waste facility required under this

chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(103) [~~(102)~~] Operation--A municipal solid waste (MSW) site or facility is considered to be in operation from the date that solid waste is first received or deposited at the MSW site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(104) [~~(103)~~] Operator--The person(s) responsible for operating the facility or part of a facility.

(105) [~~(104)~~] Owner--The person that owns a facility or part of a facility.

(106) [~~(105)~~] Permitted landfill--Any type of municipal solid waste landfill that received a permit from the State of Texas to operate and has not completed post-closure operations.

(107) [~~(106)~~] Physical construction--The first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, the laying of underground pipework, or any work beyond the stage of excavation. Physical construction does not include land preparation, such as clearing, grading, excavating, and filling; nor does it include the installation of roads and/or walkways. Physical construction includes issuance of a building or other construction permit, provided that permanent construction commences within 180 days of the date that the building permit was issued.

(108) [~~(107)~~] Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and not listed as an industrial furnace as defined by §335.1 of this title (relating to Definitions).

(109) [~~(108)~~] Point of compliance--A vertical surface located no more than 500 feet from the hydraulically downgradient limit of the waste management unit boundary, extending down through the uppermost aquifer underlying the regulated units, and located on land owned by the owner of the facility.

(110) [~~(109)~~] Point source--Any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, or discrete fissure from which pollutants are or may be discharged.

(111) [~~(110)~~] Pollutant--Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(112) [~~(111)~~] Pollution--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(113) [~~(112)~~] Polychlorinated biphenyl (PCB)--Any chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees or any combination of substances that contains such substance.

(114) [~~(113)~~] Polychlorinated biphenyl (PCB) waste(s)--Those PCBs and PCB items that are subject to the disposal requirements of 40 Code of Federal Regulations (CFR) Part 761. Substances that are regulated by 40 CFR Part 761 include, but are not limited to: PCB articles, PCB article containers, PCB containers, PCB-contaminated electrical equipment, PCB equipment, PCB transformers, recycled PCBs, capacitors, microwave ovens, electronic equipment, and light ballasts and fixtures.

(115) [~~(114)~~] Poor foundation conditions--Areas where features exist, indicating that a natural or man-induced event may result in inadequate foundation support for the structural components of a municipal solid waste landfill unit.

(116) [~~(115)~~] Population equivalent--The hypothetical population that would generate an amount of solid waste equivalent to that actually being managed based on a generation rate of five pounds per capita per day and applied to situations involving solid waste not necessarily generated by individuals. It is assumed, for the purpose of these sections, that the average volume per ton of waste entering a municipal solid waste disposal facility is three cubic yards.

(117) [~~(116)~~] Post-consumer waste--A material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purposes of this subchapter, the term does not include industrial or hazardous waste.

(118) [~~(117)~~] Post-use polymers--Plastics: [~~Plastic polymers that derive from any household, industrial, community, commercial, or other sources of operations or activities that might otherwise become waste if not converted into a valuable raw, intermediate, or final product. Post-use polymers include used polymers that contain incidental contaminants or impurities such as paper labels or metal rings but do not include used polymers mixed with solid waste, medical waste, hazardous waste, electronic waste, tires, or construction or demolition debris.~~]

(A) derived from an industrial, commercial, agricultural, or domestic activity, including preconsumer recovered materials and postconsumer materials;

(B) that would be classified as nonhazardous solid waste if discarded;

(C) that have been sorted from solid waste and other regulated waste and may contain residual amounts of organic material and incidental contaminants or impurities such as paper labels or metal rings;

(D) not mixed with solid waste or hazardous waste on-site or while being processed at an advanced recycling facility;

(E) used or intended for use as a feedstock or for the production of feedstocks, raw materials, intermediate products, or final products using advanced recycling; and

(F) processed or held prior to being processed at an advanced recycling facility.

(119) [~~(118)~~] Premises--A tract of land with the buildings thereon, or a building or part of a building with its grounds or other appurtenances.

(120) [~~(119)~~] Process to further reduce pathogens--The process to further reduce pathogens as described in 40 Code of Federal Regulations Part 503, Appendix B.

(121) [~~(120)~~] Processing--Activities including, but not limited to, 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 waste, designed to change the physical, chemical, or biological character or composition of any waste to neutralize such waste, or to recover energy or material from the waste, or render the waste safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume. The term does not include pyrolysis, gasification, solvolysis, or depolymerization. [~~or gasification.~~]

(122) [~~(121)~~] Public highway--The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park

is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(123) [~~(122)~~] Putrescible waste--Organic wastes, such as garbage, wastewater treatment plant sludge, and grease trap waste, that are capable of being decomposed by microorganisms with sufficient rapidity as to cause odors or gases or are capable of providing food for or attracting birds, animals, and disease vectors.

(124) [~~(123)~~] Pyrolysis--A manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere and the pyrolysis product is converted into valuable raw materials, valuable intermediate products, or valuable final products, which include plastic monomers, chemicals, naphtha, waxes, polymers, plastic feedstocks, or chemical feedstocks; and do not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel. [~~until melted and thermally decomposed and then cooled, condensed, and converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.~~] The term does not include incineration.

~~[(124) Pyrolysis facility--A manufacturing facility that receives, separates, stores, and converts post-use polymers using pyrolysis. The commission may not consider a pyrolysis facility to be a hazardous waste management facility, a solid waste management facility, or an incinerator.]~~

(125) Qualified groundwater scientist--A licensed geoscientist or licensed engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university programs that enable the individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

(126) Radioactive waste--Waste that requires specific licensing under 25 TAC Chapter 289 (relating to Radiation Control), and the rules adopted by the commission under the Texas Health and Safety Code.

(127) Recoverable feedstock--One or more of the following materials, derived from recoverable nonhazardous waste other than coal refuse, that has been processed so that it may be used as feedstock in an "Advanced recycling facility" or through "Gasification" as these terms are defined in this section [~~a gasification facility~~]:

(A) post-use polymers; [~~and~~]

(B) material, including municipal solid waste and other post-industrial waste: [~~containing post-use polymers and other post-industrial waste containing post-use polymers, that has been processed into a fuel or feedstock for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 Code of Federal Regulations §241.3(c).~~]

(i) for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 Code of Federal Regulations §241.3(c); or

(ii) that the commission or the United States Environmental Protection Agency has otherwise determined are feedstocks and not solid waste; and

(C) excluding fuels.

(128) Recyclable material--A material that can be or has been recovered or diverted from the nonhazardous waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products that may otherwise be produced using raw or virgin materials. The term includes any nonhazardous waste stream, including post-use polymers and recoverable feedstocks that are converted through pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials, valuable intermediate products, or valuable final products. [~~or gasification into valuable raw, intermediate, and final products.~~] Recyclable material is not solid waste. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(129) Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials or feedstocks used in the manufacture [~~in the production~~] of new products. Except for mixed municipal solid waste composting, that is, composting of the typical mixed solid waste stream generated by residential, commercial, and/or institutional sources, recycling includes the composting process if the compost material is put to beneficial use. Recycling includes the conversion of post-use polymers and recoverable feedstocks through pyrolysis, gasification, solvolysis, or depolymerization, but does not include incineration of plastics or waste-to-energy processes.

(130) Refuse--Same as rubbish.

(131) Registration--The act of filing information with the commission for review and approval for specific solid waste management activities that do not require a permit, as determined by this chapter.

(132) Regulated asbestos-containing material--Regulated asbestos-containing material as defined in 40 Code of Federal Regulations Part 61, as amended, includes: friable asbestos material, Category I nonfriable asbestos-containing material that has become friable; Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

(133) Regulated hazardous waste--A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3 and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or that was not generated by a very small quantity generator (VSQG) during a month in which the VSQG did not generate hazardous waste during an episodic event [~~conditionally exempt small-quantity generator~~].

(134) Resource recovery--The recovery of material or energy from solid waste.

(135) Resource recovery facility--A solid waste processing facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(136) Rubbish--Nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum

cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(137) Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(138) Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(139) Salvaging--The controlled removal of waste materials for utilization, recycling, or sale.

(140) Saturated zone--That part of the earth's crust in which all voids are filled with water.

(141) Scavenging--The uncontrolled and unauthorized removal of materials at any point in the solid waste management system.

(142) Scrap tire--Any tire that can no longer be used for its original intended purpose.

(143) Seasonal high-water level--The highest measured or calculated water level in an aquifer during investigations for a permit application and/or any groundwater characterization studies at a facility.

(144) Septage--The liquid and solid material pumped from a septic tank, cesspool, or similar sewage treatment system.

(145) Site--Same as facility.

(146) Site development plan--A document, prepared by the design engineer, that provides a detailed design with supporting calculations and data for the development and operation of a solid waste site.

(147) Site operating plan--A document, prepared by the design engineer in collaboration with the facility operator, that provides general instruction to facility management and operating personnel throughout the operating life of the facility in a manner consistent with the engineer's design and the commission's regulations to protect human health and the environment and prevent nuisances.

(148) Site operator--The holder of, or the applicant for, an authorization (or license) for a municipal solid waste facility.

(149) Sludge--Any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water-supply treatment plant, or air pollution control facility, exclusive of the treated effluent from a wastewater treatment plant.

(150) Small municipal solid waste landfill--A municipal solid waste landfill unit (Type IAE) at which less than 20 tons of authorized types of waste are disposed of daily based on an annual average and/or a Type IVAE landfill unit at which less than 20 tons of authorized types of waste are disposed of daily based on an annual average. A Type IAE landfill permit may include additional authorization for a separate Type IVAE landfill unit. If a permit contains dual authorization for Type IAE and Type IVAE landfill units, the permit must designate separate areas for the units and where all disposal cells will be located within each unit.

(151) Solid waste--Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;

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

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code (USC), §§6901 et seq.); or

(D) post-use polymers or recoverable feedstocks that have been converted through pyrolysis, gasification, solvolysis, or depolymerization into valuable raw materials, valuable intermediate products, or valuable final products, which include plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks pyrolysis, [~~processed through pyrolysis or gasification~~] that do not qualify as hazardous waste under the Resource Conservation and Recovery Act of 1976 (42 USC, §§6901 et seq.[ ]).

(152) Solid waste management unit--A landfill, surface impoundment, waste pile, furnace, incinerator, kiln, injection well, container, drum, salt dome waste containment cavern, land treatment unit, tank, container storage area, or any other structure, vessel, appurtenance, or other improvement on land used to manage solid waste.

(153) Solvolysis--A manufacturing process that includes hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis through which post-use polymers are purified with the aid of solvents while heated at low temperatures, pressurized, or both heated at low temperatures and pressurized, to remove additives and contaminants and make useful products, which include monomers, intermediates, valuable chemicals, plastic feedstocks, chemical feedstocks, and raw materials; and do not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel.

(154) [~~(153)~~] Source-separated recyclable material--Recyclable material from residential, commercial, municipal, institutional, recreational, industrial, and other community activities, that at the point of generation has been separated, collected, and transported separately from municipal solid waste (MSW), or transported in the same vehicle as MSW, but in separate containers or compartments. Source-separation does not require the recovery or separation of non-recyclable components that are integral to a recyclable product, including:

(A) the non-recyclable components of white goods, whole computers, whole automobiles, or other manufactured items for which dismantling and separation of recyclable from non-recyclable components by the generator are impractical, such as insulation or electronic components in white goods;

(B) source-separated recyclable material rendered unmarketable by damage during collection, unloading, and sorting, such as broken recyclable glass; and

(C) tramp materials, such as:

(i) glass from recyclable metal windows;

(ii) nails and roofing felt attached to recyclable shingles;

(iii) nails and sheetrock attached to recyclable lumber generated through the demolition of buildings; and

(iv) pallets and packaging materials.

(155) [~~(154)~~] Special waste--Any solid waste or combination of solid wastes that because of its quantity, concentration, physical or chemical characteristics, or biological properties requires special handling and disposal to protect the human health or the environment. If improperly handled, transported, stored, processed, or disposed of or otherwise managed, it may pose a present or potential danger to the human health or the environment. Special wastes are:

(A) hazardous waste generated by a very small quantity generator (VSQG) during a calendar month in which the VSQG did not generate hazardous waste during an episodic event that may be exempt from full regulation under Chapter 335, Subchapters A and C of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General and General Standards Applicable to Generators of Hazardous Waste, respectively) [~~from conditionally exempt small-quantity generators that may be exempt from full controls under Chapter 335, Subchapter N of this title (relating to Household Hazardous Wastes)~~];

(B) Class 1 industrial nonhazardous waste;

(C) untreated medical waste;

(D) municipal wastewater treatment plant sludges, other types of domestic sewage treatment plant sludges, and water-supply treatment plant sludges;

(E) septic tank pumpings;

(F) grease and grit trap wastes;

(G) wastes from commercial or industrial wastewater treatment plants; air pollution control facilities; and tanks, drums, or containers used for shipping or storing any material that has been listed as a hazardous constituent in 40 Code of Federal Regulations (CFR) Part 261, Appendix VIII but has not been listed as a commercial chemical product in 40 CFR §261.33(e) or (f);

(H) slaughterhouse wastes;

(I) dead animals;

(J) drugs, contaminated foods, or contaminated beverages, other than those contained in normal household waste;

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

(L) discarded materials containing asbestos;

(M) incinerator ash;

(N) soil contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligrams per kilogram total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1 of §335.521(a)(1) of this title (relating to Appendices);

(O) used oil;

(P) waste from oil, gas, and geothermal activities subject to regulation by the Railroad Commission of Texas when those wastes are to be processed, treated, or disposed of at a solid waste management facility authorized under this chapter;

(Q) waste generated outside the boundaries of Texas that contains:

(i) any industrial waste;

(ii) any waste associated with oil, gas, and geothermal exploration, production, or development activities; or

(iii) any item listed as a special waste in this paragraph;

(R) lead acid storage batteries; and

(S) used-oil filters from internal combustion engines.

(156) [~~(155)~~] Stabilized sludges--Those sludges processed to significantly reduce pathogens, by processes specified in 40 Code of Federal Regulations Part 257, Appendix II.

(157) [~~(156)~~] Storage--The keeping, holding, accumulating, or aggregating of solid waste for a temporary period, at the end of which the solid waste is processed, disposed, or stored elsewhere.

(A) Examples of storage facilities are collection points for:

(i) only nonputrescible source-separated recyclable material;

(ii) consolidation of parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic citywide cleanup campaigns and cleanup of rights-of-way or roadside parks; and

(iii) accumulation of used or scrap tires prior to transportation to a processing or disposal facility.

(B) Storage includes operation of pre-collection or post-collection as follows:

(i) pre-collection--that storage by the generator, normally on his premises, prior to initial collection; or

(ii) post-collection--that storage by a transporter or processor, at a processing facility, while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(158) [~~(157)~~] Storage battery--A secondary battery, so called because the conversion from chemical to electrical energy is reversible and the battery is thus rechargeable. Secondary or storage batteries contain an electrode made of sponge lead and lead dioxide, nickel-iron, nickel-cadmium, silver-zinc, or silver-cadmium. The electrolyte used is sulfuric acid. Other types of storage batteries contain lithium, sodium-liquid sulfur, or chlorine-zinc using titanium electrodes.

(159) [~~(158)~~] Structural components--Liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the municipal solid waste landfill that is necessary for protection of human health and the environment.

(160) [~~(159)~~] Surface impoundment--A natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is designed to hold an accumulation of liquids; examples include holding, storage, settling, and aeration pits, ponds, and lagoons.

(161) [~~(160)~~] Surface water--Surface water as included in water in the state.

(162) [~~(161)~~] Tank--A stationary device, designed to contain an accumulation of solid waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support.

(163) [~~(162)~~] Tank system--A solid waste storage or processing tank and its associated ancillary equipment and containment system.

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

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

(166) [~~(165)~~] Transporter--A person that collects, conveys, or transports solid waste; does not include a person transporting his or her household waste.

(167) [~~(166)~~] Trash--Same as Rubbish.

(168) [~~(167)~~] Treatment--Same as Processing.

(169) [~~(168)~~] Triple rinse--To rinse a container three times using a volume of solvent capable of removing the contents equal to 10% of the volume of the container or liner for each rinse.

(170) [~~(169)~~] Uncompacted waste--Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

(171) [~~(170)~~] Unified soil classification system--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(172) [~~(171)~~] Universal waste--Any of the following hazardous wastes that are subject to the universal waste requirements of Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule):

(A) batteries, as described in 40 Code of Federal Regulations (CFR) §273.2;

(B) pesticides, as described in 40 CFR §273.3;

(C) thermostats, as described in 40 CFR §273.4;

(D) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and

(E) lamps, as described in 40 CFR §273.5.

(173) [~~(172)~~] Unloading areas--Areas designated for unloading, including all working faces, active disposal areas, storage areas, and other processing areas.

(174) [~~(173)~~] Unstable area--A location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and karst terrains.

(175) [~~(174)~~] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer; includes lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

(176) [~~(175)~~] Vector--An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(177) Very small quantity generator--A generator who generates less than or equal to the following amounts of hazardous waste in a calendar month:

(A) 100 kilograms (220 pounds) of non-acute hazardous waste; and

(B) 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 Code of Federal Regulations (CFR) §261.31 or §261.33(e); and

(C) 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

(178) [~~(176)~~] Washout--The carrying away of solid waste by waters.

(179) [~~(177)~~] Waste acceptance hours--Those hours when waste is received from off-site.

(180) [~~(178)~~] Waste management unit boundary--A vertical surface located at the perimeter of the unit. This vertical surface extends down into the uppermost aquifer.

(181) [~~(179)~~] Waste-separation/intermediate-processing center--A facility, sometimes referred to as a materials recovery facility, to which recyclable materials arrive as source-separated materials, or where recyclable materials are separated from the municipal waste stream and processed for transport off-site for reuse, recycling, or other beneficial use.

(182) [~~(180)~~] Waste-separation/recycling facility--A facility, sometimes referred to as a material recovery facility, in which recyclable materials are removed from the waste stream for transport off-site for reuse, recycling, or other beneficial use.

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

(184) [~~(182)~~] Water table--The upper surface of the zone of saturation at which water pressure is equal to atmospheric pressure, except where that surface is formed by a confining unit.

(185) [~~(183)~~] Waters of the United States--All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified herein.

(186) [~~(184)~~] Wetlands--As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(187) [~~(185)~~] White goods--Discarded large household appliances such as refrigerators, stoves, washing machines, or dishwashers.

(188) [~~(186)~~] Working face--Areas in a landfill where waste has been deposited for disposal but has not been covered.

(189) [~~(187)~~] Yard waste--Leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

§330.5. Classification of Municipal Solid Waste Facilities.

(a) The commission has classified all municipal solid waste (MSW) facilities according to the method of processing or disposal of MSW. Subject to the limitations in §§330.15, 330.171, and 330.173 of this title (relating to General Prohibitions; Disposal of Special Wastes; and Disposal of Industrial Wastes), and with the written approval of the executive director, Type I, IV, V, and VI MSW facilities may also receive special wastes, including Class 1 industrial solid waste and hazardous waste from very small quantity generators [~~conditionally exempt small quantity generators~~], if properly handled and safeguarded in the facility.

(1) MSW facility - Type I. A Type I landfill unit is the standard landfill for the disposal of MSW. The commission may authorize the designation of special-use areas for processing, storage, and disposal or any other functions involving solid waste. Except as allowed in subsections (b) - (e) of this section, owners or operators shall follow the permit application requirements prescribed in Subchapter B of this chapter (relating to Permit and Registration Application Procedures) and the minimum design and operational requirements of Subchapter D of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities); [~~Subchapter F of this chapter (relating to Analytical Quality Assurance and Quality Control);~~] Subchapter G of this chapter (relating to Surface Water Drainage); Subchapter H of this chapter (relating to Liner System Design and Operation); Subchapter I of this chapter (relating to Landfill Gas Management); Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action); Subchapter K of this chapter (relating to Closure and Post- Closure); Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates); Subchapter M of this chapter (relating to Location Restrictions); Subchapter T of this chapter (relating to Use of Land Over Closed Municipal Solid Waste Landfills); and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). Those landfill units meeting the requirements of subsection (b) of this section shall be referred to as Type IAE landfill units. Type IAE landfill units are authorized to accept the same types of waste as Type I landfill units subject to the limitations in §330.173 of this title, and are exempt from Subchapters H and J of this chapter. Owners or operators of Type I landfill facilities that are authorized to operate a Type IV cell or trench shall operate the cell or trench in accordance with paragraph (2) of this subsection.

(2) MSW facility - Type IV. A Type IV landfill unit may only accept brush, construction, or demolition waste, and/or rubbish. A Type IV landfill unit may not accept putrescible wastes, very small quantity generator [~~conditionally exempt small-quantity generator~~] waste, or household wastes. Except as allowed in subsection (b) of this section, owners or operators shall follow the permit application requirements prescribed in Subchapter B of this chapter and the minimum design and operational standards prescribed in Subchapters D[~~, F~~,] and G of this chapter; §§330.331(d), 330.335, 330.337, 330.339, and 330.341 of this title (relating to Liner System Design and Operation); §330.417 of this title (relating to Groundwater Monitoring at Type IV Landfills); §§330.453, 330.463(a), and 330.465 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites, Post-Closure Care Requirements, and Certification of Completion of Post-Closure Care) [~~330.465, and 330.467 of this title (relating to Closure and Post-Closure)~~]; Subchapter M of this chapter; and Chapter 37, Subchapter R of this title. Those landfill units meeting the requirements of subsection (b) of this section shall be referred to as Type IVAE landfill units. Type IVAE landfill units are authorized to accept the same types of waste as Type IV landfill units and are exempt from Subchapters H and J of this chapter.

(3) MSW facility - Type V. Separate solid waste processing facilities are classified as Type V. These facilities include processing plants that transfer, incinerate, shred, grind, bale, salvage, separate, dewater, reclaim, and/or provide other storage or processing of solid waste. Owners or operators shall follow the minimum design and operational requirements prescribed in Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units); [~~Subchapter F of this chapter;~~] Subchapter G of this chapter; Subchapter H of this chapter, if required; Subchapter K of this chapter; Subchapter L of this chapter, if financial assurance is required; Subchapter M of this chapter; and Chapter 37, Subchapter R of this title, except that owners and operators of recycling facilities who store combustible material are required to comply with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities). Groundwater monitoring may be required by the executive director and shall be maintained in accordance with the requirements of Subchapter J of this chapter.

(4) MSW facility - Type VI. A Type VI facility or operation is a facility using a new or unproven method of managing or utilizing MSW, including resource and energy recovery projects for processes that are not currently in use in Texas. The commission may limit the size of these facilities until the method is proven. The minimum operational standards are prescribed in Subchapter E of this chapter.

(5) MSW facility - Type VII. A Type VII facility or operation is a facility for the land management of sludges and/or similar wastes. Operational standards, depending on the particular waste, facility purpose, and method of operation (land application for beneficial use, land disposal to include landfilling and land treatment, etc.) are contained in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation).

(6) MSW facility - Type VIII. Facilities for the management of used or scrap tires are classified as Type VIII. Standards are prescribed in Chapter 328, Subchapter F of this title (relating to Management of Used or Scrap Tires).

(7) MSW facility - Type IX. A Type IX facility is an energy, material, gas recovery for beneficial use, or landfill mining facility located within or adjacent to a closed disposal facility, an inactive portion of a disposal facility, or an active disposal facility, used for extracting materials for energy and material recovery or for gas recovery for beneficial use. Registration by rule requirements for facilities that recover landfill gas for beneficial use are prescribed in §330.9(j) [~~§330.9(k)~~] of this title (relating to Registration Required). Owners or operators of other Type IX facilities shall follow the registration application requirements prescribed in Subchapter B of this chapter. All owners and operators shall follow the minimum design and operational requirements of Subchapter E of this chapter; §330.459 of this title (relating to Closure Requirements for Municipal Solid Waste Storage and Processing Units); §330.461 of this title (relating to Certification of Final Facility Closure); §330.505 of this title (relating to Closure Cost Estimates for Storage and Processing Units); and Chapter 37, Subchapter R of this title. Waste mining activities shall also follow the minimum

design and operation requirements of §330.149 of this title (relating to Odor Management Plan); §330.151 of this title (relating to Disease Vector Control); §330.165 of this title (relating to Landfill Cover); and §330.167 of this title (relating to Ponded Water). Owners or operators of an MSW landfill facility applying for a non-beneficial use gas control system for any area within the facility's permit boundary shall apply for a permit modification under §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications). Type IX facility permits and registrations previously issued for the recovery and beneficial use of landfill gas are considered to remain valid under applicable permit provisions until amended, modified, or revoked by the commission. The owner or operator must submit all information necessary to complete the air quality review as prescribed by the commission and be approved by the executive director prior to the Type IX registration by rule becoming effective.

(b) Owners or operators of a Type IAE or Type IVAE landfill facility may qualify for an arid exemption, as follows.

(1) Owners or operators of new, existing, and lateral expansions of Type IAE or Type IVAE landfill units may qualify for an arid exemption and be exempt from Subchapters H and J of this chapter, provided all of the following conditions are met:

(A) the facility disposes less than 20 tons per day based on an annual average of authorized waste in a Type IAE landfill unit and/or less than 20 tons per day based on an annual average of authorized waste in a Type IVAE landfill unit for a total waste acceptance rate less than 40 tons per day for the facility considering all waste streams based on an annual average;

(B) there is no evidence of existing groundwater contamination from the facility;

(C) the facility serves a community that has no practicable waste management alternative; and

(D) the facility is located in an area that receives less than or equal to 25 inches of annual average precipitation based on precipitation data from the nearest official precipitation recording station for the most recent 30-year reporting period.

(2) Requests for exemptions under §330.63(d)(5) of this title (relating to Contents of Part III of the Application) may be approved administratively by the executive director, upon demonstration of compliance with all applicable criteria. The executive director may deny an exemption request if the available information indicates that granting the exemption could result in a substantial threat of groundwater contamination. Existing Type IAE landfill permits, which include a 20 tons per day waste disposal limit, may be revised via a major amendment to allow for disposal of an additional less than 20 tons of authorized waste in a Type IVAE landfill unit located in a separate area of the same facility. Existing Type IAE landfill permits, which do not include a waste disposal limit or include a waste disposal limit in excess of limits allowed for Type IAE landfill units, may be modified consistent with the restrictions for small MSW landfills. Within 180 days of the effective date of the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions), owners and operators of such a permit shall comply with the waste acceptance rate limit for a Type IAE landfill unit or apply to modify such permit to include a Type IVAE landfill unit located in a separate area of the facility. Such permits remain valid until a final decision is made on the modification application. Such a modification must be processed in accordance with §305.70(l) of this title as a modification subject to public notice. Such a modification application must be submitted in conjunction with a corresponding application to modify the revised estimated waste acceptance rate under §330.125(h) of this title (relating to Recordkeeping Requirements).

(3) Owners or operators may appeal denials of a request for exemption to the commission for decision.

(4) If the owner or operator of a new, existing, or lateral expansion of a Type IAE or Type IVAE landfill facility who has previously asserted eligibility for the arid exemption has knowledge or becomes aware of groundwater contamination from the facility within a one-mile radius of the unit, the facility no longer meets the definition of a Type IAE or Type IVAE landfill facility, the waste reduction program is ineffective (based upon an evaluation of trends established after a minimum period of a year), or a practicable alternative becomes available, the owner or operator shall notify in writing the executive director of such condition(s) and thereafter comply with Subchapter B, Subchapter H, and Subchapter J of this chapter on a schedule specified by the executive director.

(5) The executive director may consider the economic investment made by the owner or operator in establishing the schedule for compliance.

(6) The minimum time allowed for compliance necessitated by loss of Type IAE or Type IVAE landfill facility status or availability of a practicable alternative shall be 18 months.

(7) A Type IAE or Type IVAE landfill facility that meets the requirements of this subsection shall maintain the integrity of any existing on-site groundwater monitor wells and make them available to the executive director for the collection of groundwater samples.

(c) For MSW landfills that stopped receiving waste before October 9, 1991, and unauthorized MSW sites, the closure provisions of §330.453 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Stopped Receiving Waste Prior to October 9, 1991, Type IV Landfills, and Municipal Solid Waste Sites) apply. If not previously submitted, owners or operators shall submit a closure report that documents that MSW landfill units or unauthorized MSW sites, or portions thereof, have received final cover.

(d) MSW landfill units that receive waste after October 9, 1991, but stop receiving waste before October 9, 1993, are subject to the final cover requirements specified in §330.455 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units that Received Waste on or after October 9, 1991, but Stopped Receiving Waste Prior to October 9, 1993). The final cover must be installed and certified in accordance with the requirements contained in §§330.451, 330.453, 330.455, and 330.457 of this title (relating to Closure and Post-Closure). Owners or operators of MSW landfill units described in this subsection that fail to complete cover installation and certification within the time limits specified in Subchapter K of this chapter will be subject to all the requirements of these regulations.

(e) All MSW landfill units that receive waste on or after October 9, 1993, must comply with all requirements of these regulations, unless otherwise specified.

§330.7. Permit Required.

(a) Except as provided in §§330.9, 330.11, 330.13, or 330.25 of this title (relating to Registration Required; Notification Required; Waste Management Activities Exempt from Permitting, Registration, or Notification; and Relationship with County Licensing System), no person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any solid waste unless such activity is authorized by a permit or other authorization from the commission. In the event this requirement is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed. No person may commence

physical construction of a new municipal solid waste (MSW) management facility, a vertical expansion, or a lateral expansion without first having submitted a permit application in accordance with §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title (relating to Permit and Registration Applications for Municipal Solid Waste Facilities; Contents of Part I of the Application; Contents of Part II of the Application; Contents of Part III of the Application; and Contents of Part IV of the Application, respectively) and received a permit from the commission, except as provided otherwise in this section.

(b) A separate permit is required for the storage, transportation, or handling of used oil mixtures collected from oil/water separators. Any person that intends to conduct such activity shall comply with the regulatory requirements of Chapter 324 of this title (relating to Used Oil Standards).

(c) Permits by rule may be granted for persons that compact or transport waste in enclosed containers or enclosed transportation units to a Type IV facility.

(1) A permit by rule is granted for a generator operating a stationary compactor that is only used to compact waste to be disposed of at a Type IV landfill, if all of the following conditions are met.

(A) The generator submits the following information and any requested additional information on forms provided by the executive director:

(i) generator contact person, company name, mailing address, street address, city, state, ZIP code, and telephone number;

(ii) contract renewal date, if applicable;

(iii) rated compaction capability in pounds per cubic yard;

(iv) container size;

(v) description of waste stream to enter compactor;

(vi) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person; and

(vii) a certification from the generator that states the following: I, (name) _____, (title) _____ of (company name) _____, located at (street address) _____ in (city) _____, certify that the contents of the compactor located at the location stated herein are free of and shall be maintained free of putrescible, hazardous, infectious, and any other waste not allowed in an MSW Type IV landfill.

(B) The generator submits a $75 fee along with the claim for the permit by rule.

(C) The generator complies with the operational requirements of §330.215 of this title (relating to Requirements for Stationary Compactors).

(D) A stationary compactor permit by rule expires after one year. The generator must submit an annual renewal fee in the amount of $75. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the generator claims a new or renewed permit by rule.

(2) A permit by rule is granted for transporters using enclosed containers or enclosed vehicles to collect and transport brush, construction or demolition wastes, and rubbish along special collection routes to MSW Type IV landfill facilities if all of the following conditions are met.

(A) The owner or operator seeking a special collection route permit by rule submits to the executive director the following information and any requested additional information on forms provided by the executive director:

(i) name of owner and operator, mailing address, street address, city, state, ZIP code, name and title of a contact person, and telephone number;

(ii) receiving MSW Type IV disposal facility name, permit number, mailing address, street address, city, state, ZIP code, telephone number, and contact person;

(iii) information on each transportation unit, including, at a minimum, license number, vehicle identification number, year model, make, capacity in cubic yards, and rated compaction capability in pounds per cubic yard;

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

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

(vi) an alternative contingency disposal plan to include alternate trucks to be used or alternative disposal facilities; and

(vii) a signed and notarized certification from the owner or operator that states the following: I, (name) _____, (title) _____, of _____ operating in _____ County, certify that the contents of the vehicles described above will be free of putrescible, household, hazardous, infectious, or any other waste not allowed in an MSW Type IV landfill.

(B) The transporter submits a $100 per vehicle fee along with the claim for a permit by rule.

(C) The transporter documents each load delivered with a trip ticket form provided by the executive director, and provides the trip ticket to the landfill operator prior to discharging the load.

(D) A special collection route permit by rule expires after one year. The owner or operator must submit an annual renewal fee in the amount of $100 per vehicle. Failure to timely pay the annual fee eliminates the option of disposal of these wastes at a Type IV landfill until the owner or operator claims a new or renewed permit by rule.

(E) This paragraph does not apply if the waste load is from a single collection point that is a stationary compactor authorized in accordance with paragraph (1) of this subsection.

(3) Revision requirements for stationary compactor permits or special collection route permits by rule identified in paragraphs (1) and (2) of this subsection are as follows.

(A) An update must be submitted if any information within the original permit by rule submittal changes.

(B) A submittal to update an existing permit by rule must include all of the same documentation required for an original permit by rule submittal.

(d) A major permit amendment, as defined by §305.62 of this title (relating to Amendments), is required to reopen a Type I, Type IAE, Type IV, or Type IVAE MSW facility permitted by the commission or any of its predecessor or successor agencies that has either stopped accepting waste, or only accepted waste in accordance with an emergency authorization, for a period of five years or longer. The MSW facilities covered by this subsection may not be reopened to accept waste again unless the permittee demonstrates compliance with all applicable requirements of the Resource Conservation and Recov-

ery Act, Subtitle D and the implementing Texas state regulations. If an MSW facility was subject to a contract of sale on January 1, 2001, the scope of any public hearing held on the permit amendment required by this subsection is limited to land use compatibility, as provided by §330.57(a) of this title. This subsection does not apply to any MSW facility that has received a permit but never received waste, or that received an approved Subtitle D permit modification before September 1, 2001.

(e) A permit by rule is granted for an animal crematory that meets the following criteria. For facilities that do not meet all the requirements of this subsection, the owner or operator shall submit a permit application under §§330.57, 330.59, 330.61, 330.63, and 330.65 of this title and obtain a permit. To qualify for a permit by rule under this subsection, the following requirements must be met.

(1) General prohibitions. An animal crematory facility shall comply with §330.15(a) of this title (relating to General Prohibitions).

(2) Incineration limits. Incineration of carcasses shall be limited to the conditions specified in §106.494 of this title (relating to Non-commercial Incinerators and Crematories) [(~~relating to Pathological Waste Incinerators (Previously SE 90)~~)]. The facility shall not accept animal carcasses that weigh more than the capacity of the largest incinerator at the facility and shall not dismember any carcasses during processing.

(3) Ash control. Ash disposal must be at an authorized facility unless the ash is returned to the animal owner or sent to a pet cemetery. Ash shall be stored in an enclosed container that will prevent release of the ash to the environment. There shall be no more than 2,000 pounds of ash stored at an animal crematory at any given time.

(4) Air pollution control. Air emissions from the facility shall not cause or contribute to a condition of air pollution as defined in Texas Clean Air Act, §382.003. All animal crematories, prior to construction or modification, must have an air permit issued under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification), or qualify for a permit by rule under §106.494 of this title.

(5) Fire protection. The facility shall prepare, maintain, and follow a fire protection plan. This fire protection plan shall describe fire protection resources (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(6) Storage limits. Carcasses must be incinerated within two hours of receipt, unless stored at or below a temperature of 29 degrees Fahrenheit. Storage of carcasses shall be in a manner that minimizes the release of odors. Storage of carcasses shall be limited to the lesser of 3,200 pounds or the amount that can be incinerated at the maximum loading rate for the incinerators at the facility in a two-day period.

(7) Unauthorized waste. Only carcasses or animal parts, with any associated packaging, shall be processed. Carcasses shall not be accepted in packaging that includes any chlorinated plastics. Carcasses or animal parts that are either hazardous waste or medical waste are prohibited.

(8) Cleaning. Storage and processing units must be properly cleaned on a routine basis to prevent odors and the breeding of flies.

(9) Nuisance prevention. The facility shall be designed and operated in a manner so as to prevent nuisance conditions, including, but not limited to, dust from ashes, disease vectors, odors, and liquids from spills, from being released from the property boundary of the authorized facility.

(10) Diseased animals. The facility shall be equipped with appropriate protective equipment and clothing for personnel handling diseased animals that may be received at the facility. Facility owners or operators must inform customers and local veterinarians of the need to identify diseased animals for the protection of personnel handling the animals.

(11) Buffer zone. An animal crematory, including unloading and storage areas, constructed after March 2, 2003, must be at least 50 feet from the property boundary of the facility.

(12) Operating hours. A crematory shall operate within the time frames allowed by §111.129 of this title (relating to Operating Requirements).

(13) Documentation. The operator of an animal crematory shall document the carcasses' weight, date and time when carcasses are received, and when carcasses are loaded into the incinerator. A separate entry in the records for loading into the incinerator is not required if a carcass is loaded within two hours of receipt. This information will be maintained in records on site.

(14) Breakdown. The facility is subject to §330.241 of this title (relating to Overloading and Breakdown).

(15) Records management. The owner or operator must retain records as follows:

(A) maintain a copy of all requirements of this subsection that apply to the facility;

(B) maintain records for the previous consecutive 12-month period containing sufficient information to demonstrate compliance with all requirements of this subsection;

(C) keep all required records at the facility; and

(D) make the records available upon request to personnel from the commission or from local governments with jurisdiction over the facility.

(16) Fees. An animal crematory facility authorized under this section is exempt from the fee requirements of Subchapter P of this chapter (relating to Fees and Reporting).

(17) Other requirements. No other requirements under this chapter are applicable to a facility that meets all of the requirements of this subsection.

(f) A permit by rule is granted for a dual chamber incinerator if the owner or operator complies with §106.491 of this title (relating to Dual-Chamber Incinerators).

(g) A permit by rule is granted for an air curtain incinerator if the owner or operator complies with §106.496 of this title (relating to Air Curtain Incinerators). An air curtain incinerator may not be located within 300 feet of an active or closed MSW landfill unit boundary.

(h) A standard air permit is granted for facilities that comply with Subchapter U of this chapter (relating to Standard Air Permits for Municipal Solid Waste Landfill Facilities and Transfer Stations).

(i) A permit by rule is granted for a period of up to five years to a county or municipality with a population of 12,000 people or less to dispose of demolition waste from properties with nuisance or abandoned buildings.

(1) Requirements. The following conditions must be met.

(A) Form submittal. The county or municipality submits a form provided by the commission to the executive director for review and approval before construction begins.

(B) Notice to regional office. The county or municipality notifies the applicable commission regional office of the intent to dispose of waste under this authorization at least 48 hours prior to accepting the first load of waste.

(C) Facility location. The location where disposal will occur:

(i) is owned or controlled by the county or municipality, and

(ii) receives less than or equal to 25 inches average annual precipitation as determined from precipitation data for the nearest official precipitation recording station for at least the most recent 30-year reporting period or by another method approved by the executive director.

(D) Sources of waste. The properties on which nuisance and abandoned buildings are located have been acquired by the county or municipality by means of bankruptcy, tax delinquency, or condemnation, and the previous owners are not financially capable of paying the costs of the disposal of demolition waste at a permitted solid waste disposal facility, including transportation of the waste to the facility.

(E) Waste acceptance.

(i) Prior to demolition, structures are surveyed and abated, if required, for asbestos-containing materials in accordance with 25 TAC Chapter 296 [~~25 TAC Chapter 295, Subchapter C~~] (relating to Texas Asbestos Health Protection).

(ii) The facility may accept non-regulated asbestos-containing materials (non-RACM) for disposal. The wastes are placed on the active working face and covered at the end of the operating day with at least six inches of soil. Under no circumstances may any of the material containing non-RACM be placed on a surface that is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(iii) The facility may accept regulated asbestos-containing materials (RACM) if the following conditions are met.

(I) The county or municipality notifies the executive director on a form provided by the commission in accordance with subparagraph (A) of this paragraph.

(II) All waste trenches are identified as receiving RACM, and deed records required under subparagraph (Q) of this paragraph include an indication that the waste trench(es) received RACM.

(III) RACM is transported and received at the facility in tightly closed and unruptured containers or bags or wrapped with at least six-mil polyethylene.

(IV) Bags or containers holding RACM are carefully unloaded and placed in the final disposal location. RACM is then covered immediately with at least six inches of soil. Care is taken during unloading and placement of RACM and during application of the cover so that the bags or containers are not ruptured.

(iv) Waste is limited to the abandoned or nuisance buildings and materials from the property on which the buildings are located. All waste disposed under this authorization must meet the limitations of §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and may not include waste prohibited under §330.15(e) of this title.

(F) Access control. Access to the disposal facility is controlled by means of fences, other artificial barriers, natural barriers, or a combination of these methods, and includes a locking gate.

(G) Buffers and easements. The county or municipality maintains a minimum distance of 50 feet as a buffer between the permit boundary and waste storage, processing and disposal areas. No disposal occurs within a utility or pipeline easement or within 25 feet of the center of a utility or pipeline easement.

(H) Below-grade placement. Waste is placed only below grade. The top of final cover is placed at pre-existing grade or up to three feet above pre-existing grade to ensure that natural drainage patterns are not altered and ponding of water over waste is prevented.

(I) Weekly cover. Waste is covered at least weekly with six inches of earthen material not previously mixed with waste, or by tarps. Use of tarps as cover is limited to a seven-day period after which the county or municipality must replace the tarp with either waste or a six-inch layer of earthen material not previously mixed with waste. Tarps may not be used in place of soil cover requirements relating to non-RACM and RACM in subparagraph (E)(ii) and (iii) of this paragraph. Any trench that has received waste but will be inactive for more than 180 days receives intermediate cover in accordance with subparagraph (J) of this paragraph, or final cover in accordance with subparagraph (P) of this paragraph.

(J) Intermediate cover. Waste is covered, including any soil weekly cover, with twelve inches of well compacted earthen material not previously mixed with waste.

(K) Maximum volume. The design waste disposal volume is less than 2.5 million cubic meters in accordance with §106.534(3) of this title (relating to Municipal Solid Waste Landfills and Transfer Stations).

(L) Facility signs. At all entrances through which waste is received, the facility conspicuously displays a sign with letters at least three inches in height providing a statement that the facility is "NOT FOR PUBLIC USE," an emergency 24-hour contact number that reaches an individual with the authority to obligate the facility at all times that the facility is not in operation, and the local emergency fire department number.

(M) Stormwater and contaminated water. The county or municipality constructs berms to divert the 25-year/24-hour storm event from entering excavations containing waste. Water that has contacted waste is managed as contaminated water and disposed at an authorized treatment facility.

(N) Reporting. The county or municipality, while not required to provide quarterly reporting, provides annual reporting in accordance with the annual reporting provisions of §330.675(a) of this title (relating to Reports).

(O) Reauthorization. Before reaching the permit by rule term limit of five years, the county or municipality may request reauthorization under the permit by rule by submitting a form that is current at the time of reauthorization, provided by the commission in accordance with subparagraph (A) of this paragraph, to the executive director at least 14 days before the end of the permit term.

(P) Final cover. The following conditions are met.

(i) Within 60 days after a trench reaches its capacity or waste deposition activities are complete in a trench, the county or municipality installs final cover over waste in the trench. Final cover shall be composed of no less than two feet of soil. The first 18 inches or more of cover shall be of compacted clayey soil, classification sand clay (SC) or low plasticity clay (CL) as defined in the "Unified Soils

Classification System" developed by the United States Army Corps of Engineers, and placed and compacted in layers of no more than six inches to minimize the potential for water infiltration. A high plasticity clayey (CH) soil may be used; however, this soil may experience excessive cracking and shall therefore be covered by a minimum of 12 inches of topsoil to retain moisture. Other types of soil may be used with prior written approval from the executive director. The final six inches of cover shall be of suitable topsoil that is capable of sustaining native plant growth and shall be seeded or sodded as soon as practicable following the application of the final cover in order to minimize erosion.

(ii) The trench final cover procedures listed in clause (i) of this subparagraph are completed before facility closure, as described in subparagraph (Q) of this paragraph. If these procedures cannot be performed before the permit by rule term limit is reached, the county or municipality submits a current application form for reauthorization of the permit by rule to the executive director at least 14 days before the end of the permit term.

(Q) Facility closure. The county or municipality notifies the executive director and the applicable regional office at least 60 days before the anticipated closure date of the facility. Within ten days after closure, submit to the executive director by registered mail a certified copy of an "affidavit to the public" in accordance with the requirements of §330.19 of this title (relating to Deed Recordation). In addition, record a certified notation of the deed to the facility property, or on some other instrument that is normally examined during title search, that will in perpetuity notify any potential purchaser of the property that the land has been used as a landfill facility and use of the land is restricted. Submit a certified deed to the executive director.

(2) Other provisions. The following provisions also apply to this authorization.

(A) Processing. This permit by rule also authorizes the processing of waste destined for the disposal unit. Authorized processing is limited to volume reduction, such as chipping or grinding, but not burning. Processing must occur within the permit boundary and may not occur within a buffer zone or right-of-way. Tires, RACM and non-RACM may not be processed. If required, the county or municipality must obtain authorization for air emissions resulting from this processing.

(B) Fees. Waste that is disposed under this authorization is not subject to the fee requirements of Subchapter P of this chapter.

(C) Other requirements. No other requirements under this chapter are applicable to a facility that meets all the requirements of this subsection.

§330.13. Waste Management Activities Exempt from Permitting, Registration, or Notification.

(a) A permit, registration, notification, or other authorization is not required for the disposal of up to 2,000 pounds per year of litter or other solid waste generated by an individual on that individual's own land and is not required to comply with §330.19 of this title (relating to Deed Recordation) provided that:

(1) the litter or waste is generated on land that the individual owns;

(2) the litter or waste is not generated as a result of an activity related to a commercial purpose;

(3) the disposal occurs on land that the individual owns;

(4) the disposal is not for a commercial purpose;

(5) the waste disposed of is not hazardous waste or industrial waste;

(6) the waste disposal method complies with Chapter 111, Subchapter B of this title (relating to Outdoor Burning); and

(7) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment. Exceeding 2,000 pounds per individual's residence per year is considered to be a nuisance.

(b) A permit, registration, notification, or other authorization is not required for the disposal of animal carcasses from government roadway maintenance where:

(1) either of the following:

(A) the animals were killed on county or municipal roadways and the carcasses are buried on property owned by the entity that is responsible for road maintenance; or

(B) the animals were killed on state highway rights-of-way and the carcasses are disposed of by the Texas Department of Transportation by burying the carcasses on state highway rights-of-way; and

(2) the waste disposal method does not contribute to a nuisance and does not endanger the public health or the environment; and

(3) the animal carcasses are covered with at least two feet of soil within 24 hours of collection in accordance with §330.171(c)(2) of this title (relating to Disposal of Special Wastes).

(c) A permit, registration, notification, or other authorization is not required for veterinarians performing activities as authorized by Texas Occupations Code, §801.361, Disposal of Animal Remains. Disposal by burning under this section must comply only with §111.209(3) of this title (relating to Exception for Disposal Fires).

(d) Except as required by §330.7(c)(2) and §330.9(a) of this title (relating to Permit Required; and Registration Required), a permit, registration, notification, or other authorization is not required for transporters of municipal solid waste.

(e) A permit, registration, notification, or other authorization is not required for a collection point for parking lot or street sweepings or wastes collected and received in sealed plastic bags from such activities as periodic city-wide cleanup campaigns and cleanup of rights-of-way or roadside parks.

(f) A permit, registration, notification, or other authorization is not required from a car wash facility for drying grit trap waste as long as these wastes are dried and disposed of in compliance with applicable federal, state, and local regulations. Grit trap waste from car wash facilities may be transported for drying purposes to other property if the car wash facility and the property with the drying bed have the same owner and if the facilities are located within 50 miles of each other. This subsection is not intended to preempt or supersede local government regulation of grit trap waste-drying facilities. Drying facilities must comply with Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) if applicable.

(g) A permit, registration, notification, or other authorization is not required for an advanced recycling facility that processes recoverable feedstocks into valuable raw materials, valuable intermediate products, or valuable final products through pyrolysis, gasification, solvolysis, or depolymerization [~~a gasification or pyrolysis facility~~]. The owner or operator of an advanced recycling facility shall keep records onsite to demonstrate:

(1) that the primary function of the facility is to convert materials into products for subsequent beneficial use; and [~~that have a resale value greater than the cost of converting the materials for subsequent beneficial use. The demonstration may consist of the following information:~~]

[~~(A) documentation to support all costs associated with processing materials versus the resale value for the intended beneficial use; or~~]

[~~(B) published indices or buyer contracts, proposed turnover rates, and calculations to show a resale value greater than the costs associated with processing materials.~~]

(2) that all solid waste generated from converting materials has been disposed of at a disposal facility authorized by the commission to accept and dispose of the solid waste, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner. Such documentation shall include a description of the type and volume of solid waste generated, the date(s) and volumes of waste transported off-site, the name and permit or other authorization number of each transporter and authorized disposal facility, and the address of each authorized disposal facility [~~identification of the disposal site(s) authorized by the commission where all solid waste generated from converting the materials will be disposed of~~].

§330.15. General Prohibitions.

(a) A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of municipal solid waste (MSW), or the use or operation of a solid waste facility to store, process, or dispose of solid waste, or to extract materials under Texas Health and Safety Code, §361.092, in violation of the Texas Health and Safety Code, or any regulations, rules, permit, license, order of the commission, or in such a manner that causes:

(1) the discharge or imminent threat of discharge of MSW into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the human health and welfare or the environment.

(b) MSW land disposal facilities (Types I, IAE, IV, IVAE, and VI) failing to satisfy the applicable requirements of this chapter, unless exempted by this chapter, are considered open dumps for purposes of state solid waste management planning under the Resource Conservation and Recovery Act and are prohibited under Resource Conservation and Recovery Act, §4005(a).

(c) Except as otherwise authorized by this chapter, a person may not cause, suffer, allow, or permit the dumping or disposal of MSW without the written authorization of the commission.

(d) The open burning of solid waste, except for the infrequent burning of waste generated by land-clearing operations, agricultural waste, silvicultural waste, diseased trees, emergency cleanup operations as authorized by the commission or executive director as appropriate, is prohibited at any MSW landfill. The operation of an air curtain incinerator as allowed in §330.7(g) of this title (relating to Permit Required) other than for the exceptions noted in the previous sentence, is prohibited.

(e) The following wastes are prohibited from disposal in any MSW facility.

(1) A lead acid storage battery shall not be intentionally or knowingly offered by a generator or transporter for disposal at an MSW landfill or incinerator, and/or shall not be intentionally or knowingly accepted for disposal at an MSW landfill or incinerator permitted under this chapter.

(A) Each battery improperly disposed of constitutes a separate violation and offense.

(B) A person that violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Health and Safety Code, as amended.

(2) Do-it-yourself used motor vehicle oil shall not be intentionally or knowingly offered by a generator or transporter for disposal at an MSW landfill or MSW incinerator, either by itself or mixed with other solid waste, and/or shall not be intentionally or knowingly accepted for disposal at an MSW landfill or MSW incinerator permitted under this chapter.

(A) It is an exception to this subsection if the mixing or commingling of used oil with solid waste that is to be disposed of in a landfill is incidental to, and the unavoidable result of, the mechanical shredding of motor vehicles; appliances; or other items of scrap, used, or obsolete metals.

(B) A person that violates the provisions of this paragraph is subject to the criminal and/or civil penalties found in the Texas Health and Safety Code, as amended.

(3) Used oil filters from internal combustion engines shall not be offered for landfill disposal by any generator and shall not be intentionally or knowingly accepted for disposal at a landfill permitted under this chapter.

(4) Whole used or scrap tires shall not be accepted for disposal or disposed of in any MSW landfill, unless processed prior to disposal in a manner acceptable to the executive director.

(5) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC) must be handled in accordance with 40 Code of Federal Regulations §82.156 [~~§82.156(f)~~], as amended.

(6) Except as allowed in §330.177 of this title (relating to Leachate and Gas Condensate Recirculation), liquid waste as defined in §330.3 of this title (relating to Definitions) and as described in subparagraphs (A) and (B) of this paragraph below shall not be disposed of in any MSW landfill unit.

(A) Bulk or noncontainerized liquid waste shall not be accepted for disposal or disposed of in an MSW landfill unless the waste is household waste other than septic waste.

(B) Containers holding liquid waste shall not be accepted for disposal or disposed of in an MSW landfill unless:

(i) the container is a small container similar in size to that normally found in household waste;

(ii) the container is designated to hold liquids for use other than storage; or

(iii) the waste is household waste.

(7) Regulated hazardous waste as defined in §330.3 of this title shall not be accepted at an MSW facility.

(8) Polychlorinated biphenyls (PCB) wastes, as defined under 40 Code of Federal Regulations Part 761, shall not be accepted for disposal or disposed of in an MSW facility unless authorized by the United States Environmental Protection Agency and the MSW permit.

(9) Radioactive materials as defined in Chapter 336 of this title (relating to Radioactive Substance Rules), except as authorized in Chapter 336 of this title or that are subject to an exemption of the

Department of State Health Services shall not be accepted at an MSW facility.

(f) MSW facilities receiving sewage sludge and failing to satisfy the criteria of this chapter violate Federal Clean Water Act, §309 and §405(e).

(g) The drilling of any test borings, for any reason, through previously deposited waste or cover material without prior written authorization from the executive director is prohibited.

(h) An MSW facility shall not cause:

(1) a discharge of solid wastes or pollutants adjacent to or into waters of the state, including wetlands, that is in violation of the requirements of Texas Water Code, §26.121;

(2) a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Federal Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System requirements, under §402, as amended, or Texas Pollutant Discharge Elimination System requirements;

(3) a discharge of dredged or fill material to waters of the United States, including wetlands, that is in violation of the requirements under Federal Clean Water Act, §404, as amended; and

(4) a discharge of a nonpoint source pollution into waters of the United States, including wetlands, that violates any requirement of an area-wide or state-wide water quality management plan that has been approved under Federal Clean Water Act, §208 or §319, as amended.

(i) Processing of liquid waste as defined in §330.3 of this title, other than that incidental to transfer and storage, at a transfer station without a specific Type V processing authorization is prohibited.

§330.23. Relationships with Other Governmental Entities.

(a) Texas Department of Transportation (TxDOT). The executive director shall coordinate with TxDOT on the review of all permit applications for municipal solid waste (MSW) land disposal facilities existing or proposed within 1,000 feet of an interstate or primary highway to determine the need for screening or special operating requirements. When primary access to an MSW disposal facility is provided by state-maintained streets or highways, the executive director shall solicit recommendations from TxDOT regarding the adequacy and design capacity of such roadways to safely accommodate the additional volumes and weights of traffic generated or expected to be generated by the facility operation.

(b) United States Army Corps of Engineers. The executive director shall coordinate the review of all permit applications for MSW disposal facilities with the appropriate district engineer to determine the need for a permit from the Corps of Engineers.

(c) Federal Aviation Administration (FAA). The executive director shall coordinate the review of permit applications for all MSW land disposal facilities existing or proposed in the vicinity of airports with the appropriate airports' district office of the FAA (FAA Advisory Circular 150/5200-33C, "Hazardous Wildlife Attractants on or Near Airports," February21, 2020) [(~~FAA Advisory Circular 150/5200.33A, "Hazardous Wildlife Attractants on or Near Airports," July 27, 2004~~)].

(d) Special districts. The Texas Health and Safety Code (THSC) applies to political subdivisions of the state to which the legislature has given waste handling authority for two or more counties. The relationship between the agency and any such waste handling authority will be similar to that between the agency and a county.

(e) Regional planning agencies. The agency will provide educational, technical, and advisory assistance to the various councils of governments and regional planning commissions throughout the state.

(f) Municipal governments. Municipalities may enforce the provisions of this chapter as provided for in the THSC and the Texas Water Code. The commission is committed to assisting municipal governments in an educational and advisory capacity. The commission is a necessary and indispensable party to any suit filed by a local government under the THSC and the Texas Water Code.

(g) County governments. County governments may exercise the authority provided in THSC, Chapters 361, 363, and 364, regarding the management of solid waste including the enforcement of the requirements of the THSC and this chapter. The provisions of THSC, Chapters 361, 363, and 364, allow county governments to require and issue licenses authorizing and governing the operation and maintenance of facilities used for the storage, processing, or disposal of solid waste not in the territorial or extraterritorial jurisdiction of a municipality. THSC, Chapters 361, 363, and 364, provide that no license for disposal of solid waste may be issued, renewed, or extended without the prior approval of the commission. Under Texas Water Code, Chapter 7, the commission is a necessary and indispensable party to any suit filed by a local government for the violation of any provision of the Solid Waste Disposal Act. If a permit is issued, renewed, or extended by the commission, the owner or operator of the facility does not need to obtain a separate license for the same facility from a county or from a political subdivision as defined in THSC, Chapters 361, 363, and 364.

(h) Texas Parks and Wildlife Department (TPWD). TPWD has jurisdiction over certain environmental issues that may be affected by MSW facilities including, but not limited to, endangered species and wetlands. The executive director will solicit comments from, and consider information provided by, TPWD.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402109
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Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
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SUBCHAPTER B. PERMIT AND REGISTRATION APPLICATION PROCEDURES

30 TAC §§330.57, 330.63, 330.65, 330.69

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal

solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The proposed amendments implement House Bill 3060, 88th Texas Legislature, 2023.

§330.57. Permit and Registration Applications for Municipal Solid Waste Facilities.

(a) Permit application. The application for a municipal solid waste facility is divided into Parts I - IV. Parts I - IV of the application shall be required before the application is declared administratively complete in accordance with Chapter 281 of this title (relating to Applications Processing). The owner or operator shall submit a complete application, containing Parts I - IV, before a hearing can be conducted on the technical design merits of the application. An owner or operator applying for a permit may request a land-use only determination. If the executive director determines that a land-use only determination is appropriate, the owner or operator shall submit a partial application consisting of Parts I and II of the application. The executive director may process a partial permit application to the extent necessary to determine land-use compatibility alone. If the facility is determined to be acceptable on the basis of land use, the executive director will consider technical matters related to the permit application at a later time. When this procedure is followed, an opportunity for a public hearing will be offered for each determination in accordance with §39.419 of this title (relating to Notice of Application and Preliminary Decision). A complete application, consisting of Parts I - IV of the application, shall be submitted based upon the results of the land-use only public hearing. Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are required to submit all parts of the application except for those items pertaining to Subchapters H and J of this chapter (relating to Liner System Design and Operation; and Groundwater Monitoring and Corrective Action). Owners or operators of Type IAE and Type IVAE municipal solid waste landfill units are exempt from the geology report requirements of §330.63(e) of this title (relating to Contents of Part III of the Application) except for the requirement to submit a soil boring plan in accordance with §330.63(e)(4) and (e)(4)(A) of this title, and the information requested in §330.63(e)(6) of this title.

(b) Registration application. A registration application for a municipal solid waste facility is also divided into Parts I - IV, but is not subject to a hearing request or to the administrative completeness determinations of Chapter 281 of this title.

(c) Parts of the application.

(1) Part I of the application consists of the information required in §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits), §305.45 of this title (relating to Contents of Application for Permit), and §330.59 of this title (relating to Contents of Part I of the Application).

(2) Part II of the application describes the existing conditions and character of the facility and surrounding area. Part II of the application shall consist of the information contained in §330.61 of this title (relating to Contents of Part II of the Application). Parts I and II of a permit application must provide information relating to land-use compatibility under the provisions of Texas Health and Safety Code, §361.069. Part II may be combined with Part I of the application or may be submitted as a separate document. An owner or operator must submit Parts I and II of the permit application before a land-use determination is made in accordance with subsection (a) of this section.

(3) Part III of the application contains design information, detailed investigative reports, schematic designs of the facility, and required plans. Part III shall consist of the documents required in §330.63 of this title.

(4) Part IV of the application contains the site operating plan that shall discuss how the owner or operator plans to conduct daily operations at the facility. Part IV shall consist of the documents required in §330.65 of this title (relating to Contents of Part IV of the Application).

(d) Required information. The information required by this subchapter defines the basic elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site. It is the responsibility of the applicant to provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no reasonable probability of adverse effects on the health, welfare, environment, or physical property of nearby residents or property owners. Failure of the owner or operator to provide complete information as required by this chapter may be cause for the executive director to return the application without further action in accordance with §281.18 and §281.19 of this title (relating to Applications Returned and Technical Review). Submission of false information shall constitute grounds for denial of the permit or registration application.

(e) Number of copies.

(1) Applications shall be initially submitted in two paper copies and one accurate duplicate in electronic format [~~four copies~~]. The owner or operator shall furnish [~~up to 18~~] additional copies of the application for use by required reviewing agencies, upon request of the executive director.

(2) The accurate duplicate in electronic format shall meet the application formatting and drawing requirements of the paper copy.

(3) [~~(2)~~] For permit applications initially submitted to the executive director, the owner or operator shall also furnish Parts I and II, and any subsequent revisions to Parts I and II, to the regional council of governments.

(f) Preparation. Preparation of the application must conform with Texas Occupations Code, Texas Engineering Practice Act, Chapter 1001 and Texas Geoscience Practice Act, Chapter 1002.

(1) The responsible engineer shall seal, sign, and date the title page of each bound engineering report or individual engineering plan in the application and each engineering drawing as required by Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) The responsible geoscientist shall seal, sign, and date applicable items as required by Texas Geoscience Practice Act, §6.13(b), and in accordance with 22 TAC §851.156 (relating to Professional Geoscientist Seals and Geoscience Firm Identification).

(3) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the owner or operator.

(g) Application format.

(1) Paper applications [~~Applications~~] shall be submitted in three-ring, "D"-ring, loose-leaf binders.

(2) The title page shall show the name of the project; the municipal solid waste permit application number, if known; the name of the owner and operator; the location by city and county; the date the

part was prepared; and, if appropriate, the number and date of the revision. It shall be sealed as required by the Texas Engineering Practice Act.

(3) The table of contents shall list and give the page numbers for the main sections of the application. It shall be sealed as required by the Texas Engineering Practice Act.

(4) The narrative of the report shall be printed on 8-1/2 by 11 inches white paper. Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(5) All pages shall contain a page number and date.

(6) Revisions shall have the revision date and note that the sheet is revised in the header or footer of each revised sheet. The revised text shall be marked to highlight the revision.

(7) Use dividers and tabs [~~Dividers and tabs are encouraged~~].

(h) Application drawings.

(1) All information contained on a drawing shall be legible, even if it has been reduced. The drawings shall be 8-1/2 by 11 inches or 11 by 17 inches. Standard-sized drawings (24 by 36 inches) folded to 8-1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.

(2) If color coding is used, it should be legible and the code distinct when reproduced on black and white photocopy machines.

(3) Drawings shall be submitted at a standard engineering scale.

(4) Each drawing shall have a:

(A) dated title block;

(B) bar scale at least one-inch long;

(C) revision block;

(D) responsible engineer's or geoscientist's seal, if required; and

(E) drawing number and a page number.

(5) Each map or plan drawing shall also have:

(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;

(B) a reference to the base map source and date, if the map is based upon another map. The latest published edition of the base map should be used; and

(C) a legend.

(6) Match lines and section lines shall reference the drawing where the match or section is shown. Section drawings should note from where the section was taken.

(i) Posting application information.

[~~(1) Upon submittal of an application, the owner or operator shall provide a complete copy of any application that requires public notice, except for authorizations at Type IAE and Type IVAE landfill facilities, including all revisions and supplements to the application, on a publicly accessible internet website, and provide the commission with the Web address link for the application materials. This internet posting is for informational purposes only~~].

(1) [~~(2)~~] The commission shall post on its website the accurate duplicate electronic application(s) [~~identity of all owners and operators filing such applications and the Web address link required by this subsection~~].

(2) [~~(3)~~] For applications for new permits or major amendments, an owner or operator shall post notice signs at the site within 30 days of the executive director's receipt of an application. This sign posting is for informational purposes only. Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) identify as appropriate that the application is for a proposed permitted facility or an amendment to a permitted facility;

(C) include the words "For further information on how the public may participate in Texas Commission on Environmental Quality (TCEQ) permitting matters, contact TCEQ," the toll free telephone number for the Public Education Program, and the agency's website address;

(D) include the name and address of the owner or operator;

(E) include the telephone number of the owner or operator; and

(F) remain in place and legible until the close of the final comment period.

(3) [~~(4)~~] Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line parallel to a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the permitted facility.

(4) [~~(5)~~] The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.426 of this title (relating to Alternative Language Requirements) [~~§39.405(h)(2) of this title (relating to General Notice Provisions)~~] are met.

(5) [~~(6)~~] The executive director may approve variances from the requirements of paragraphs (2), (3), and (4) [~~(3), (4), and (5)~~] of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those paragraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this paragraph must be received before posting alternative signs for purposes of satisfying the requirements of this subsection.

§330.63. Contents of Part III of the Application.

(a) Site development plan. This plan must include criteria that in the selection and design of a facility will provide for the safeguarding of the health, welfare, and physical property of the people and the environment through consideration of geology, soil conditions, drainage, land use, zoning, adequacy of access roads and highways, and other considerations as the specific facility dictates. The site development plan must include the items listed in this section.

(b) General facility design.

(1) Facility access. The owner or operator shall describe how access will be controlled for the facility such as the type and location of fences or other suitable means of access control to prevent the entry of livestock, to protect the public from exposure to potential

health and safety hazards, and to discourage unauthorized entry or uncontrolled disposal of solid waste or hazardous materials.

(2) Waste movement. The owner or operator shall submit a generalized process design and working plan of the overall facility that includes, at a minimum:

(A) flow diagrams indicating the storage, processing, and disposal sequences for the various types of wastes and feedstocks received;

(B) schematic view drawings showing the various phases of collection, separation, processing, and disposal as applicable for the types of wastes and feedstocks received at the facility;

(C) proposed ventilation and odor control measures for each storage, separation, processing, and disposal unit;

(D) generalized construction details of all storage and processing units and ancillary equipment (i.e., tanks, foundations, sumps, etc.) with regard to approximate dimensions and capacities, construction materials, vents, covers, enclosures, protective coatings of surfaces, etc. Performance data on all units shall be provided;

(E) generalized construction details of slab and subsurface supports of all storage and processing components;

(F) locations and engineering design details of all containment dikes or walls (with indicated freeboard) proposed to enclose all storage and processing components and all loading and unloading areas;

(G) plans for the storage of grease, oil, and sludge on site including determinations of maximum periods of time all separated materials will remain on site and the ultimate disposition of such materials off site;

(H) proposed disposition of effluent resulting from all processing operations; and

(I) for transfer stations, provide designs for noise pollution control.

(3) Sanitation. The owner or operator shall describe how solid waste processing facilities will be designed to facilitate proper cleaning. This may be accomplished by:

(A) controlling surface drainage in the vicinity of the facility to prevent surface water runoff onto, into, and off the treatment area;

(B) constructing walls and floors in operating areas of masonry, concrete, or other hard-surfaced materials that can be hosed down and scrubbed;

(C) providing necessary connections and equipment to permit thorough cleaning with water or steam; and

(D) providing adequate floor or sump drains to remove wash water.

(4) Water pollution control. The owner or operator shall describe how all liquids resulting from the operation of solid waste processing facilities will be disposed of in a manner that will not cause surface water or groundwater pollution. The owner or operator shall provide for the treatment of wastewaters resulting from the process or from cleaning and washing and specify how the procedure for wastewater disposal is in compliance with the rules of the commission.

(5) Endangered species protection. If necessary, the owner or operator shall describe how the facility will be designed to protect endangered species.

(c) Facility surface water drainage report. The owner or operator of a municipal solid waste (MSW) facility shall include a statement that the facility design complies with the requirements of §330.303 of this title (relating to Surface Water Drainage for Municipal Solid Waste Facilities). Additionally, applications for landfill and compost units shall include a surface water drainage report to satisfy the requirements of Subchapter G of this chapter (relating to Surface Water Drainage) and shall include the following.

(1) Drainage analyses. The owner or operator shall submit the following information and analyses:

(A) drawing(s) showing the drainage areas and drainage calculations;

(B) designs of all drainage facilities within the facility area, including such features as typical cross-sectional areas, ditch grades, flow rates, water surface elevation, velocities, and flowline elevations along the entire length of the ditch;

(C) sample calculations provided to verify that existing drainage patterns will not be adversely altered;

(D) a description of the hydrologic method and calculations used to estimate peak flow rates and runoff volumes including justification of necessary assumptions:

(i) the 25-year rainfall intensity used for facility design including the source of the data; all other data and necessary input parameters used in conjunction with the selected hydrologic method and their sources should be documented and described;

(ii) hydraulic calculations and designs for sizing the necessary collection, drainage, and/or detention facilities;

(iii) discussion and analyses to demonstrate that existing drainage patterns will not be adversely altered as a result of the proposed landfill development; and

(iv) structural designs of the collection, drainage, and/or storage facilities.

(2) Flood control and analyses. The owner or operator shall:

(A) identify whether the site is located within a 100-year floodplain. If applicable, indicate 100-year floodplain on the drawing in paragraph (1)(A) of this subsection;

(B) provide the source of all data for such determination and include a copy of the relevant Federal Emergency Management Agency (FEMA) flood map or the calculations and maps used where a FEMA map is not used. FEMA maps are prima facie evidence of floodplain locations. Information shall also be provided identifying the 100-year flood level and any other special flooding factors (e. g., wave action) that must be considered in designing, constructing, operating, or maintaining the proposed facility to withstand washout from a 100-year flood. The boundaries of the proposed landfill facility should be shown on the floodplain map;

(C) if the site is located within the 100-year floodplain, provide information detailing the specific flooding levels and other events (e.g., design hurricane projected by Corps of Engineers) that impact the flood protection of the facility. Data should be that required by §§301.33 - 301.36 of this title (relating to Preliminary Plans: Data To Be Submitted, Criteria For Approval of Preliminary Plans; Additional Information; Plans To Bear Seal of Engineer). The owner or operator shall include cross-sections or elevations of landfill levees shown tied into contours;

(D) for construction in a floodplain, submit, where applicable:

(i) approval from the governmental entity with jurisdiction under Texas Water Code, §16.236, as implemented by Chapter 301 of this title (relating to Levee Improvement Districts, District Plans of Reclamation, and Levees and Other Improvements);

(ii) a floodplain development permit from the city, county, or other agency with jurisdiction over the proposed improvements;

(iii) a Conditional Letter of Map Amendment from FEMA; and

(iv) a Corps of Engineers Section 404 Specification of Disposal Sites for Dredged or Fill Material permit for construction of all necessary improvements.

(d) Waste management unit design.

(1) Storage and transfer units. The owner or operator shall:

(A) describe how the solid waste management facility will be designed for the rapid processing and minimum detention of solid waste at the facility. The owner or operator shall specify that all solid waste capable of creating public health hazards or nuisances be stored indoors only and processed or transferred promptly and shall not be allowed to result in nuisances or public health hazards. If the facility is in continuous operation, such as for resource or energy recovery, the owner or operator shall provide design features for wastes storage units that will prevent the creation of nuisances or public health hazards due to odors, fly breeding, or harborage of other vectors;

(B) design the units to control and contain spills and contaminated water from leaving the facility. The design shall be sufficient to control and contain a worst-case spill or release from the unit. Unenclosed containment areas shall also account for precipitation from a 25-year, 24-hour rainfall event; and

(C) specify the maximum allowable period of time that unprocessed and processed wastes are to remain on site.

(2) Incineration units. The owner or operator shall provide waste feed rates, an estimate of the amount and planned method for testing and final disposal of incinerator ash, an estimate of the volume of quench or process water, and the planned method of treatment and disposal of such water.

(3) Surface impoundments. The owner or operator shall provide:

(A) design specifications for surface impoundments, including a plan view and cross-section of the impoundment;

(B) the minimum freeboard to be maintained and the basis of the design to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and wave action; rainfall; run-on (if allowed); malfunctions of level controllers, alarms, and other equipment; and human error. The owner or operator shall show that adequate freeboard will be available to prevent overtopping from a 25-year, 24-hour rainfall event; and/or

(C) in accordance with §330.339 of this title (relating to Liner Quality Control Plan), a liner quality control plan prepared in accordance with Subchapter H of this chapter (relating to Liner System Design and Operation).

(4) Landfill units. The owner or operator shall specify:

(A) provisions for all-weather operation, e.g., all-weather road, wet-weather pit, alternative disposal facility, etc., and provisions for all-weather access from publicly owned routes to the disposal facility and from the entrance of the facility to unloading areas used during wet weather. Interior access road locations and the type of surfacing shall be indicated on a facility plan. The roads within the facility shall be designed so as to minimize the tracking of mud onto the public access road;

(B) the landfill method proposed, e.g., moving-face cell or trench, area fill, or combination;

(C) elevation of deepest excavation, maximum elevation of waste, maximum elevation of final cover;

(D) a calculation of the estimated rate of solid waste deposition and operating life of the landfill unit. As a general rule, 10,000 people with a per capita collection rate of five pounds per day, dispose of 10 - 15 acre-feet of solid waste in one year;

(E) landfill unit cross-sections consisting of plan profiles across the facility clearly showing the top of the levee, top of the proposed fill (top of the final cover), maximum elevation of proposed fill, top of the wastes, existing ground, bottom of the excavations, side slopes of trenches and fill areas, gas vents or wells, and groundwater monitoring wells, plus the initial and static levels of any water encountered. The owner or operator shall provide a sufficient number of cross-sections, both latitudinally and longitudinally, so as to accurately depict the existing and proposed depths of all fill areas within the site. The plan portion shall be shown on an inset key map. The fill cross-sections shall go through or very near the soil borings in order that the boring logs obtained from the soils report can also be shown on the profile;

(F) construction and design details of compacted perimeter or toe berms that are proposed in conjunction with above-ground (aerial-fill) waste disposal areas shall be included in the fill cross-sections; and

(G) a liner quality control plan prepared in accordance with Subchapter H of this chapter.

(5) Arid exemption landfill application information. Owners or operators of new, existing, and lateral expansions of small MSW landfill facilities that meet the criteria in §330.5(b) of this title (relating to Classification of Municipal Solid Waste Facilities) shall submit a certification of eligibility to the executive director and place a copy of the certification in the operating record. The certification shall be signed by a principal executive officer, a ranking elected official, or an independent professional engineer licensed to practice in the State of Texas. The certification must contain the following information:

(A) a statement certifying that the small MSW landfill facility meets all requirements contained in §330.5(b) of this title for exemptions from Subchapter H of this chapter (relating to Liner System Design and Operation) and Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action);

(B) documentation that the small MSW landfill facility receives for disposal an annual average of less than 20 tons per day of authorized types of waste in a Type IAE landfill unit and/or less than 20 tons per day of authorized types of waste in a Type IVAE landfill unit for a total waste acceptance rate less than 40 tons per day for the facility, based upon the most recent four reporting quarters or a certification that programs have been put in place, or will be implemented, to reduce the annual average to less than 20 tons per day based on an annual average for each landfill unit type within one year;

(C) documentation that there are no practicable waste management alternatives available. The documentation shall demonstrate one of the following:

(i) additional costs of available alternatives are estimated to exceed 1.0% of the owner's or operating community's budget for all public services;

(ii) haul distances to alternative sites are unreasonably long; or

(iii) all other alternatives are not feasible to implement, given the community location and economic condition; and

(D) documentation that the small MSW landfill unit receives less than or equal to 25 inches of average annual precipitation as determined from precipitation data for the nearest official precipitation recording station for the most recent 30-year reporting period.

(6) Type V mobile liquid waste processing units. The owner or operator shall provide the following:

(A) documentation of affirmative local government approval or acceptance of the mobile unit operation, including conformity with local ordinances, local rules, or requirements set forth by the treatment facility for the discharge, including local limits, zoning restrictions, permits, licenses, authorizations, etc. These regulations do not grant authorization for operation of mobile liquid waste processing units in noncompliance with local government ordinances and regulations or without the express approval of the local wastewater authority. Discharge from a mobile liquid waste processing unit is allowed only at selected disposal points selected by the local treatment facility permitted under Texas Water Code, Chapter 26, so that they can be monitored by the local treatment facility; and

(B) written approval from the receiving treatment facility permitted under Texas Water Code, Chapter 26.

(7) Type IX energy, material, gas recovery for beneficial use, or landfill mining waste processing units. The owner or operator shall provide:

(A) For wastes to be excavated, a test pit evaluation report prepared by an engineer. Prior approval of a test pit plan must be obtained from the executive director before excavation of test pits including location and depth of all test pits, including a discussion and information on the following:

(i) a description of the characteristics of waste observed in test pits excavated on the site to include the percent of paper, plastics, ferrous metal, other metal, glass, other constituents, and soil fraction by weight;

(ii) a design for the test pits to extend four feet beneath the waste or to a depth authorized by the executive director and information submitted to include a Toxicity Characteristic Leaching Procedure (TCLP) of the soil to characterize the soil beneath the site. Liners if present shall not be disrupted;

(iii) a TCLP analysis of each representative type of waste excavated. Additionally, waste excavated from each test pit must be analyzed for asbestos and polychlorinated biphenyls (PCBs). Consideration should be given to the analysis of waste material from each test pit for hazardous waste constituents;

(iv) a determination as to a sufficient number of test pits to establish the properties of the waste. A site of five acres or less must have a minimum of three test pits. Sites larger than five acres must have three test pits plus one for every additional five acres or fraction of an acre. The number of test pits shall be approved by the executive director prior to making the pits. The test pits should be sufficiently large enough to provide representative information;

(v) a description of how all test pits will be backfilled with clean high plasticity or low plasticity clay. The excavation shall be backfilled to exceed the existing grade and provide positive drainage;

(vi) a cross-section drawing using the information from the test pits to depict the top and bottom elevations of the landfill;

(vii) a plan view map depicting the location and extent (vertical and lateral) of the waste unit and proposed extent of mining/recovery operations. In areas with liners, mining operations should not extend below the top of the protective cover of the liner. In areas where no liner exists, excavation operations may extend below the waste;

(viii) an evaluation of historical records of landfill operations, where available, to determine such things as hazardous waste potential, receipt of special waste, types of waste received, special waste disposal areas, construction or demolition waste disposal areas, methane and leachate records, age, volume, disposal methods, existence of liners, gas collection systems, and leachate collection systems; and

(ix) a description of how all waste removed in test pit evaluation will be disposed of in a permitted landfill;

(B) a process description to include:

(i) a list of the typical materials intended for processing along with the anticipated volume to be processed. This description shall also contain an estimate of the daily quantity of material to be processed at the facility along with a description of the proposed process of screening for hazardous materials;

(ii) the methods of excavating the buried waste materials. The owner or operator shall indicate how the material will be handled, how long it will remain in the area, what equipment will be used, how the material will be moved from the excavation area, how the excavation area will be held to a minimum, the maximum side slopes in buried waste, and the maximum excavation area at any one time. The owner or operator shall provide the sequence of excavation;

(iii) the processes used to recover reusable or recyclable material or energy. The narrative shall include any water addition, processing rates, equipment, and mass balance or energy balance calculations;

(iv) how any process water will be handled and disposed of if a wet mining process is to be used;

(v) a complete narrative on product distribution to include items such as disposition of material or energy recovered and probable use of soils on site and off site; and

(vi) a process diagram that depicts the general process;

(C) a description of liner system used for excavated waste storage, processing, and screening areas to control seepage and runoff. The liner shall be covered with a material designed to withstand normal traffic from the processing operations; and

(D) a description of how waste excavation activities will comply with the minimum design and operation requirements of:

(i) §330.149 (relating to Odor Management Plan);

(ii) §330.151 (relating to Disease Vector Control);

(iii) §330.165 (relating to Landfill Cover); and

(iv) §330.167 (relating to Ponded Water).

(8) Compost units. The owner or operator shall provide:

(A) for mechanical composting systems, a detailed engineering description of the system and the manufacturer's performance data;

(B) facility layout, including calculations for area requirements;

(C) a description of the movement of the material as it leaves the tipping area indicating how the material is incorporated into the composting process and what handling techniques are used all the way through to the post-processing area. The narrative must include:

(i) processing rates;

(ii) equipment;

(iii) mass balance calculations;

(iv) use of bulking agents, moisture control, or feed amendments;

(v) process monitoring methods;

(vi) temperature range and resident time;

(vii) storage of compost for curing after the primary composting operation; and

(viii) provision for additional drying and screening;

(D) a narrative on the post-processing process, including post-processing times, identification and segregation of product, storage of product, and quality assurance and quality control; and

(E) a narrative on product distribution including items such as end-product quantities, anticipated final grades, packaging, labeling, loading, marketing, distribution, tracking, and delivery of composted material.

(9) Type VI waste processing demonstration facilities.

(A) The facility size shall be limited to a liquid waste processing rate no greater than 10,000 gallons per day.

(B) The facility design and operation shall be coordinated with a consultant connected with an accredited college or university or with a consultant that has demonstrated the ability to carry out scientific experiments for demonstrating new and unproven waste handling methods and submitted to the executive director. The owner or operator shall submit to the executive director an annual and final status report to document the viability of the method being demonstrated. The report, at a minimum, must document the effluent standards and solid waste standards achieved.

(C) The owner or operator may request a variance.

(i) In specific cases, the executive director may approve a variance from the requirements of this chapter if the variance is not contrary to safeguarding the health, welfare, and physical property of the people and to protecting the environment. A variance may not be approved concerning the procedural requirements of this chapter.

(ii) A request for a variance must be submitted in writing to the executive director. The request may be made in an application for a registration. Any approval of a variance must be in writing from the executive director.

(e) Geology report. This portion of the application applies to owners or operators of MSW landfills, compost units, and if otherwise requested by the executive director. The geology report shall be prepared and signed by a qualified groundwater scientist. Previously prepared documents may be submitted but must be supplemented as necessary to provide the requested information. Sources and references for information must be provided. The geology report must contain the following information:

(1) a description of the regional geology of the area that includes:

(A) a geologic map of the region with text describing the stratigraphy and lithology of the map units. An appropriate section of a published map series such as the Geologic Atlas of Texas prepared by the Bureau of Economic Geology is acceptable; and

(B) a description of the generalized stratigraphic column in the facility area from the base of the lowermost aquifer capable of providing usable groundwater, or from a depth of 1,000 feet, whichever is less, to the land surface. The geologic age, lithology, variations in lithology, thickness, depth, geometry, hydraulic conductivity, and depositional history of each geologic unit should be described based upon available geologic information. Regional stratigraphic cross-sections should be provided;

(2) a description of the geologic processes active in the vicinity of the facility that includes an identification of any faults and subsidence in the area of the facility. The information about faulting and subsidence shall include at least that required in §330.555(b) and §330.559 of this title (relating to Fault Areas and Unstable Areas);

(3) a description of the regional aquifers in the vicinity of the facility based upon published and open-file sources that provides:

(A) aquifer names and their association with geologic units described in paragraph (1)(B) [~~paragraph (2)~~] of this subsection;

(B) the composition of the aquifer(s);

(C) the hydraulic properties of the aquifer(s);

(D) information on whether the aquifers are under water table or artesian conditions;

(E) information on whether the aquifers are hydraulically connected;

(F) a regional water-table contour map or potentiometric surface map for each aquifer, if available;

(G) an estimate of the rate of groundwater flow;

(H) typical values or a range of values for total dissolved solids content of groundwater from the aquifers;

(I) identification of areas of recharge to the aquifers within five miles of the site; and

(J) the present use of groundwater withdrawn from aquifers in the vicinity of the facility. The identification, location, and aquifer of all water wells within one mile of the property boundaries of the facility shall be provided;

(4) the results of investigations of subsurface conditions at a particular waste management unit. This report must describe all borings drilled on site to test soils and characterize groundwater and must include a site map drawn to scale showing the surveyed locations and elevations of the borings. Boring logs must include a detailed description of materials encountered including any discontinuities such as fractures, fissures, slickensides, lenses, or seams. Geophysical logs of the boreholes may be useful in evaluating the stratigraphy. Each boring must be presented in the form of a log that contains, at a minimum, the boring number; surface elevation and location coordinates; and a columnar section with text showing the elevation of all contacts between soil and rock layers, description of each layer using the unified soil classification, color, degree of compaction, and moisture content. A key explaining the symbols used on the boring logs and the classi-

fication terminology for soil type, consistency, and structure must be provided. The boring plan, including locations and depths of all proposed borings, shall be approved by the executive director prior to initiation of the work.

(A) A sufficient number of borings shall be performed to establish subsurface stratigraphy and to determine geotechnical properties of the soils and rocks beneath the facility. Other types of samples may also be taken to provide geologic and geotechnical data. The number of borings necessary can only be determined after the general characteristics of a site are analyzed and will vary depending on the heterogeneity of subsurface materials. Locations with stratigraphic complexities such as non-uniform beds that pinch out, vary significantly in thickness, coalesce, or grade into other units, will require a significantly greater degree of subsurface investigation than areas with simple geologic frameworks.

(B) Borings shall be sufficiently deep enough to allow identification of the uppermost aquifer and underlying hydraulically interconnected aquifers. Borings shall penetrate the uppermost aquifer and all deeper hydraulically interconnected aquifers and be deep enough to identify the aquiclude at the lower boundary. All the borings shall be at least five feet deeper than the elevation of the deepest excavation. In addition, at least the number of borings shown on the Table of Borings shall be drilled to a depth at least 30 feet below the deepest excavation planned at the waste management unit, unless the executive director approves a different depth. If no aquifers exist within 50 feet of the elevation of the deepest excavation, at least one test hole shall be drilled to the top of the first perennial aquifer beneath the site, if sufficient data does not exist to accurately locate it. The executive director may accept data equivalent to a deep boring on the site to determine information for aquifers more than 50 feet below the site. Aquifers more than 300 feet below the lowest excavation and where the estimated travel times for constituents to the aquifer are in excess of 30 years plus the estimated life of the site need not be identified through borings.
Figure: 30 TAC §330.63(e)(4)(B) (No change.)

(C) All borings shall be conducted in accordance with established field exploration methods. The hollow-stem auger boring method is recommended for softer materials; coring may be required for harder rocks. Other methods shall be used as necessary to obtain adequate samples for soil testing required in this paragraph. Investigation procedures shall be discussed in the report.

(D) Installation, abandonment, and plugging of the borings in accordance with the rules of the commission.

(E) Both the number and depth of borings may be modified because of site conditions with approval of the executive director.

(F) Geophysical methods, such as electrical resistivity, may be used with authorization of the executive director to reduce the number of borings that may be necessary or to provide additional information between borings.

(G) Cross-sections must be prepared from the borings depicting the generalized strata at the facility. For small waste management units, two perpendicular cross-sections will normally suffice.

(H) A narrative that describes the investigator's interpretations of the subsurface stratigraphy based upon the field investigation shall be provided;

(5) geotechnical data that describes the geotechnical properties of the subsurface soil materials and a discussion with conclusions about the suitability of the soils and strata for the uses for which they are intended. All geotechnical tests shall be performed in accordance with industry practice and recognized procedures such as described below. A brief discussion of geotechnical test procedures including:

(A) a laboratory report of soil characteristics determined from at least one sample from each soil layer or stratum that will form the bottom and side of the proposed excavation and from those that are less than 30 feet below the lowest elevation of the proposed excavation. Additional tests shall be performed, as necessary, to provide a typical profile of soil stratification within the site. No laboratory work need be performed on highly permeable soil layers such as sand or gravel. The samples shall be tested by a competent independent third-party soils laboratory;

(B) permeability tests performed according to one of the following standards on undisturbed soil samples. Permeability tests shall be performed using tap water or .05 Normal solution of calcium sulfate ($CaSO_4$), and not distilled water, as the permeant. Those undisturbed samples that represent the sidewall of any proposed cell, pit, or excavation shall be tested for the coefficient of permeability on the sample's in-situ horizontal axis; all others shall be tested on the in-situ vertical axis. All test results shall indicate the type of tests used and the orientation of each tested sample. All calculations for the final coefficient of permeability tests result for each sample tested shall be included in the report:

(i) constant head with back pressure per Appendix VII of Corps of Engineers Manual EM1110-2-1906, "Laboratory Soils Testing;" American Society for Testing and Materials (ASTM) D5084 "Saturated Porous Materials Using a Flexible Wall Permeameter";

(ii) falling head per Appendix VII of Corps of Engineers Manual EM1110-2-1906, "Laboratory Soils Testing";

(iii) sieve analysis for the 200, and less than 200 fraction per ASTM D1140;

(iv) Atterberg limits per ASTM D4318; and

(v) moisture content per ASTM D2216;

(C) the depth at which groundwater was encountered and records of after-equilibrium measurements in all borings. The cross-sections prepared in response to paragraph (4)(G) of this subsection must be annotated to note the level at which groundwater was first encountered and the level of groundwater after equilibrium is reached or just prior to plugging, whichever is later. This water-level information must also be presented on all borings required by paragraph (4) of this subsection and presented in a table format in the report;

(D) records of water-level measurements in monitoring wells. Historic water-level measurements made during any previous groundwater monitoring shall be presented in a table for each well;

(E) a tabulation of all relevant groundwater monitoring data from wells on site or on adjacent MSW landfill unit(s); and

(F) identification of the uppermost aquifer and any lower aquifers that are hydraulically connected to it beneath the facility, including groundwater flow direction and rate, and the basis for such identification (i.e., the information obtained from hydrogeologic investigations of the facility area);

(6) for owners and operators seeking an arid exemption for their landfill unit designs, a groundwater certification process must be used for meeting the provisions for groundwater certification of the arid exemption, as described in §330.5(b) of this title:

(A) locate and plot the facility accurately on a topographic map (7.5-minute or 15-minute United States Geological Survey quadrangle). Draw a line to enclose all of the area within one mile of the facility boundary;

(B) visit the facility and locate by physical inspection water wells and springs in the facility area. Determine the locations and plot them on the topographic map:

(i) if no wells or springs exist within the facility area, refer to subparagraph (I) of this paragraph. Otherwise, refer to clause (ii) of this subparagraph; and

(ii) determine from appropriate records (for example, water-well drillers, pump installers, city records, underground water conservation district, Texas Water Development Board, Texas Commission on Environmental Quality, United States Geological Survey, etc.) which of the wells are completed in the shallowest aquifer. If no wells are completed in the shallowest aquifer or if the shallowest aquifer is more than 150 feet below the land surface at the facility, refer to subparagraph (I) of this paragraph. Otherwise, refer to subparagraph (C) of this paragraph;

(C) determine the groundwater gradient of the shallowest aquifer in the vicinity of the facility. This can be done by measuring stabilized water levels in wells completed in the shallowest aquifer in the facility area (from subparagraph (B)(ii) of this paragraph) or from previous hydrogeologic studies using contemporaneous stabilized water-level measurements. Care should be taken to measure water levels when nearby high-volume wells, such as irrigation wells, have not been pumped for a long enough period to allow the water level to stabilize. Where no data exist or cannot be determined, the regional gradient can be used;

(D) from springs and from the wells completed in the shallowest aquifer, select the two wells/springs downgradient of and nearest to the facility based on the findings from subparagraph (C) of this paragraph. Select a well/spring upgradient or lateral to the facility, where groundwater quality is not likely to have been affected by landfill activities and preferably not by other human activities such as oil and gas operations, feedlots, sewage treatment plants, septic systems, etc;

(E) sample the three selected wells/springs determined by subparagraphs (C) and (D) of this paragraph in accordance with accepted practices, such as described in technical guidance from the executive director. The owner or operator shall have the samples analyzed by a qualified laboratory for the following parameters:

(i) chloride;

(ii) nitrate (as N);

(iii) sulfate;

(iv) total dissolved solids;

(v) specific conductance;

(vi) pH;

(vii) chromium;

(viii) non-purgeable organic carbon; and

(ix) volatile organic compounds listed in §330.419 of this title (relating to Constituents for Detection Monitoring);

(F) if permission cannot be obtained to sample one or more of the three selected wells/springs, select one or more alternate wells/springs, within the plotted area. If fewer than three wells/springs are available, sample those that are available;

(G) if permission cannot be obtained to sample any appropriately located wells/springs, submit written documentation of the facts to the executive director. If the executive director confirms that permission cannot be obtained for sampling, the well(s) may be eliminated from consideration;

(H) compile the data from subparagraphs (A) - (F) of this paragraph in a report that includes:

(i) a map showing all known wells, springs, facility boundaries, sampling points, etc.;

(ii) a map showing the groundwater gradient and data points;

(iii) chemical analyses, showing analytical methods used;

(iv) logs and construction information for the sampled wells and description and flow rate for sampled springs;

(v) text describing methods of investigation, such as sampling and water-level measurements; and

(vi) conclusions with respect to presence or lack of evidence of groundwater contamination by the facility;

(I) where no wells or springs are present in the facility area or the shallowest water level is more than 150 feet below land surface at the facility, submit a brief report describing the facility (with a map of the area) and the method(s) of determining the lack of appropriate sampling points or depth to the shallowest aquifer. Confirmed absence of sampling points will be deemed to be "no evidence of groundwater contamination";

(J) the report shall be signed and sealed by the qualified groundwater scientist who reviewed the data and reached the conclusions;

(K) if there is no evidence of groundwater contamination by the landfill, the qualified groundwater scientist who reviewed the data and reached the conclusions shall sign and seal a statement in the following format: "I (we) have reviewed the groundwater data described in a report submitted with this certification and have found no evidence that the _____ municipal solid waste landfill located at _____ has contaminated groundwater in the uppermost aquifer"; and

(L) the executive director may accept information and data, other than described in this paragraph, as showing that there is no evidence of groundwater contamination by the landfill, if the information and data are deemed to be adequate for such a determination.

(f) Groundwater sampling and analysis plan. The groundwater sampling and analysis plan for landfills and if otherwise requested by the executive director for other MSW units must be prepared in accordance with Subchapter J of this chapter (relating to Groundwater Monitoring and Corrective Action). The groundwater sampling and analysis plan for composting operations that require a permit must be prepared in accordance with the groundwater monitoring requirements of §332.47(6)(C)(ii) of this title (relating to Permit Application Preparation). As part of this plan for Type I landfills, submit the following:

(1) on a topographic map, a delineation of the waste management area, the property boundary, the proposed point of compliance as defined under §330.3 of this title (relating to Definitions), the proposed location of groundwater monitoring wells as required under §330.403 of this title (relating to Groundwater Monitoring Systems);

(2) a description of any plume of contamination that has entered the groundwater from an MSW management unit at the time that the application was submitted. In addition:

(A) delineate the extent of the plume on the topographic map required in paragraph (1) of this subsection; and

(B) identify the concentration of each assessment constituent as defined in §330.409 of this title (relating to Assessment

Monitoring Program) throughout the plume or identify the maximum concentration of each assessment constituent in the plume;

(3) an analysis of the most likely pathway(s) for pollutant migration in the event that the primary barrier liner system is penetrated. This must include any groundwater modeling data and results as described in §330.403(e)(2) of this title and consider changes in groundwater flow that are expected to result from construction of the facility;

(4) detailed plans and an engineering report describing the proposed groundwater monitoring program to be implemented to meet the requirements of §330.403 of this title;

(5) if the hazardous constituents listed in the table located in 40 Code of Federal Regulations Part 258, Appendix I, and §330.419 of this title have not been detected in the groundwater at the time of permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a detection monitoring program that meets the requirements of §330.407 of this title (relating to Detection Monitoring Program for Type I Landfills). This submission must address the following items as specified in §330.407 of this title:

(A) a proposed groundwater monitoring system;

(B) background values for each monitoring parameter or constituent listed in §330.419 of this title, or procedures to calculate such values; and

(C) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data;

(6) if the presence of hazardous constituents listed in §330.419 of this title has been detected in the groundwater at the time of the permit application, the owner or operator shall submit sufficient information, supporting data, and analyses to establish an assessment monitoring program that meets the requirements of §330.409 of this title. To demonstrate compliance with §330.409 of this title, the owner or operator shall address the following items:

(A) a description of any special wastes previously handled at the MSW facility;

(B) a characterization of the contaminated groundwater, including concentration of assessment constituents as defined in §330.409 of this title;

(C) a list of assessment constituents as defined in §330.409 of this title for which assessment monitoring will be undertaken in accordance with §330.405 of this title (relating to Groundwater Sampling and Analysis Requirements) and §330.409 of this title;

(D) detailed plans and an engineering report describing the proposed groundwater monitoring system, in accordance with the requirements of §330.405 of this title; and

(E) a description of proposed sampling, analysis, and statistical comparison procedures to be utilized in evaluating groundwater monitoring data; and

(7) if hazardous constituents have been measured in the groundwater that exceed the concentration limits established in §330.409 of this title, the owner or operator shall submit sufficient information, supporting data, and analyses to establish a corrective action program that meets the requirements of §330.411 and §330.413 of this title (relating to Assessment of Corrective Measures and Selection of Remedy). To demonstrate compliance with §330.411 of this title, the owner or operator shall address, at a minimum, the following:

(A) a characterization of the contaminated groundwater, including concentrations of assessment constituents as defined in §330.409 of this title;

(B) the concentration limit for each constituent found in the groundwater;

(C) detailed plans and an engineering report describing the corrective action to be taken;

(D) a description of how the groundwater monitoring program will demonstrate the adequacy of the corrective action; and

(E) a schedule for submittal of the information required in subparagraphs (C) and (D) of this paragraph provided the owner or operator obtains written authorization from the executive director prior to submittal of the complete permit application.

(g) Landfill gas management plan. A facility gas management plan shall be prepared to address all of the requirements in Subchapter I of this chapter (relating to Landfill Gas Management).

(h) Closure plan. The facility closure plan shall be prepared in accordance with Subchapter K of this chapter (relating to Closure and Post-Closure). For a landfill unit, the closure plan will include a contour map showing the final constructed contour of the entire landfill to include internal drainage and side slopes plus accommodation of surface drainage entering and departing the completed fill area plus areas subject to flooding due to a 100-year frequency flood. Cross-sections shall be provided.

(i) Post-closure plan. The facility post-closure care plan shall be prepared in accordance with Subchapter K of this chapter.

(j) Cost estimate for closure and post-closure care. The owner or operator shall submit a cost estimate for closure and post-closure care in accordance with Subchapter L of this chapter (relating to Closure, Post-Closure, and Corrective Action Cost Estimates). For an existing facility, the owner or operator shall also submit a copy of the documentation required to demonstrate financial assurance as specified in Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities). For a new facility, a copy of the required documentation shall be submitted 60 days prior to the initial receipt of waste.

§330.65. Contents of Part IV of the Application.

(a) The owner or operator shall submit a site operating plan. This plan will provide general operating procedures for facility management for day-to-day operations at the facility. The site operating plan must be retained during the active life of the facility. At a minimum, the site operating plan must include a description for how the items in Subchapters D and E of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities; and Operational Standards for Municipal Solid Waste Storage and Processing Units) will be implemented.

(b) A facility that has an environmental management system that meets [~~both~~] the minimum standards described in §90.30 [~~§90.32~~] of this title (relating to Minimum Standards for Environmental Management Systems) [~~and the United States Environmental Protection Agency's National Environmental Performance Track (NEPT) Program standards~~] and is approved to operate under an environmental management system in accordance with §90.31 of this title (relating to Review of Incentive Applications for Environmental Management Systems) [~~§90.36 of this title (relating to Evaluation of an Environmental Management System by the Executive Director)~~], is not subject to site operating plan requirements while the authorization to operate under the environmental management system remains in place. In the event the executive director terminates authorization to operate under

an environmental management system, the facility will comply with the site operating plan requirements within 90 days.

(c) The owner or operator shall specify procedures for recirculating leachate or gas condensate into a landfill unit as part of the site operating plan.

(d) The owner or operator of a grease trap waste, grit trap waste, or septage processing facility shall submit information identifying any permit requirements under the Texas Pollutant Discharge Elimination System and any permit requirements imposed by other agencies (e.g., local government pretreatment or discharge authorization requirements).

§330.69. Public Notice for Registrations.

(a) Notice to local governments. For mobile liquid waste processing unit registration applications only, upon filing a registration application, the owner or operator shall mail notice to the city, county, and local health department of any local government in which operations will be conducted notifying local governments that an application has been filed. Proof of mailing shall be provided to the executive director in the form of return receipts for registered mail. Mobile liquid waste processing unit registration applications are not subject to public meeting or sign-posting requirements under subsection (b) of this section.

(b) Opportunity for public meeting and posting notice signs. The owner or operator shall provide notice of the opportunity to request a public meeting and post notice signs for all registration applications not later than 45 days of the executive director's receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit) and by posting signs at the proposed site. The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings) or by Texas Health and Safety Code, §361.111(c). Notice of a public meeting shall be provided as specified in §39.501(e)(5) and (6) of this title. This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing. Applications for registrations filed after the comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) become effective are subject to the 2006 Revisions requirements to provide notice of the opportunity to request a public meeting. The owner, operator, or a representative authorized to make decisions and act on behalf of the owner or operator shall attend the public meeting. A public meeting conducted under this section is not a contested case hearing under the Texas Government Code, Chapter 2001, Administrative Procedure Act. At the owner's or operator's expense, a sign or signs must be posted at the site of the proposed facility declaring that the application has been filed and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements.

(1) Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) be headed by the words "PROPOSED MUNICIPAL SOLID WASTE FACILITY";

(C) include the words "REGISTRATION NO.," the number of the registration, and the type of registration;

(D) include the words "for further information contact";

(E) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate commission permitting office;

(F) include the name of the owner or operator, and the address of the appropriate responsible official;

(G) include the telephone number of the owner or operator;

(H) remain in place and legible until the period for filing a motion to overturn has expired. The owner or operator shall provide a verification to the executive director that the sign posting was conducted according to the requirements of this section; and

(I) describe how persons affected may request that the executive director and applicant conduct a public meeting.

(2) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the registered facility.

(3) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.426 of this title (relating to Alternative Language Requirements) [~~§39.405(h)(2) of this title (relating to General Notice Provisions)~~] are met.

(4) The executive director may approve variances from the requirements of paragraphs (1) and (2) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those paragraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this paragraph must be received before posting alternative signs for purposes of satisfying the requirements of this paragraph.

(c) Notice of final determination. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. In accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update), if the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the land ownership map and landowners list required by §330.59 of this title (relating to Contents of Part I of the Application), and to other persons who timely filed public comment in response to public notice.

(d) Motion to overturn. The owner or operator, or a person affected may file with the chief clerk a motion to overturn the executive director's action on a registration application, under §50.139 of this title. The criteria regarding motions to overturn shall be explained in public notices given under Chapter 39 of this title (relating to Public Notice) and §50.133 of this title.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402110
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER C. MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION

30 TAC §330.103

Statutory Authority

The amendment is proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The proposed amendment implements House Bill 3060, 88th Texas Legislature, 2023.

§330.103. Collection and Transportation Requirements.

(a) Municipal solid waste (MSW) containing putrescibles shall be collected a minimum of once weekly to prevent propagation and attraction of vectors and the creation of public health nuisances. Collection should be made more frequently in circumstances where vector breeding or harborage potential is significant.

(b) Transporters of MSW shall be responsible for ensuring that all solid waste collected is unloaded only at facilities authorized to accept the type of waste being transported. Off-loading at an unauthorized location or at a facility not authorized to accept such waste is a violation of this subchapter. Allowable wastes at a particular solid waste management facility may be determined by reviewing the following regulations as applicable:

(1) §330.5 of this title (relating to Classification of Municipal Solid Waste Facilities);

(2) Subchapter D of this chapter (relating to Operational Standards for Municipal Solid Waste Landfill Facilities);

(3) Subchapter E of this chapter (relating to Operational Standards for Municipal Solid Waste Storage and Processing Units);

(4) Chapter 312, Subchapters A - E of this title (relating to General Provisions; Land Application and Storage of Biosolids and Domestic Septage [~~Land Application for Beneficial Use and Storage at Beneficial Use Sites~~]; Surface Disposal; Pathogen and Vector Attraction Reduction; and Guidelines and Standards for Sludge Incineration); and

(5) §330.15(e) of this title (relating to General Prohibitions).

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

(d) Each transporter delivering waste to a solid waste management facility shall immediately remove any non-allowable wastes delivered to the solid waste management facility or, at the option of the disposal facility operator, pay any applicable surcharges to have the disposal facility operator remove the non-allowable waste.

(e) If non-allowable wastes are discovered in a load of waste being discharged at an MSW facility, the transporter shall immediately take all necessary steps to determine the origin of the non-allowable waste and to assure that non-allowable wastes are either not collected or are taken to a facility approved to accept such wastes.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402111
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER D. OPERATIONAL STANDARDS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES

30 TAC §§330.125, 330.147, 330.165, 330.171, 330.173

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The proposed amendments implement House Bill 3060, 88th Texas Legislature, 2023.

§330.125. Recordkeeping Requirements.

(a) A copy of the permit, the approved site development plan, the site operating plan, the final closure plan, the post-closure maintenance plan, the landfill gas management plan, and any other required plan or other related document shall be maintained at the municipal

solid waste facility, or an alternate location approved by the executive director. This requirement shall be considered a part of the operating record for the facility.

(b) The owner or operator shall within seven working days of completion or receipt of analytical data, as appropriate, record and retain in the operating record the following information:

(1) any and all location-restriction demonstrations;

(2) inspection records, training procedures, and notification procedures relating to excluding the receipt of prohibited waste;

(3) all results from gas monitoring and any remediation plans relating to explosive and other gases;

(4) any and all unit design documentation for the placement of leachate or gas condensate in a municipal solid waste landfill;

(5) any and all demonstration, certification, findings, monitoring, testing, and analytical data relating to groundwater monitoring and corrective action;

(6) closure and post-closure care plans and any monitoring, testing, or analytical data relating to post-closure requirements;

(7) any and all cost estimates and financial assurance documentation relating to financial assurance for closure and post-closure;

(8) any and all information demonstrating compliance with the small community exemption criteria;

(9) copies of all correspondence and responses relating to the operation of the facility, modifications to the permit, approvals, and other matters pertaining to technical assistance;

(10) any and all documents, manifests, shipping documents, trip tickets, etc., involving special waste;

(11) for any spray-applied alternative daily cover (ADC) material, records of the application rate and total amount ADC applied to the working face on those days in which ADC is applied; and

(12) any other document(s) as specified by the approved permit or by the executive director.

(c) The owner or operator shall place all information specified in subsections (a) and (b) of this section in the operating record. The owner or operator shall place this information in the operating record in accordance with the time period specified in subsection (b) of this section and maintain the operating record in an organized format which allows the information to be easily located and retrieved. All information contained in the operating record must be furnished upon request to the executive director and must be made available for inspection by the executive director.

(d) The owner or operator shall retain all information contained within the operating record and the different plans required for the facility for the life of the facility including the post-closure care period.

(e) The owner or operator shall maintain training records in accordance with §335.586(d) and (e) of this title (relating to Personnel Training).

(f) The owner or operator shall maintain personnel operator licenses issued in accordance with Chapter 30, Subchapter F of this title (relating to Municipal Solid Waste Facility Supervisors), as required.

(g) The executive director may set alternative schedules for recordkeeping and notification requirements as specified in subsections (a) - (f) of this section, except for notification requirements contained in Subchapter M of this chapter (relating to Location Restrictions) for any proposed lateral expansion located within a six-mile radius of any airport runway end used by turbojet or piston-type aircraft or notification relating to landowners whose property overlies any part of the plume of contamination, if contaminants have migrated off site as indicated by groundwater sampling.

(h) The owner or operator shall maintain records to document the annual waste acceptance rate for the facility. Documentation must include maintaining the quarterly solid waste summary reports and the annual solid waste summary reports required by §330.675 of this title (relating to Reports) in the operating record. After an updated site operating plan permit modification under §330.121(b) of this title (relating to General) is approved to comply with the rules that became effective December 2, 2004, if the annual waste acceptance rate exceeds the rate estimated in the landfill permit application and the waste increase is not due to a temporary occurrence, the owner or operator shall file an application to modify the permit application, including the revised estimated waste acceptance rate, in accordance with §305.70(l) [~~§305.70(k)~~] of this title (relating to Municipal Solid Waste Permit and Registration Modifications), within 90 days of the exceedance as established by the sum of the previous four quarterly summary reports. The application must propose any needed changes in the site operating plan to manage the increased waste acceptance rate to protect public health and the environment. The increased waste acceptance rate may justify requiring permit conditions that are different from or absent in the existing permit. This subsection is not intended to make an estimated waste acceptance rate a limiting parameter of a landfill permit.

§330.147. Disposal of Large Items.

(a) Large, heavy, or bulky items, that cannot be incorporated in the regular spreading, compaction, and covering operations at landfills should be recycled. A special area should be established to collect these items. This special collection area must be designated as a large-item salvage area. The owner or operator shall remove the items from the site often enough to prevent these items from becoming a nuisance and to preclude the discharge of any pollutants from the area.

(b) Items that can be classified as large, heavy, or bulky can include, but are not limited to, white goods (household appliances), air conditioner units, metal tanks, large metal pieces, and automobiles.

(c) Refrigerators, freezers, air conditioners, and any other items containing chlorinated fluorocarbon (CFC) must be handled in accordance with 40 Code of Federal Regulations §82.156 [~~§82.156(f)~~], as amended.

§330.165. Landfill Cover.

(a) Daily cover for Type I and Type IAE landfills. Type I and IAE landfills must apply six inches of well-compacted earthen material not previously mixed with garbage, rubbish, or other solid waste at the end of each operating day to control disease vectors, fires, odors, windblown litter or waste, and scavenging, unless the executive director requires a more frequent interval to control disease vectors, fires, odors, windblown litter or waste, and scavenging. Landfills that operate on a 24-hour basis must cover the working face or active disposal area at least once every 24 hours. The executive director may require a chemical analysis of any landfill cover material. Runoff from areas that have intact daily cover is not considered as having come into contact with the working face or leachate.

(b) Daily cover for Type IV and Type IVAE landfills. All Type IV facilities must follow the requirements of this section except the rate of cover must be no less than weekly, unless the executive director approves another schedule. The executive director may require a chemical analysis of any landfill cover material. Runoff from areas that have intact weekly cover is not considered as having come into contact with the working face or leachate.

(c) Intermediate cover. All areas that have received waste but will be inactive for longer than 180 days must provide intermediate or final cover. This intermediate cover must include six inches of suitable earthen material that is capable of sustaining native plant growth and must be seeded or sodded following its application in order to control erosion, or must be a material approved by the executive director that will otherwise control erosion. This intermediate cover must not be less than 12 inches of suitable earthen material. The intermediate cover must be graded to prevent ponding of water. Plant growth or other erosion control features must be maintained. Runoff from areas that have intact intermediate cover is not considered as having come into contact with the working face or leachate.

(d) Alternative daily cover. Alternative daily cover may only be allowed by a temporary authorization under §305.62(k) of this title (relating to Amendments) [~~§305.70(m) of this title (relating to Municipal Solid Waste Permit and Registration Modifications)~~] followed by a major amendment or a modification in accordance with §305.70(k)(1) of this title. Use of alternative daily cover is limited to a 24-hour period after which either waste or daily cover as defined in subsection (a) of this section must be placed.

(1) An alternative daily cover operating plan must be included in the request for temporary authorization or in a site development plan that includes the following:

(A) a description and minimum thickness of the alternative material to be used;

(B) its effect on vectors, fires, odors, and windblown litter and waste;

(C) the application and operational methods to be utilized at the site when using this alternative material;

(D) chemical analysis of the material and/or the Material Safety Data Sheet(s) for the alternative material; and

(E) any other pertinent characteristic, feature, or other factors related to the use of this alternative material.

(2) A status report on the alternative daily cover must be submitted on a two-month basis to the executive director during the temporary authorization period describing the effectiveness of the alternative material, any problems that may have occurred, and corrective actions required as a result of such problems. If no unresolved problems have occurred within the temporary authorization period, status reports may no longer be required.

(3) Alternative daily cover must not be allowed when the landfill is closed for a period greater than 24 hours, unless the executive director approves an alternative length of time.

(4) For contaminated soil proposed to be used as alternative daily cover in a municipal solid waste landfill, the constituents of concern shall not exceed the concentrations listed in Table 1, Constituents of Concern and Their Maximum Leachable Concentrations, located in §335.521(a)(1) of this title (relating to Appendices). Additionally, the contaminated soil must not contain:

(A) polychlorinated biphenyl wastes that are subject to the disposal requirements of 40 Code of Federal Regulations Part 761; or

(B) total petroleum hydrocarbons in concentrations greater than 1,500 milligrams per kilogram. The owner or operator may submit a demonstration for executive director approval that material exceeding 1,500 milligrams per kilogram (mg/kg) total petroleum hydrocarbons can be a suitable alternative daily cover. The demonstration shall include information regarding the risk to human health and the environment and the information required in paragraph (1) of this subsection. If approved, the executive director may impose additional permit requirements regarding the use of this material.

(5) Alternative daily cover must not exceed constituent limitations imposed on waste authorized to be disposed at the facility.

(6) The executive director may require the owner or operator to test runoff from areas that have alternative daily cover for compliance with Texas Pollutant Discharge Elimination System storm water discharge limits or manage the runoff as contaminated water.

(e) Temporary waiver. The executive director may grant a temporary waiver from the requirements of subsections (a) - (d) of this section if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

(f) Final cover. Final cover for the landfill must be in accordance with the site closure plan and Subchapter K of this chapter (relating to Closure and Post-Closure).

(g) Erosion of cover. Erosion gullies or washed-out areas deep enough to jeopardize the final or intermediate cover must be repaired within five days of detection by restoring the cover material, grading, compacting, and seeding unless the commission's regional office approves otherwise, based on the extent of the damage requiring more time to repair or the repairs are delayed because of weather conditions. An eroded area is considered to be deep enough to jeopardize the final or intermediate cover if it exceeds four inches in depth as measured from the vertical plane from the erosion feature and the 90-degree intersection of this plane with the horizontal slope face or surface. The date of detection of erosion and date of completion of repairs, including reasons for any delays, must be documented in the cover inspection record required under subsection (h) of this section. The site operating plan must establish a frequency, and identify other occasions, for conducting inspections of the final and intermediate covers to detect the need for repairs. The periodic inspections and restorations are required during the entire operational life and for the post-closure maintenance period.

(h) Cover inspection record. Each landfill must keep a cover application record on site readily available for inspection by commission representatives and authorized agents or employees of local governments having jurisdiction. This record must specify the date cover (no exposed waste) was accomplished, how it was accomplished, and the last area covered. This applies to daily, intermediate, and alternative daily cover. For final cover, this record must specify the area covered, the date cover was applied, and the thickness applied that date. Each entry must be certified by the signature of the on-site supervisor that the work was accomplished as stated in the record. The cover inspection record must document inspections required under subsection (g) of this section, the findings, and corrective action taken when necessary.

§330.171. Disposal of Special Wastes.

(a) Type IV and Type IVAE landfills may accept special wastes consistent with the limitations established in §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and the waste acceptance plan required by §330.61(b) of this title (relating to Contents of Part II of the Application).

(b) The acceptance and/or disposal of a special waste as defined in §330.3 of this title (relating to Definitions), that is not specifically identified in subsection (c) or (d) of this section, or in §330.173 of this title (relating to Disposal of Industrial Wastes), requires prior written approval from the executive director.

(1) Approvals will be waste-specific and/or site-specific and will be granted only to appropriate facilities operating in compliance with this chapter.

(2) Requests for approval to accept special wastes must be submitted by the generator to the executive director or to a facility with an approved Special Waste Management Plan [~~plan~~] and must include, but are not limited to, the following:

(A) a complete description of the chemical and physical characteristics of each waste, a statement as to whether or not each waste is a Class 1 industrial waste as defined in §330.3 of this title, and the quantity and rate at which each waste is produced and/or the expected frequency of disposal;

(B) for Class 1 industrial solid waste, a hazardous waste determination as required by §335.504 of this title (relating to Hazardous Waste Determination) [~~§335.6(c) of this title (relating to Notification Requirements)~~];

(C) an operational plan containing the proposed procedures for handling each waste and listing required protective equipment for operating personnel and on-site emergency equipment; and

(D) a contingency plan outlining responsibility for containment and cleanup of any accidental spills occurring during the delivery and/or disposal operation.

(3) A vacuum truck, as used in this section, refers to any vehicle that transports liquid waste to a solid waste disposal or processing facility. A vacuum truck must transport liquid waste to a landfill that has a sludge stabilization and solidification process or to a Type V processing facility for sludge, grease trap, or grit trap waste. The owner or operator shall submit written notification to the executive director of the liquids-processing activity as required in §330.11 of this title (relating to Notification Required).

(4) Soils contaminated by petroleum products, crude oils, or chemicals in concentrations of greater than 1,500 milligram per kilogram (mg/kg) total petroleum hydrocarbons; or contaminated by constituents of concern that exceed the concentrations listed in Table 1, Constituents of Concern and Their Maximum Leachable Concentrations in §335.521(a)(1) of this title (relating to Appendices) must be disposed in dedicated cells that meet the requirements of §330.331(e) of this title (relating to Design Criteria).

(5) The executive director may authorize the receipt of special waste with a written concurrence from the owner or operator; however, the facility operator is not required to accept the waste.

(6) The executive director may revoke an authorization to accept special waste if the owner or operator does not maintain compliance with these rules or conditions imposed in the authorization to accept special waste.

(c) Receipt of the following special wastes does not specifically require written authorization for acceptance provided the waste is handled in accordance with the noted provisions for each waste.

(1) Medical wastes that have not been treated in accordance with the procedures specified in Chapter 326 of this title (relating to Medical Waste Management) must not be accepted at a landfill unless authorized in writing by the executive director. The executive director may provide this authorization when a situation exists that requires disposal of untreated medical wastes in order to protect the human health and the environment from the effects of a natural or man-made disaster.

(2) Dead animals and/or slaughterhouse waste may be accepted at any Type I or Type IAE landfill without further approval from the executive director provided the carcasses and/or slaughterhouse waste are covered by three feet of other solid waste or at least two feet of earthen material immediately upon receipt.

(3) Regulated asbestos-containing material (RACM) as defined in 40 Code of Federal Regulations Part 61 may be accepted at a Type I or Type IAE landfill in accordance with subparagraphs (A) - (I) of this paragraph provided the landfill has been authorized to accept RACM. The facility operator proposing to accept RACM shall provide written notification to the executive director of the intent to accept RACM.

(A) To receive authorization to accept RACM, the owner or operator shall dedicate a specific area or areas of the landfill to receive RACM and shall provide written notification to the executive director of the area or areas to be designated for receipt of RACM. After initial authorization to receive RACM is issued, additional areas may be designated by providing written notice to the executive director.

(B) The location of the area designated to receive the RACM must be surveyed and marked by a registered professional land surveyor and identified on a current site diagram that is maintained at the landfill. A copy of the current site diagram identifying the RACM area must be submitted to the executive director immediately upon completion of the diagram. The operator shall maintain a record of each load of RACM accepted as to its location, depth, and volume of material.

(C) Upon closure of the unit that accepted RACM, a specific notation that the facility accepted RACM must be placed in the deed records for the facility with a diagram identifying the RACM disposal areas. Concurrently, a notice of the deed recordation and a copy of the diagram identifying the asbestos disposal areas must be submitted to the executive director.

(D) Delivery of the RACM to the landfill unit must be coordinated with the on-site supervisor so the waste will arrive at a time it can be properly handled and covered.

(E) RACM must only be accepted at the facility in tightly closed and unruptured containers or bags or must be wrapped with at least six-mil polyethylene.

(F) The bags or containers holding the RACM must be placed below natural grade level. Where this is not possible or practical, provisions must be made to ensure that the waste will not be subject to future exposure through erosion or weathering of the intermediate and/or final cover. RACM that is placed above natural grade must be located in the landfill unit such that it is, at closure of the landfill unit, not less than 20 feet from any final side slope of the unit and must be at least ten feet below the final surface of the unit.

(G) The bags or containers holding the RACM must be carefully unloaded and placed in the final disposal location. The RACM must be covered immediately with 12 inches of earthen material or three feet of solid waste containing no asbestos. Care must be exercised in the application of the cover so that the bags or containers are not ruptured.

(H) A contingency plan in the event of accidental spills (e.g., ruptured bags or containers) shall be prepared by the owner or operator prior to accepting RACM. The plan must specify the responsible person(s) and the procedure for the collection and disposal of the spilled material.

(I) RACM that has been designated as a Class 1 industrial waste may be accepted by a Type I landfill authorized to accept RACM provided the RACM waste is handled in accordance with the

provisions of this paragraph and the landfill operator complies with the provisions of §330.173(g) - (i) of this title.

(4) Nonregulated asbestos-containing materials (non-RACM) may be accepted for disposal at a Type I, Type IAE, Type IV, or Type IVAE landfill provided the wastes are placed on the active working face and covered in accordance with this chapter. Under no circumstances may any material containing non-RACM be placed on any surface or roadway that is subject to vehicular traffic or disposed of by any other means by which the material could be crumbled into a friable state.

(5) Empty containers that have been used for pesticides, herbicides, fungicides, or rodenticides must be disposed of in accordance with subparagraphs (A) and (B) of this paragraph.

(A) These containers may be disposed of at any landfill provided that:

(i) the containers are triple-rinsed prior to receipt at the landfill;

(ii) the containers are rendered unusable prior to or upon receipt at the landfill; and

(iii) the containers are covered by the end of the same working day they are received.

(B) Those containers for which triple-rinsing is not feasible or practical (e.g., paper bags, cardboard containers) may be disposed of under the provisions of paragraph (6) of this subsection or in accordance with §330.173 of this title, as applicable.

(6) Municipal hazardous waste from a very small quantity generator (VSQG) [~~conditionally exempt small quantity generator~~] may be accepted at a Type I or Type IAE landfill without further approval from the executive director provided the hazardous waste is not regulated hazardous waste, was not generated by a VSQG during a calendar month in which the VSQG generated hazardous waste during an episodic event, and the amount of hazardous waste [~~amount of waste~~] does not exceed 220 pounds (100 kilograms) per month per generator, and provided the landfill owner or operator authorizes acceptance of the waste.

(7) Sludge, grease trap waste, grit trap waste, or liquid wastes from municipal sources can be accepted at a Type I or Type IAE landfill for disposal only if the material has been, or is to be, treated or processed and the treated/processed material has been tested, in accordance with Test Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (United States Environmental Protection Agency Publication Number SW-846), as amended, and is certified to contain no free liquids. Prior to treatment or processing of this waste at the landfill, the owner or operator shall submit written notification to the executive director of the liquids processing activity as required in §330.11 of this title.

(d) Used oil filters from internal combustion engines must not be intentionally and knowingly accepted for disposal at landfills permitted under this chapter except as provided in paragraphs (1) and (2) of this subsection.

(1) Used oil filters must not be offered for disposal by a generator and/or be intentionally and knowingly accepted for landfill disposal unless the filter has been:

(A) crushed to less than 20% of its original volume to remove all free-flowing used oil; or

(B) processed by a method other than crushing to remove all free-flowing used oil. A filter is considered to have been processed if:

(i) the filter has been separated into component parts and the free-flowing used oil has been removed from the filter element by some means of compression in order to remove free-flowing used oil;

(ii) the used filter element of a filter consisting of a replaceable filtration element in a reusable or permanent housing has been removed from the housing and pressed to remove free-flowing used oil; or

(iii) the housing is punctured and the filter is drained for at least 24 hours.

(2) Used oil filters (to include filters that have been crushed and/or processed to remove free-flowing used oil) must not be offered for landfill disposal by any non-household generator and must not be intentionally or knowingly accepted by any landfill permitted and regulated under this chapter.

§330.173. Disposal of Industrial Wastes.

(a) Except as specified in subsection (c) of this section, Class 1 industrial solid waste shall not be disposed in a Type IAE landfill unit.

(b) Generators shall manifest Class 1 industrial solid waste as required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [~~(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste~~]). Owners or operators of municipal solid waste landfill facilities shall not accept such wastes without prior written approval from the executive director and specific authorization in the permit.

(c) Wastes that are Class 1 only because of asbestos content may be accepted at any Type I or Type IAE landfill that is authorized to accept regulated asbestos-containing material (RACM) as stated in §330.171(c)(3)(I) of this title (relating to Disposal of Special Wastes). Authorization to accept this waste is implied in the authorization to accept RACM unless the acceptance of industrial wastes is prohibited by the permit. All Class 1 industrial asbestos wastes must be manifested and the owner or operator of the landfill facility shall comply with the requirements of subsections (g) and (h) of this section.

(d) Unless the facility permit authorizes the acceptance of a specified type of Class 1 industrial waste, an authorization to accept specific types of Class 1 wastes will be waste-specific and site-specific and will be granted only to appropriate facilities that are operating in compliance with this chapter. Requests for authorization to accept Class 1 solid wastes must be submitted in writing to the executive director and must include, but are not limited to, the following:

(1) a complete description of the chemical and physical characteristics of the waste in accordance with §335.587 of this title (relating to Waste Analysis), a statement as to whether or not the waste is a hazardous waste as defined in §330.3 of this title (relating to Definitions), and the quantity and rate at which the waste is produced and/or the expected frequency of disposal;

(2) an operational plan containing the proposed procedures for handling the waste and a listing of required protective equipment for operating personnel and on-site emergency equipment. This plan must become a part of the site operating plan; and

(3) a written contingency plan meeting the requirements of §335.589 of this title (relating to Contingency Plan). This plan shall become a part of the site operating plan.

(e) Unless specifically authorized by the facility permit, a Type I or Type IAE landfill facility permitted after October 9, 1993, may not accept Class 1 industrial solid wastes in excess of 20% of the total amount of waste (not including Class 1 wastes) accepted during the current or previous year. The amount of waste may be determined by volume or by weight, but the same unit of measure must be used for each year, unless a variance is authorized by the executive director.

(f) Any authorization to accept Class 1 waste is subject to the site operating in compliance with these rules and any specific conditions required under any letter(s) of authorization. Failure to operate the site in compliance with these rules or any special conditions imposed by the executive director may result in revocation of the authorization to accept a Class 1 waste.

(g) All shipments of Class 1 waste must be accompanied by a manifest in compliance with §335.10(c) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste). The facility operator shall comply with the manifest requirements in §335.15(1) and (3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Treatment, Storage, or Disposal Facilities). [~~(waste shipping control ticket) as required by the commission. The facility operator or a designated representative shall sign the manifest for any authorized shipments of Class 1 waste.~~] The facility operator shall not accept or sign for shipments of Class 1 waste for which the authorization to accept has not been granted by the executive director or has not been authorized by permit provisions. The facility operator shall retain the disposal facility copy of the manifest for a period of three years. This time period is automatically extended if any enforcement action involving the owner, operator, or landfill facility is initiated or pending by the executive director.

(h) A facility that accepts any Class 1 waste must submit to the executive director a written report of Class 1 waste received. This report must be submitted no later than the 25th day of the month following the month that the waste was received. Reports must be submitted on forms provided by the commission and must include all information required. Monthly reports must be submitted by facilities that have received Class 1 wastes including those months in which no Class 1 waste is received at the facility unless an exception is granted by the executive director. Failure to submit the reports required by this subsection in a timely manner is a violation of these rules.

(i) Class 2 industrial solid waste, except special wastes as defined in §330.3 of this title, may be accepted at any Type I or Type IAE landfill provided the acceptance of this waste does not interfere with facility operation. Type IV and Type IVAE landfills may accept Class 2 industrial solid waste consistent with the limitations established in §330.5(a)(2) of this title (relating to Classification of Municipal Solid Waste Facilities) and the waste acceptance plan required by §330.61(b) of this title (relating to Contents of Part II of the Application).

(j) Class 3 industrial solid waste may be disposed of at a Type I, Type IAE, Type IV, or Type IVAE landfill provided the acceptance of this waste does not interfere with facility operation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402112

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Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER E. OPERATIONAL STANDARDS FOR MUNICIPAL SOLID WASTE STORAGE AND PROCESSING UNITS

30 TAC §330.217

Statutory Authority

The amendment is proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The proposed amendment implements House Bill 3060, 88th Texas Legislature, 2023.

§330.217. Pre-Operation Notice.

(a) Type V mobile liquid waste processing unit demonstration of viability.

(1) The owner or operator shall not initiate operation of each unit until a pre-operation inspection of each mobile unit has been conducted and the executive director gives written authorization to accept waste. The owner or operator shall demonstrate under field conditions that the process works. The demonstration shall be conducted under the supervision of experienced executive director staff and when appropriate, with local government staff. The viability demonstration shall be made by processing three traps in a single day representative of the traps normally serviced. The traps must have been in operation and not have been serviced for at least 30 days prior to the demonstration. The volume of material to be processed before unloading must be consistent with manufacturer's performance specifications and the operating plan, particularly as to the expected ratios between gross volumes processed and amounts discharged following processing. Multiple grab samples of effluent taken from the discharge outlet of the mobile processing unit must be tested for fats, oils, greases, and pH and be designed and operated to meet the effluent limits imposed by its treatment facility permitted under Texas Water Code, Chapter 26, Texas Pollutant Discharge Elimination System, or the liquid effluent limits specified in §330.207(g) [~~§330.207(h)~~] of this title (relating to Contaminated Water Management) if the discharge points do not require compliance with locally set limits.

(2) Waste solids (sludges) produced by the mobile processing unit must be disposed of in a solid waste disposal facility regulated by the State of Texas or other location approved by the executive director. Solids should be dewatered to the point that they pass the United

States Environmental Protection Agency (EPA) paint filter test, EPA Test Method 9095, or they should be taken to an authorized facility to be dewatered prior to landfilling.

(3) The owner or operator shall remain responsible for making corrections or changes that are necessary to meet requirements prior to operating the mobile unit.

(b) Type VI demonstration projects for liquid waste processing facilities. The operation of the facility shall not begin until a pre-opening inspection has been conducted and written authorization to accept waste has been given by the executive director.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402113
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER J. GROUNDWATER MONITORING AND CORRECTIVE ACTION

30 TAC §330.421

Statutory Authority

The amendment is proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The proposed amendment implements House Bill 3060, 88th Texas Legislature, 2023.

§330.421. Monitor Well Construction Specifications.

(a) Monitoring well construction. Monitoring well construction shall provide for maintenance of the integrity of the bore hole, collection of representative groundwater samples from the water-bearing zone(s) of concern, and prevention of migration of groundwater and surface water within the bore hole. The following specifications must be used for the installation of groundwater monitoring wells at municipal solid waste landfills. Equivalent alternatives to these specifications may be used if prior written approval is obtained in advance from the executive director.

(1) Drilling.

(A) Monitoring wells must be drilled by a Texas-licensed driller who is qualified to drill and install monitoring wells. The installation and development shall be supervised by a licensed professional geoscientist or engineer who is familiar with the geology of the area.

(B) The well shall be drilled by a method that will allow installation of the casing, screen, etc., and that will not introduce contaminants into the borehole or casing. Drilling techniques used for boring shall take into account the materials to be drilled, depth to groundwater, total depth of the hole, adequate soil sampling, and other such factors that affect the selection of the drilling method. If any fluids are necessary in drilling or installation, then clean, treated city water shall be used; other fluids must be approved in writing by the executive director before use. If city water is used, a current chemical analysis of the city water shall be provided with the monitor-well report.

(C) The diameter of the boring shall be at least four inches larger than the diameter of the casing. When the boring is in hard rock, a smaller annulus may be approved by the executive director.

(D) A log of the boring shall be made by or under the supervision of a licensed professional geoscientist or engineer who is familiar with the geology of the area, and shall be sealed, signed, and dated by the licensed professional.

(2) Casing, screen, filter pack, and seals.

(A) The well casing shall be: two to four inches in diameter; National Sanitation Foundation-certified polyvinyl chloride [~~National Science Foundation-certified polyvinyl chloride~~] (PVC) Schedule 40 or 80 pipe, flush-thread, screw joint (no glue or solvents); polytetrafluorethylene (PTFE, such as Teflon) tape or O-rings in the joints; no collar couplings. The top of the casing shall be at least two feet above ground level. Where high levels of volatile organic compounds or corrosive compounds are anticipated, stainless steel or PTFE casing and screen may be used, subject to approval by the executive director. Four-inch diameter casing is recommended because it allows larger volume samples to be obtained and provides easier access for development, pumps, and repairs. The casing shall be cleaned and packaged at the place of manufacture; the packaging shall include a PVC wrapping on each section of casing to keep it from being contaminated prior to installation. The casing shall be free of ink, labels, or other markings. The casing (and screen) shall be centered in the hole to allow installation of a good filter pack and annular seal. Centralizers are recommended on wells over six meters (20 feet) in length, but may not be needed if the wells are installed through hollow-stem augers. The top of the casing shall be protected by a threaded or slip-on top cap or by a sealing cap or screw-plug seal inserted into the top of the casing. The cap shall be vented to prevent buildup of methane or other gases and shall be designed to prevent moisture from entering the well.

(B) The screen shall be compatible with the casing and should generally be of the same material. The screen shall not involve the use of any glues or solvents for construction. A wire-wound screen is recommended to provide maximum inflow area. Field-cut slots are not permitted for well screen. Filter cloth shall not be used. A blank-pipe sediment trap, typically one to two feet, should be installed below the screen. A bottom cap is typically placed on the bottom of the sediment trap. The sediment trap shall not extend through the lower confining layer of the water-bearing zone being tested. Screen sterilization methods are the same as those for casing. Selection of the size of the screen opening should be done by a person experienced with such work and shall include consideration of the distribution of particle sizes both in the water-bearing zone and in the filter pack surrounding

the screen. The screen opening shall not be larger than the smallest fraction of the filter pack.

(C) The filter pack, placed between the screen and the well bore, shall consist of prepackaged, inert, clean silica sand or glass beads; it shall extend from one to four feet above the top of the screen. Open stockpile sources of sand or gravel are not permitted. The filter pack usually has a 30% finer grain size that is about four to ten times larger than the 30% finer grain size of the water-bearing zone; the filter pack should have a uniformity coefficient less than 2.5. The filter pack should be placed with a tremie pipe to ensure that the material completely surrounds the screen and casing without bridging. The tremie pipe shall be steam cleaned prior to the first well and before each subsequent well.

(D) The annular seal shall be placed on top of the filter pack and shall be at least two feet thick. It should be placed in the zone of saturation to maintain hydration. The seal should be composed of coarse-grain sodium bentonite, coarse-grit sodium bentonite, or bentonite grout. Special care should be taken to ensure that fine material or grout does not plug the underlying filter pack. Placement of a few inches of prepackaged clean fine sand on top of the filter pack will help to prevent migration of the annular seal material into the filter pack. The seal should be placed on top of the filter pack with a steam-cleaned tremie pipe to ensure good distribution and should be tamped with a steam-cleaned rod to determine that the seal is thick enough. The bentonite shall be hydrated with clean water prior to any further activities on the well and left to stand until hydration is complete (eight to 12 hours, depending on the grain size of the bentonite). If a bentonite-grout (without cement) casing seal is used in the well bore, then it may replace the annular seal described in this paragraph.

(E) A casing seal shall be placed on top of the annular seal to prevent fluids and contaminants from entering the borehole from the surface. The casing seal shall consist of a commercial bentonite grout or a cement-bentonite mixture. Drilling spoil, cuttings, or other native materials are not permitted for use as a casing seal. Quick-setting cements are not permitted for use because contaminants may leach from them into the groundwater. The top of the casing seal shall be between five and two feet from the surface.

(3) Concrete pad. High-quality structural-type concrete shall be placed from the top of the casing seal (two to five feet below the surface) continuously to the top of the ground to form a pad at the surface. This formed surface pad shall be at least six inches thick and not less than four (preferably six) feet square or five (preferably six) feet in diameter. The pad shall contain sufficient reinforcing steel to ensure its structural integrity in the event that soil support is lost. The top of the pad shall slope away from the well bore to the edges to prevent ponding of water around the casing or collar.

(4) Protective collar. A steel protective pipe collar shall be placed around the casing "stickup" to protect it from damage and unwanted entry. The collar shall be set at least one foot into the surface pad during its construction and should extend at least three inches above the top of the well casing (and top cap, if present). The top of the collar shall have a lockable hinged top flap or cover. A sturdy lock shall be installed, maintained in working order, and kept locked when the well is not being bailed/purged or sampled. The well number or other designation shall be marked permanently on the protective steel collar; it is useful to mark the total depth of the well and its elevation on the collar.

(5) Protective barrier. Where monitoring wells are likely to be damaged by moving equipment or are located in heavily traveled areas, a protective barrier shall be installed. A typical barrier is three or four six- to 12-inch diameter pipes set in concrete just off the protective pad. The pipes can be joined by pipes welded between them, but consideration must be given to well access for sampling and other activities. Separation of such a pipe barrier from the pad means that the barrier can be damaged without risk to the pad and well. Other types of barriers may be approved by the executive director.

(b) Unusual conditions. Where monitoring wells are installed in unusual conditions, all aspects of the installation shall be approved in writing in advance by the executive director. Such aspects include, for example, the use of cellar-type enclosures for the top-well equipment or multiple completions in a single hole.

(c) Development. After a monitoring well is installed, it shall be developed to remove artifacts of drilling (clay films, bentonite pellets in the casing, etc.) and to open the water-bearing zone for maximum flow into the well. Development should continue until all of the water used or affected during drilling activities has been removed and field measurements of pH, specific conductance, and temperature have stabilized. Failure to develop a well properly may mean that it is not properly monitoring the water-bearing zone or may not yield adequate water for sampling even though the water-bearing zone is prolific.

(d) Location and elevation. Upon completion of a monitoring well, the location of the well and all appropriate elevations associated with the top-well equipment shall be surveyed by a registered professional surveyor. The elevation shall be surveyed to the nearest 0.01 foot above mean sea level (with year of the sea-level datum shown). The point on the well casing for which the elevation was determined shall be permanently marked on the casing. The location shall be given in terms of the latitude and longitude at least to the nearest tenth of a second or shall be accurately located with respect to the landfill grid system described in §330.143(b)(5) of this title (relating to Landfill Markers and Benchmark).

(e) Reporting. Monitoring well installation and construction details must be submitted on forms available from the commission and must be completed and submitted within 60 days of well completion. A copy of the detailed geologic log of the boring, a description of development procedures, any particle size or other sample data from the well, and a site map drawn to scale showing the location of all monitoring wells and the point of compliance must be submitted to the executive director at the same time. The licensed driller should be familiar with the forms required by other agencies; a copy of those forms must also be submitted to the commission.

(f) Damaged wells. Any monitoring well that is damaged to the extent that it is no longer suitable for sampling shall be reported to the executive director, who may make a determination about whether to repair or replace the well.

(g) Plugging and abandonment. Any monitoring well that is no longer used shall be properly abandoned and plugged in accordance with 16 TAC §76.72 [~~16 TAC §76.702~~] (relating to Responsibilities of the Licensee and Landowner--Well Drilling, Completion, Capping and Plugging) and §76.104 (relating to Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Injurious Water Zones) [~~§76.1004 (relating to Technical Requirements--Standards for Capping and Plugging of Wells and Plugging Wells that Penetrate Undesirable Water or Constituent Zones)~~]. No abandonment shall take place without prior authorization in writing by the executive director.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402114
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Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER M. LOCATION RESTRICTIONS

30 TAC §330.545

Statutory Authority

The amendment is proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The proposed amendment implements House Bill 3060, 88th Texas Legislature, 2023.

§330.545. Airport Safety.

(a) Owners or operators of new municipal solid waste landfill units, existing municipal solid waste landfill units, vertical or lateral expansions, and landfill mining operations that are located within 10,000 feet of any airport runway end used by turbojet aircraft or within 5,000 feet of any airport runway end used by only piston-type aircraft shall demonstrate that the units are designed and operated so that the municipal solid waste landfill unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new municipal solid waste landfill units and lateral expansions located within a six-mile radius of any small general service airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration. Owners or operators proposing to site new municipal solid waste landfill units and lateral expansions located within a five-mile radius of any large general public commercial airport runway end used by turbojet or piston-type aircraft shall notify the affected airport and the Federal Aviation Administration.

(c) The owner or operator shall submit the demonstration in subsection (a) of this section with a permit application or a permit amendment application. The demonstration will be considered a part of the operating record once approved.

(d) Landfills disposing of putrescible waste shall not be located in areas where the attraction of birds can cause a significant bird hazard to low-flying aircraft. [~~Guidelines regarding location of landfills near airports can be found in Federal Aviation Administration Order 5200.5(A), January 31, 1990.~~] All landfill facilities within a six-mile radius of any small general service airport runway or within a five-mile radius of any large general public commercial airport runway shall be critically evaluated to determine if an incompatibility exists.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402115
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER N. LANDFILL MINING

30 TAC §330.613, §330.615

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The proposed amendments implement House Bill 3060, 88th Texas Legislature, 2023.

§330.613. Sampling and Analysis Requirements for Final Soil Product.

(a) Applicability. Facilities that receive a registration under this subchapter are required to test their final product in accordance with this section.

(b) Analytical methods. Facilities that use analytical methods to characterize their final product must use methods such as those described in the following publications.

(1) Chemical and physical analysis shall utilize:

(A) "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (SW-846); or

(B) "Methods for Chemical Analysis of Water and Wastes" (EPA-600).

(2) Analysis of pathogens shall utilize "Standard Methods for the Examination of Water and Wastewater" (Water Pollution Control Federation, 1995).

(3) Analysis for salinity and pH shall utilize North Central Regional (NCR) Method 14 for Saturated Media Extract Method contained in "Recommended Test Procedure for Greenhouse Growth Media" NCR Publication Number 221 (Revised), Recommended Chemical Soil Test Procedures, Bulletin Number 49 (Revised), October 1988, pages 34-37.

(4) Analysis of total, fixed, and volatile solids shall utilize Method 2540 G (Total, Fixed, and Volatile Solids in Solid and Semi-solid Samples) as described in "Standard Methods for the Examination of Water and Wastewater" (Water Pollution Control Federation, 1995).

(c) Sample collection. Sample collection, preservation, and analysis shall assure valid and representative results in accordance with National Environmental Laboratory Accreditation Conference (NELAC) standards [~~Subchapter F of this chapter (relating to Analytical Quality Assurance and Quality Control)~~].

(d) Documentation.

(1) Owners or operators of registered facilities shall record and maintain all of the following information regarding their activities of operation for three years after the final product is shipped off-site or upon facility closure:

(A) batch numbers identifying the final product sampling batch;

(B) the quantities, types, and sources of materials processed and the dates processed;

(C) the quantity and final product grade assigned described in §330.615 of this title (relating to Final Soil Product Grades and Allowable Uses);

(D) the date of sampling; and

(E) all analytical data used to characterize the final product, including laboratory quality assurance/quality control data.

(2) The following records shall be maintained on-site permanently or until facility closure:

(A) sampling plan and procedures;

(B) training and certification records of staff; and

(C) final soil product test results.

(3) Records shall be available for inspection by executive director representatives during normal business hours.

(4) The executive director may at any time request by registered or certified mail that a soil generator submit copies of all documentation listed in paragraph (1) of this subsection for auditing the final soil product grade. Documentation requested under this section shall be submitted within ten working days of receipt of the request.

(e) Sampling frequencies. All final soil product must be sampled and assigned a final product grade set forth in §330.615 of this title at a minimum rate of one sample for every 5,000 cubic yard batch of final soil product or annually, whichever is more frequent. Each sample will be a composite of nine grab samples as discussed in subsection (f) of this section.

(f) Sampling requirements. The operator shall utilize the sampling methods specified in NELAC standards [~~protocol specified in Subchapter F of this chapter~~]. The executive director may at any time request that split samples be provided to an agency representative. Specific sampling requirements that must be satisfied include those listed in paragraphs (1) and (2) of this subsection.

(1) Sampling from stockpiles. One-third of the grab samples shall be taken from the base of the stockpile (at least 12 inches into the pile at ground level), one-third from the exposed surface, and one-third from a depth of two feet from the exposed surface of the stockpile.

(2) Sampling from conveyors. Sampling times shall be selected randomly at frequencies that provide the same number of subsamples per volume of mined soil product as is required in subsection (d) of this section.

(A) If samples are taken from a conveyor belt, the belt shall be stopped at that time. Sampling shall be done along the entire width and depth of the belt.

(B) If samples are taken as the material falls from the end of a conveyor, the conveyor does not need to be stopped. Free-falling samples need to be taken to minimize the bias created as larger particles segregate or heavier particles sink to the bottom as the belt moves. In order to minimize sampling bias, the sample container shall be moved in the shape of a "D" under the falling product to be sampled. The flat portion of the "D" shall be perpendicular to the beltline. The circular portion of the "D" shall be accomplished to return the sampling container to the starting point in a manner so that no product to be sampled is included.

(g) Analytical requirements. The final product subject to the sampling requirements of this section will be tested for all of the following parameters. The executive director may at any time request that additional parameters be tested. These parameters are intended to address public health and environmental protection:

(1) total metals, to include:

(A) arsenic;

(B) cadmium;

(C) chromium;

(D) copper;

(E) lead;

(F) mercury;

(G) molybdenum;

(H) nickel;

(I) selenium; and

(J) zinc;

(2) weight percent of foreign matter, dry weight basis;

(3) pH by the saturated media extract method;

(4) salinity by the saturated media extract electrical conductivity method;

(5) pathogens:

(A) salmonella; and

(B) fecal coliform;

(6) polychlorinated-biphenyls; and

(7) asbestos.

(h) Data precision and accuracy. Analytical data quality shall be established in accordance with NELAC standards [~~as specified in Subchapter F of this chapter~~].

(i) Reporting requirements.

(1) Facilities must report the following information to the executive director on a semiannual basis for each sampling batch of final soil product. Reports must include, but may not be limited to, all of the following information:

(A) batch numbers identifying the final soil product sampling batch;

(B) the quantities and types of waste materials processed and the dates processed;

(C) the quantity of final soil product;

(D) the final soil product grade or permit number of the disposal facility receiving the final product if it is not Grade 1 or Grade 2 as established in §330.615 of this title;

(E) all analytical results used to characterize the final soil product, including laboratory quality assurance/quality control data and chain-of-custody documentation; and

(F) the date of sampling.

(2) Reports must be submitted to the executive director within two months after the reporting period ends.

§330.615. Final Soil Product Grades and Allowable Uses.

(a) Applicability. Facilities that receive a registration under this subchapter are required to test final soil products in accordance with this section.

(b) Final soil product testing. The final soil product shall be regularly tested under §330.613 of this title (relating to Sampling and Analysis Requirements for Final Soil Product) to determine the product's grade. Testing of final product and interpretation of test results shall be conducted in accordance with National Environmental Laboratory Accreditation Conference standards [~~Subchapter F of this chapter (relating to Analytical Quality Assurance and Quality Control)~~].

(c) Final product classification and usage. The final soil product shall be classified according to the following classification system.

(1) Grade 1 Soil. There are no restrictions on the use of Grade 1 Soil. To be considered Grade 1 Soil, the final product shall meet all of the following criteria:

(A) shall contain no foreign matter of a size or shape that can cause human or animal injury;

(B) shall not exceed all Maximum Allowable Concentrations for Grade 1 Soil in Table 1 of this subparagraph:
Figure: 30 TAC §330.615(c)(1)(B) (No change.)

(C) shall not contain foreign matter in quantities that cumulatively are greater than 1.5% dry weight on a four millimeter screen;

(D) shall meet the requirements for pathogen reduction for Grade 1 Soil as described in Table 2 of this subparagraph; and
Figure: 30 TAC §330.615(c)(1)(D) (No change.)

(E) shall meet the requirements for salinity and pH for Grade 1 Soil as described in Table 2 of subparagraph (D) of this paragraph.

(2) Grade 2 Soil. To be considered Grade 2 Soil, the final product shall meet all of the following criteria:

(A) shall contain no foreign matter of a size or shape that can cause human or animal injury;

(B) shall not exceed all Maximum Allowable Concentrations for Grade 2 Soil in Table 1 of paragraph (1)(B) of this subsection;

(C) shall not contain foreign matter in quantities that cumulatively are greater than 1.5% dry weight on a four millimeter screen;

(D) shall meet the requirements for pathogen reduction for Grade 2 Soil as described in Table 2 of paragraph (1)(D) of this subsection;

(E) shall meet the requirements for salinity and pH for Grade 2 Soil as described in Table 2 of paragraph (1)(D) of this subsection; and

(F) shall not be used at a residence, recreational area, or licensed child-care facility, or for food chain crops.

(3) Waste grade soil. Waste grade soil:

(A) exceeds any one of the Maximum Allowable Concentrations for Grade 2 final product in Table 1 of paragraph (1)(B) of this subsection;

(B) does not meet the other requirements of Grade 1 or Grade 2 Soil; and

(C) shall be appropriately disposed at a permitted municipal solid waste facility.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402116
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Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER O. REGIONAL AND LOCAL SOLID WASTE MANAGEMENT PLANNING AND FINANCIAL ASSISTANCE GENERAL PROVISIONS

30 TAC §330.633, §330.635

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The proposed amendments implement House Bill 3060, 88th Texas Legislature, 2023.

§330.633. Definitions of Terms and Abbreviations.

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

(1) Advisory council--The Municipal Solid Waste Management and Resource Recovery Advisory Council.

(2) City--An incorporated city or town in the state.

(3) Closed municipal solid waste landfill unit--A discrete area of land or an excavation that has received only municipal solid waste or municipal solid waste combined with other solid wastes, including, but not limited to, construction/demolition waste, commercial solid waste, nonhazardous sludge, very small quantity generator [~~conditionally exempt small-quantity generator~~] hazardous waste, and industrial solid waste, and the area of land is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined by 40 Code of Federal Regulations §257.2.

(4) Council of governments--A regional planning commission created under Local Government Code, Chapter 391.

(5) Governing body--The city council, commissioners court, board of directors, trustees, or similar body charged by law with governing a public agency.

(6) Inactive facility--A facility that no longer receives solid waste.

(7) Planning fund--The municipal solid waste management planning fund created in the state treasury by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Texas Health and Safety Code, Chapter 363).

(8) Planning period--The period of time that an adopted solid waste management plan is designed to remain effective.

(9) Planning region--A region of the state identified by the governor as an appropriate region for municipal solid waste planning.

(10) Private operator--A person, other than a government or governmental subdivision or agency, engaged in some aspect of operating a solid waste management system. The term includes any entity other than a government or governmental subdivision or agency, owned and operated by investment of private capital.

(11) Property--Land, structures, interests in land, air rights, water rights, and rights that accompany interests in land, structures, water rights, and air rights and includes easements, rights of way, uses, leases, incorporeal hereditaments, legal and equitable estates, interest, or rights such as terms for years and liens.

(12) Public agency--A city, county, district, or authority created and operating under the Texas Constitution, Article III, §52(b)(1) or (2), or Article XVI, §59, or a combination of two or more of these governmental entities acting under an interlocal agreement and having the authority under state laws to own and operate a solid waste management system.

(13) Regional or local solid waste management plan--A plan adopted by a council of governments or local government under authority of the Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Texas Health and Safety Code, Chapter 363).

(14) Regional Solid Waste Grants Program--The program established to utilize funds dedicated under Texas Health and Safety Code, §361.014, for local and regional solid waste projects and to update and maintain regional solid waste management plans.

(15) Resolution--A resolution, order, ordinance, or other action of a governing body.

(16) Solid waste management--The systematic control of any or all of the following activities:

(A) generation;

(B) source separation;

(C) collection;

(D) handling;

(E) storage;

(F) transportation;

(G) processing;

(H) treatment;

(I) resource recovery; or

(J) disposal of solid waste.

(17) Solid waste management system--Any plant, composting process plant, incinerator, sanitary landfill, transfer station, or other works and equipment acquired, installed, or operated for the purpose of collecting, handling, storing, processing, recovering material or energy, or disposing of solid waste and includes sites for these works and equipment.

(18) Solid waste resource recovery system--Any real property, buildings, structures, plants, works, facilities, equipment, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in connection with the processing of solid waste to extract, recover, reclaim, salvage, reduce, concentrate, or convert to energy or useful matter or resources, whatever their form, including electricity, steam, or other forms of energy, and fertilizer, glass, or other forms of material and resources, from such solid waste, and includes any real property, buildings, structures, plants, works, facilities, pipelines, machinery, vehicles, vessels, rolling stock, licenses, or franchises used or useful in:

(A) the transportation, receipt, storage, transfer, and handling of solid waste;

(B) the preparation, separation, or processing of solid waste for reuse;

(C) the handling and transportation of recovered matter, resources, or energy; and

(D) the handling, transportation, and disposal of any nonrecoverable solid waste residue.

§330.635. Regional and Local Solid Waste Management Plan Requirements.

(a) Regional solid waste management plans. A regional plan identifies the overriding concerns, goals, objectives, and recommended actions for solid waste management over a long-range period for the entire planning region. The details to implement a regional plan are provided in a Regional Solid Waste Management Implementation Plan Guideline that is approved by the executive director. A Regional Solid Waste Management Plan Implementation Guideline is a separate document. The requirements for the guidance document are found in §330.643 of this title (relating to Regional and Local Solid Waste Management Implementation Plan Guideline Requirements).

(1) Geographic scope. The geographic scope of the regional planning process shall be the entire planning region designated by the governor.

(2) Plan content. A regional plan shall be the result of a planning process related to the proper management of solid waste in the planning region. The process shall include identification of overriding concerns and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and actions recommended to accomplish those goals and objectives. The regional plan shall include:

(A) a statement of regional goals and objectives;

(B) a description and assessment of efforts to minimize, reuse, and recycle waste, as follows:

(i) include a brief description and an assessment of current efforts in the region to minimize municipal solid waste (MSW), including sludge, and efforts to reuse or recycle waste;

(ii) establish a recycling rate goal appropriate to the region;

(iii) list any recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(iv) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(v) recommend composting programs for yard waste and related organic wastes that may include:

(I) creation and use of community composting centers;

(II) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(III) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch; and

(vi) include a public education/outreach component in the solid waste program; and

(C) a commitment to the following, regarding the management of MSW facilities:

(i) encouraging cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(ii) assessing the need for new waste disposal capacity;

(iii) considering the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area;

(iv) allowing a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction;

(v) completing and maintaining an inventory of MSW landfill units in accordance with Texas Health and Safety Code, §363.064(10) [~~§363.0635~~]. One copy of the inventory shall be provided to the commission and to the chief planning official of each municipality and county in which a unit is located; and

(vi) developing a guidance document to review MSW registration and permit applications to determine conformance with the goals and objectives outlined in Volume II: Regional Solid Waste Management Plan Implementation Guidelines as referenced in §330.643 of this title.

(b) Local plans. A local plan addresses overriding short and long-range concerns and actions related to solid waste management within the jurisdiction of one or more local governments and may be developed regardless of whether a regional plan has been developed that will affect the local planning area. The details to implement a local plan are provided in a Regional Solid Waste Management Implementation Plan Guideline that is approved by the executive director. A Regional Solid Waste Management Plan Implementation Guideline is a separate document. The requirements for the guidance document are found in §330.643 of this title.

(1) Geographic scope. The geographic scope of the local planning process shall be the jurisdiction of one or more local governments with common concerns or needs, but shall not include the entire planning region.

(2) Plan content. A local plan shall be the result of a planning process that is related to the proper management of solid waste in the local planning area. The process shall include identification of concerns and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and the actions recommended to accomplish those goals and objectives. The local plan shall include:

(A) a statement of local goals and objectives;

(B) a description and assessment of efforts to minimize, reuse, and recycle waste, as follows:

(i) include a brief description and an assessment of current efforts in the region to minimize MSW, including sludge, and efforts to reuse or recycle waste;

(ii) establish a recycling rate goal appropriate to the region;

(iii) list any recommendations for encouraging and achieving a greater degree of waste minimization and waste reuse or recycling in the geographic area covered by the plan;

(iv) include a description and assessment of existing or proposed community programs for the collection of household hazardous waste;

(v) recommend composting programs for yard waste and related organic wastes that may include:

(I) creation and use of community composting centers;

(II) adoption of the "Don't Bag It" program for lawn clippings developed by the Texas Agricultural Extension Service; and

(III) development and promotion of education programs on home composting, community composting, and the separation of yard waste for use as mulch; and

(vi) include a public education/outreach component in the solid waste program; and

(C) commitment to the following, regarding the management of MSW facilities:

(i) encouraging cooperative efforts between local governments in the siting of landfills for the disposal of solid waste;

(ii) assessing the need for new waste disposal capacity;

(iii) considering the need to transport waste between municipalities, from a municipality to an area in the jurisdiction of a county, or between counties, particularly if a technically suitable site for a landfill does not exist in a particular area; and

(iv) allowing a local government to justify the need for a landfill in its jurisdiction to dispose of the solid waste generated in the jurisdiction of another local government that does not have a technically suitable site for a landfill in its jurisdiction.

(3) Special considerations or restrictions. The local plan shall not prohibit, in fact or by effect, importation or exportation of waste from one political jurisdiction to another.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402117
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Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER T. USE OF LAND OVER CLOSED MUNICIPAL SOLID WASTE LANDFILLS

30 TAC §§330.951, 330.953, 330.954, 330.959

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act.

The proposed amendments implement House Bill 3060, 88th Texas Legislature, 2023.

§330.951. Definitions.

Unless otherwise noted, all terms contained in this section are defined by their plain meaning. This section contains definitions that are applicable only to this subchapter and that supersede definitions in §330.3 of this title (relating to Definitions) where those terms appear in this subchapter. As used in this subchapter, words in the singular include the plural and words in the plural include the singular. The following words and terms, when used in this subchapter, have the following meanings.

(1) Alteration--Minor changes and standard redesign activities common in residential and commercial structures, such as moving walls and doors, that will not affect the foundation or increase the horizontal extent of the foundation.

(2) Authorization--A written approval issued by the executive director that, by its conditions, may allow the disturbance of the integrity of the final cover.

(3) Closed municipal solid waste landfill--A permitted or previously permitted municipal solid waste landfill, a municipal solid waste landfill which has never been permitted, or a dumping area as defined in this section, which stopped receiving waste and completed the closure activities.

(4) Closure plan--A plan addressing the placement of a final cap on a closed municipal solid waste landfill where waste is exposed or the existing cap is inadequate.

(5) Construction--The inception of an activity that provides improvements necessary for the utilization of an enclosed structure.

(6) Develop and/or development--Any activity on or related to real property that is intended to lead to the construction or alteration of an enclosed structure for the use and/or occupation of people for an industrial, commercial, or public purpose or to the construction of residences for three or more families, including subdivisions that will include single-family homes and duplexes.

(7) Development permit--A written permit issued by the executive director that, by its conditions, may authorize a person or persons to develop an enclosed structure over a closed municipal solid waste landfill unit. The development permit does not supersede local building and development permits, but is an additional permit.

(8) Dumping area--An non-permitted area of land or an excavation with unknown boundaries or which have had the boundaries determined through subsequent investigation that has received only municipal solid waste or municipal solid waste combined with other solid wastes, including but not limited to, construction/demolition waste, commercial solid waste, nonhazardous sludge, very small quantity generator [~~conditionally exempt small-quantity generator~~] hazardous waste, and industrial solid waste, and that is not a land treatment unit, surface impoundment, injection well, or waste pile as those terms are defined in 40 Code of Federal Regulations §257.2. [~~§330.3 of this title (relating to Definitions).~~]

(9) Enclosed structure or structure--Any permanent structure that is intended to be or has the potential of being used or occupied by people for an industrial, commercial, public, or residential purpose.

(10) Essential improvements--All improvements and appurtenances including, but not limited to, the excavations for the structure, installation of utilities, on-site wastewater disposal facilities, grading and drainage improvements, access drives and parking lots, foundation, security, fencing, landscape plantings, and irrigation systems necessary for the utilization of an enclosed structure.

(11) Existing structure--Any enclosed structure that began development prior to September 1, 1993.

(12) Permitted development--An enclosed structure or group of enclosed structures that have been issued a development permit.

(13) Post-closure care--The period of time beginning with the professional engineer certification of completing final closure activities as accepted by the executive director in accordance with §§330.453(f), 330.455(c), or 330.457(f)(5) of this title (relating to Closure and Post-Closure) and ending with the professional engineer certification of completion of post-closure care maintenance as accepted by the executive director in accordance with §330.463 of this title (relating to Post-Closure Care Requirements). Monitoring and maintenance activities are required during the post-closure care period in accordance with §330.463 of this title.

(14) Post-closure care landfills--A municipal solid waste landfill facility that has received a municipal solid waste permit under §330.7 of this title (relating to Permit Required) and is currently in the post-closure care period as defined in this section.

(15) Registration--A document issued by the executive director regarding submitted information for an existing enclosed structure built over a closed municipal solid waste landfill unit that does not require a development permit.

(16) Site operating plan--A prepared document that provides guidance for operations and procedures necessary to maintain human safety and environmental protection at the development, permitted development, or existing structure in a manner consistent with the development permit and the commission's regulations.

(17) Structures gas monitoring plan--A document prepared by a licensed professional engineer that provides procedures to ensure the detection of landfill gases and the prevention of migration of landfill gases into enclosed structures.

§330.953. Soil Test Required before Development.

(a) A person may not undertake the development of a tract of land that is greater than one acre in area unless the person conducts a soil test prior to or during development and construction. The soil test is intended to determine if a landfill exists on the property planned for development.

(b) A soil test under this section shall be conducted by a licensed professional engineer.

(c) The licensed professional engineer must choose one of the following tests.

(1) Test I. The licensed engineer shall observe all subsurface disturbances, undertaken for whatever reason, during development through the completion of the foundation. A subsurface investigation prior to construction is not required by Test I.

(2) Test II. A subsurface investigation undertaken for the purpose of finding a closed municipal solid waste landfill unit. The investigation must incorporate a sufficient number of borings or excavations, the number of which shall be determined on a site-specific basis by the licensed professional engineer. Each boring or excavation shall be to a minimum depth of ten feet.

(3) Test III. A subsurface investigation conducted at the development site for geotechnical or environmental purposes, or a housing and urban development test for a homeowner's warranty.

(d) In accordance with Texas Health and Safety Code, §361.538(c), any engineer who conducts a soil test and determines that part of the tract overlies a closed municipal solid waste landfill shall notify the following persons of that determination within 30 days of the completion of the test:

(1) each owner and each lessee of the tract;

(2) the executive director;

(3) local government officials with the authority to disapprove the application for development; and

(4) the regional council of governments.

(e) The responsible engineer shall affix his seal, signature, and date of execution to the soil test results as required by the Texas Engineering Practice Act, §15c, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures) [~~22 TAC §131.166 (relating to Engineer's Seal)~~].

(f) All soil test excavations where waste is removed shall be backfilled and compacted with clean high-plasticity or low-plasticity clay. The excavation shall be backfilled to exceed the existing grade and provide positive drainage.

§330.954. Development Permit, Development Authorization, and Registration Requirements, Procedures, and Processing.

(a) Permit required for development over a closed municipal solid waste (MSW) landfill unit.

(1) No person may commence or continue physical construction of an enclosed structure over a closed MSW landfill as defined in §330.951 of this title (relating to Definitions) without first submitting a development permit application in accordance with §330.956 of this title (relating to Application for Proposed or Existing Constructions Over a Closed Municipal Solid Waste Landfill Unit, General Requirements) and receiving a development permit issued by the executive director, except as noted in paragraph (7) of this subsection. The permit issued by the executive director under this subchapter is a development permit and not a permit for the management of solid waste. A permit application for a development permit shall comply with those requirements in this subchapter. A permit application to manage MSW shall comply with the applicable sections of Chapter 281 and Chapter 305 of this title (relating to Applications Processing and Consolidated Permits), and Subchapters A - M of this chapter.

(2) A development permit is required for construction of an enclosed structure over a closed MSW landfill that had received a permit under §330.7 of this title (relating to Permit Required) and had its permit revoked at the end of the post-closure care period in accordance with §305.67 of this title (relating to Revocation and Suspension upon Request or Consent) or for construction of an enclosed structure over a non-permitted closed MSW landfill. The exact waste boundary may be determined through soil boring tests in accordance with §330.953 of this title (relating to Soil Test Required before Development), or through alternative investigation methods approved by the executive director.

(3) A development permit for construction of an enclosed structure is required for an entire property that includes a closed MSW landfill with unknown boundaries as defined in §330.951 of this title.

(4) The permit application under this subchapter must be received at least 45 days prior to the proposed commencement of construction over the closed MSW landfill unit.

(5) If a person directs an engineer to conduct Soil Test I, and the soil test reveals the existence of a closed MSW landfill unit after the commencement of construction, construction of the enclosed structure being built over the waste area shall cease immediately, and a permit application shall be submitted and a development permit issued before construction of the enclosed structure over the waste area unit can resume. The person may proceed with construction and development of other facilities, including those items listed in the definition of essential improvements.

(6) If a person directs an engineer to conduct either Soil Test II or Soil Test III and the engineer discovers a closed MSW landfill unit as a result of the test, the person shall submit a permit application. Development of an enclosed structure over the closed landfill unit cannot begin until a development permit is issued.

(7) If a person directs an engineer to conduct either Soil Test II or Soil Test III and the engineer does not detect a closed MSW landfill unit as a result of the test, but subsequently discovers a closed MSW landfill unit during the development, the person is not required to submit a permit application but must meet the provisions of §330.959 of this title (relating to Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit).

(8) As part of the application, the owner shall provide the name and physical and mailing addresses of a public building with nor-

mal operating hours such as library, city hall, or county courthouse where the application can be viewed by the general public. The facilities where the permit can be viewed shall be in compliance with all applicable requirements of the Americans with Disabilities Act. The application shall also include an adjacent landowner list.

(b) Review and approval of permit application.

(1) Notice of the opportunity to request a public meeting for an application shall be provided not later than 45 days of the executive director's receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit). The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings). This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing. The purpose of the public meeting is for the public to provide input for consideration by the commission, and for the applicant and commission staff to provide information to the public.

(2) The commission shall notify the owner by mail of the date and time of the meeting .

(3) The commission shall require the applicant to publish notice of the meeting in a newspaper that is generally circulated in each county in which the property proposed for development is located. The published notice must appear at least once a week for the two weeks before the date of the meeting. The commission shall also notify all individuals on the list of adjacent landowners at least 15 days prior to the meeting. The notice shall list the location, date, and time of the public meeting, and the location of the public building where the development permit application can be viewed.

(4) The executive director's staff will conduct the public meeting at the designated location. The owner will make a presentation of the application, the executive director's staff will describe the development permit, and public comment will be received. The public meeting is not an evidentiary proceeding.

(5) On or before the fifth day following the public meeting:

(A) the executive director will either approve or deny the development permit application. The executive director shall base the decision on whether the application meets each of the requirements of §330.956 of this title and §330.957 of this title (relating to Contents of the Development Permit and Workplan Application). A decision denying the permit shall state the deficiencies that were cause for the denial and any modifications necessary to correct those deficiencies; and

(B) a person may submit in writing to the chief clerk a request to be notified of the executive director's decision on the application.

(6) The date on which the executive director issues the order shall be construed as the date on which notice of the decision is mailed to the owner and to each person that requested notification of the executive director's decision in accordance with paragraph (5)(B) of this subsection.

(7) Petition for review of executive director's decision.

(A) The owner or a person may file a petition for review not later than the tenth day after the date the executive director issues the order. The owner or person that files a petition shall file the petition with the chief clerk, and shall mail a copy of the petition to the owner and to each person that requested notification of the executive director's decision in accordance with paragraph (5)(B) of this subsection.

(B) If a petition for review is filed, the commission shall act on the petition for review within 35 days after issuance of the executive director's order or at the next scheduled commission meeting, whichever is later. The commission may affirm or reverse the order issued by the executive director.

(C) A commission order ruling on a petition for review is final and effective on the date issued.

(8) If no petition for review is filed ten days after the executive director issues a decision, the decision is final and effective on the 11th day after the date the decision was issued.

(9) If the actual cost of reviewing the permit is not equal to the application fee, the owner will be presented with either a refund or an invoice in accordance with subsection (a)(7) of this section. If an invoice is submitted, a development permit will not be issued until the invoice is paid.

(10) An owner who is denied a development permit may submit a new application to the executive director.

(c) Requirements for development over a closed MSW landfill in post-closure care.

(1) For an MSW landfill that is covered by an existing permit for the management of solid waste received under §330.7 of this title and is currently in post-closure care, no person may commence physical construction of an enclosed structure without submitting a permit modification application for the closure plan and post-closure plan of the existing permit in accordance with §305.70(k)(12) [~~§305.70(j)(6)~~] of this title (relating to Municipal Solid Waste Permit and Registration Modifications), or a permit amendment application in accordance with §305.62 of this title (relating to Amendment), and a workplan including those items listed in §330.957 of this title, and receiving the approval from the executive director.

(2) For an MSW landfill that is covered by an existing permit for the management of solid waste received under §330.7 of this title and is currently in post-closure care, no person may commence with any type of non-enclosed structures, which will result in the disturbance, in any way, of the final cover without submitting a permit modification application for the closure plan and post-closure plan of the existing permit in accordance with §305.70(k)(12) [~~§305.70(j)(6)~~] of this title or a permit amendment application in accordance with §305.62 of this title, and a workplan including those items listed in §330.960 of this title (relating to Contents of Authorization Request to Disturb Final Cover Over a Closed Municipal Solid Waste Landfill for Non-enclosed Structures), and receiving the approval from the executive director.

(3) The executive director shall issue a decision to approve or deny the permit modification/amendment application. The executive director shall base the decision on whether the application meets each of the requirements of §305.70(k)(12) [~~§305.70(j)(6)~~] or §305.62 of this title, respectively, and of §330.957 or §330.960 of this title, respectively. A decision denying the permit modification/amendment shall state the deficiencies that were cause for the denial and any modifications necessary to correct those deficiencies.

(d) Registration for existing structures.

(1) The owner or lessee of an existing structure that existed or began development prior to September 1, 1993, and is built over a closed MSW landfill unit, shall submit a registration application to the executive director. The registration application shall be submitted to the executive director and shall include those items listed in §330.959 of this title. This paragraph is not intended to require that owners and lessees of enclosed structures initiate investigations for closed MSW landfills.

(2) A registration issued by the executive director under this subchapter is not a registration for the management of solid waste. A registration application for an existing structure shall comply with those requirements in this subchapter. A registration application to manage MSW shall comply with the applicable sections of Chapter 281 and Chapter 305 of this title and Subchapters A - M of this chapter.

(3) The owner shall submit the registration within 180 days from the determination that the structure overlies a closed MSW landfill.

(4) Upon receipt of written approval of the structures gas monitoring plan or approval with modifications to the plan from the executive director, the owner or lessee of the existing structure shall implement the plan in accordance with its approved schedule.

(e) Authorization to disturb final cover for non-enclosed structures.

(1) The integrity of the final cover of a closed MSW landfill shall not knowingly be violated, disturbed, altered, removed, or interrupted in any way without the prior authorization of the executive director, except where soil tests are being performed in accordance with §330.953 of this title.

(2) Penetrations of the final cover or liner systems will not be allowed without the prior authorization of the executive director. These include, but are not limited to, borings, piers, spread footings, foundations for light standards, fence posts, anchors, deadman anchors, manholes, on-site disposal systems, recreational facilities, and any other kind of non-enclosed structures.

(3) An authorization to disturb final cover issued by the executive director under this subchapter is not an authorization for the management of solid waste. An application for authorization shall comply with those requirements in this subchapter.

(4) The authorization request must be received at least 45 days prior to the proposed commencement of construction over the closed MSW landfill unit.

§330.959. Contents of Registration Application for an Existing Structure Built Over a Closed Municipal Solid Waste Landfill Unit.

(a) The application shall follow the general requirements as set forth in §330.956 of this title (relating to Application for Proposed or Existing Constructions Over a Closed Municipal Solid Waste Landfill Unit, General Requirements).

(b) The registration application shall consist of the following:

(1) a legal description as set forth in §330.957(h) [~~§330.957(e)~~] of this title (relating to Contents of the Development Permit and Workplan Application);

(2) certified copies of all notices having been made by the owner and the lessor/lessee in accordance with §330.962 of this title (relating to Notice to Real Property Records), §330.963 of this title (relating to Notice to Buyers, Lessees, and Occupants), and §330.964 of this title (relating to Lease Restrictions);

(3) plans and drawings as set forth in §330.957(i), (j), and (n)(3) of this title;

(4) a site operating plan as set forth in §330.957(s) of this title;

(5) a structures gas monitoring plan:

(A) General.

(i) The owner or lessee of an existing structure built over a closed municipal solid waste landfill unit shall ensure that the concentration of methane gas generated by the landfill does not exceed 20% of the lower explosive limit for methane (1.0% by volume methane in air) in facility structures (excluding gas control or recovery system components). Any enclosed structures shall contain automatic methane gas sensors approved by the executive director and designed to trigger an audible alarm if the volumetric concentration of methane in the air is greater than 1.0%.

(ii) Landfill gas monitoring requirements for a registration under this section may be suspended by the executive director as provided for in §330.957(t)(1)(B) of this title.

(B) Requirements for structures gas monitoring plan. The owner or lessee shall submit a structures gas monitoring plan, designed by a licensed professional engineer, to the executive director for review and approval. The plan shall ensure detection of the presence of landfill gas entering on-site structures. All design drawings should bear the licensed engineer's seal and signature. The plan shall include, but not be limited to, the following:

(i) an analysis of specific facility characteristics and potential migration pathways or barriers as set forth in §330.957(t)(2)(A) of this title;

(ii) a facility drawing, drawn to scale, which indicates the location of all waste disposal areas, existing structures, creeks, and ponds;

(iii) a narrative describing modifications to the existing structures including, but not limited to, the following:

(I) structural;

(II) electrical;

(III) mechanical; and

(IV) landfill gas monitoring equipment including manufacturer's specification sheets and any gas ventilation or active gas extraction systems if the development utilizes such systems;

(iv) a detailed implementation schedule for the installation of landfill gas monitoring equipment;

(v) a sampling and analysis plan as set forth in §330.957(t)(2)(F) of this title; and

(vi) a landfill gas analysis as set forth in §330.957(t)(2)(G) of this title; and

(6) a safety and evacuation plan describing evacuation procedures and safety measures in the event the methane gas sensors sound the audible alarms.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402118
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Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER U. STANDARD AIR PERMITS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES AND TRANSFER STATIONS

30 TAC §§330.987, 330.991, 330.993, 330.995

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act. The standard air permit is also adopted under THSC, §382.002, which establishes the policy of the state and the purpose of the chapter to safeguard the state's air resources from pollution; §382.011, which gives the commission the powers necessary or convenient to carry out its responsibilities under the TCAA; THSC, §382.017, which authorizes the commission to adopt rules; THSC, §382.051, which authorizes the commission to issue a permit to construct or modify a facility that may emit air contaminants, including a standard permit for similar sources; and THSC, §382.05195, which authorizes the commission to issue standard permits and to adopt rules as necessary to implement standard permits.

The proposed amendments implement House Bill 3060, 88th Texas Legislature, 2023.

§330.987. Certification Requirements.

(a) Type IV landfills are exempt from the requirements of this subsection.

(b) Certification under this subchapter constitutes an acknowledgment and agreement that the permit holder will comply with all rules, regulations, and orders of the commission issued in conformity with Texas Clean Air Act, Texas Health and Safety Code, Chapter 382, and the conditions precedent to the claiming of this standard permit. If more than one state or federal rule or regulation or permit condition are applicable, the most stringent limit or condition will govern. Acceptance includes consent to the entrance of commission employees and designated representatives of any local air pollution control agency having jurisdiction over the site into the permitted premises at reasonable times to investigate conditions relating to the emission or concentration of air contaminants, including compliance with the standard permit.

(c) A certification under this subchapter is valid for a term not to exceed ten years from the date of receipt by the Texas Commission on Environmental Quality. An owner and/or operator is required to renew a certification by no later than the expiration date of the certification. The commission will provide written notice to operators of the renewal deadline at least 180 days prior to the expiration of the certification.

(d) Two copies of the certification must be submitted to the Waste Permits Division. One copy must be submitted to the appropriate regional office, and one copy must be sent to any appropriate local air pollution control program having jurisdiction over the site. The certification must be based on the capacity of the landfill minimum of a ten-year period. The certification must include supporting documentation to demonstrate compliance with the conditions of this subchapter and any other applicable federal and state requirements, and at a minimum should include the following:

(1) the basis and quantification of emission estimates;

(2) sufficient information to demonstrate that the project will comply with all applicable conditions of this subchapter; and

(3) a description of any equipment and related processes.

(e) Certifications must be submitted as follows.

~~[(1) Owners or operators of existing municipal solid waste landfill sites that have been modified and do not continue to meet the existing standard permit under §116.621 of this title (relating to Municipal Solid Waste Landfills) must certify.]~~

(1) [~~(2)~~] Owners or operators must submit a certification for the initial construction of a municipal solid waste landfill under this subchapter at least 120 days prior to building or installation of any equipment or structure that may emit air contaminants.

(2) [~~(3)~~] Modifications to an existing municipal solid waste landfill site that results in a change in categories as listed in §330.983 of this title (relating to Definitions) must submit a certification at least 60 days after changes occurring at the site.

(f) New facilities or changes to existing facilities that do not cause a site to become ineligible for this standard permit can be authorized by meeting one of the following:

(1) independently claiming the permit by rule under Chapter 106 of this title (relating to Permits by Rule) or a standard permit under Chapter 116, Subchapter F of this title (relating to Standard Permits), including all registrations, fees, and documentation. These independent registrations must be administratively incorporated at the next standard permit certification renewal or modification; or

(2) including the claimed permit by rule or standard permit as a part of an initial or modified certification. A claimed permit by rule or standard permit included under a municipal solid waste landfill standard permit certification is exempt from the registration and fee requirements normally required of permits by rule or standard permits. The certification must include sufficient information necessary to demonstrate qualification for those authorizations. Certifications must meet the following:

(A) update the site certification within one year of constructing new facilities or modifications if the cumulative amount of emissions resulting from the new facilities or modifications is:

(i) less than five tons per year of any criteria air contaminant for sites located in a designated nonattainment area; or

(ii) less than 25 tons per year of any criteria air contaminant for sites located in an attainment area;

(B) update the site certification within 30 days of constructing new facilities or modifications if the site is not considered an existing major source in accordance with prevention of significant deterioration review or nonattainment new source review, and the cumulative amount of emissions for these changes is:

(i) greater than or equal to five tons per year of any criteria air contaminant for sites located in a designated nonattainment area; or

(ii) greater than or equal to 25 tons per year of any criteria air contaminant for sites located in attainment areas; or

(C) update the site certification at least 30 days prior to the change, including any applicable major source netting demonstration as specified in §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Areas), if the site is considered an existing major site in accordance with prevention of significant deterioration review or nonattainment new source review, and the cumulative amount of emissions for changes is:

(i) greater than or equal to five tons per year of any criteria air contaminant for sites located in a designated nonattainment area; or

(ii) greater than or equal to 25 tons per year of any criteria air contaminant for sites located in an attainment area.

§330.991. Technical and Operational Requirements for all Municipal Solid Waste Landfill Sites.

(a) Air emissions from the following stationary sources are authorized by this standard permit:

(1) recycling (e.g., crushing glass, shredding or crushing aluminum, light bulb crushing, wood chipping, or mulching);

(2) transfer stations:

(A) located at a municipal solid waste (MSW) landfill site; or

(B) not located at a landfill and store over 1,000 tons of MSW overnight, defined as sunset to sunrise, must have the waste holding area covered by a ventilated building that has a minimum 16-foot vertical exhaust of 45,000 cubic feet per minute or greater;

(3) waste solidification/stabilization operations, which must be conducted with the following conditions:

(A) when dry fine powdery materials, including, but not limited to, fly ash, cement kiln dust, hydrated lime, and fine sawdust are used for mixing in the waste solidification/stabilization process loading/unloading, transporting, and mixing, they must be controlled so as to minimize particular matter emissions. Controls to minimize particular matter emissions may include loading and storing in enclosed containers, or mixing and unloading under conditions where the materials cannot become airborne; and

(B) no site-generated visible emissions may cross the property line for a period not to exceed 30 seconds in any six-minute period, as determined by United States Environmental Protection Agency (EPA) Test Method 22;

(4) landfill cell construction, operation, and closures, including landfill gas emissions and associated capture and control equipment;

(5) landfill mist spray systems to control odor. These landfill mist spray systems will operate such that no visible emissions may cross the property line for a period not to exceed 30 seconds in any six-minute period, as determined by EPA Test Method 22;

(6) any other facility or group of facilities that meets a permit by rule under Chapter 106 of this title (relating to Permits by Rule) or a standard permit under Chapter 116, Subchapter F of this title (relating to Standard Permits) with the exception of activities listed in §330.985(d)(2) of this title (relating to Applicability and Exceptions);

(7) leachate and landfill gas condensate activities, which must be conducted as follows:

(A) leachate and/or landfill gas condensate may be recirculated on-site at a rate not to exceed 100,000 gallons per day, and in accordance with the conditions and limitations specified in §330.177 of this title (relating to Leachate and Gas Condensate Recirculation); and

(B) air emissions are authorized from leachate and/or landfill gas condensate stored in tanks or disposed in evaporation ponds that are lined in accordance with §330.331(b) of this title (relating to Design Criteria), and meet the requirements in §330.17 of this title (relating to Technical Guidelines);

(8) fuel storage tanks, which must meet the following requirements:

(A) storage and transfer of gasoline, diesel fuel, or kerosene are authorized by this standard permit;

(B) permanent gasoline tanks must be located at least 500 feet from any off-property receptor;

(C) total annual throughput of gasoline for all tanks may not exceed 20,000 gallons per year unless a vapor balance system as defined in §115.10 of this title (relating to Definitions), is used; and

(D) records of annual throughput must be maintained;

(9) tire shredding, which may be conducted at a rate not to exceed 11 tons per hour. Records of the amount of tires shredded per hour must be maintained;

(10) bioremediation pads, which must be operated such that the pad must be located at least 165 feet from any off-property receptor;

(11) the GCCS, which must be designed to route total collected landfill gas to one of the following control devices:

(A) flares that satisfy requirements and are operated in accordance with 40 CFR Part 60, Subpart WWW, as applicable;

(B) a landfill gas-fired stationary, reciprocating internal combustion engine or a landfill gas-fired turbine not used to generate electricity, that satisfies all of the requirements of §106.4(a)(1) of this title (relating to Requirements for Permitting by Rule) and §106.512 of this title (relating to Stationary Engines and Turbines);

(C) a landfill gas-fired stationary electric generating unit that satisfies all of the requirements of Chapter 116, Subchapter F of this title;

(D) a landfill gas-fired boiler, heater, or other combustion unit, not including stationary, reciprocating internal combustion engines or turbines, that satisfies the maximum heat input and nitrous oxide requirements of §106.4(a)(1) of this title and §106.183 of this title (relating to Boilers, Heaters, and Other Combustion Devices) and applicable sections of Chapter 117 of this title (relating to Control of Air Pollution from Nitrogen Compounds);

(E) a pollution control project that satisfies all the requirements of §116.617 of this title (relating to State Pollution Control Project Standard Permit) [(~~relating to Standard Permits for Pollution Control Projects~~)]. Any facility or process added under this subsection is not considered a new production facility for the purposes of §116.617 of this title; or

(F) a gas treatment system that processes the collected gas to produce a product or by-product for subsequent sale or use. All emissions from any atmospheric vent from the gas treatment system must be subject to the requirements of 40 CFR §60.752(b)(2)(iii)(A) or (B); and

(12) a temporary rock crusher that is used exclusively for cell construction that satisfies all the requirements of the Air Quality Standard Permit for Temporary Rock Crushers.

(b) If sampling of stacks and/or process vents are required, the owner or operator must contact the appropriate regional office and any other air pollution control program having jurisdiction over the site prior to sampling to obtain the proper data forms and procedures. All sampling and testing procedures must be approved by the executive director and coordinated with the regional representatives of the commission. The owner or operator is also responsible for providing sampling facilities and conducting the sampling operations or contracting with an independent sampling consultant.

(c) The facilities covered by this standard permit may not be operated unless all air pollution emission capture and abatement equipment is maintained in good working order and operating properly during normal facility operations. Notification for emissions events and unscheduled maintenance must be made in accordance with §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) and §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements).

(d) Owners and/or operators must monitor and control particulate matter as follows.

(1) All operations must be conducted in a manner so as to minimize any particulate matter emissions at the landfill boundary. No site-generated visible emissions, as determined by EPA Test Method 22, may not cross the property line for a period exceeding 30 seconds in any six-minute period.

(2) Roads and other areas subject to vehicle traffic must be kept clean of debris and either be watered, treated with dust-suppressant chemicals, or paved with a cohesive hard surface that is maintained intact and cleaned as necessary.

(3) All excavated areas must be watered or treated with dust-suppressant chemicals as necessary to control particulate matter emissions.

(e) Tire shredding, outdoor dry abrasive blasting, the operation of a temporary rock crusher used exclusively for cell construction, or waste solidification/stabilization when fine materials are used in the process, must not occur simultaneously (no two or more processes can occur at the same time).

(f) An MSW landfill cell that contains Class 1 industrial nonhazardous waste greater than 20% by weight or volume must have a GCCS associated with the location of the Class 1 waste, and that GCCS is subject to the provisions of §330.995 of this title (relating to Recordkeeping and Reporting Requirements for all Municipal Solid Waste Landfill Sites).

§330.993. Additional Requirements for Owners or Operators of Category 3 Municipal Solid Waste Landfills.

(a) The owner and/or operator must comply with the applicable provisions as specified in 40 Code of Federal Regulations §§60.752 - 60.759 and 40 Code of Federal Regulations Part 63, Subparts A and AAAA. The landfill gas collection and control system may be capped or removed provided that the following are met:

(1) the municipal solid waste landfill is permanently closed in accordance with Subchapter K of this chapter (relating to Closure and Post-Closure); and

(2) the conditions of 40 Code of Federal Regulations §60.752(b)(2)(v) [~~§60.752(2)(b)(v)~~] are met, and a closure report has been submitted to the Texas Commission on Environmental Quality's Air Permits Division in accordance with 40 Code of Federal Regulations §60.757(d).

(b) Methane concentration at the surface of the municipal solid waste landfill must be monitored quarterly, as specified in 40 Code of Federal Regulations §60.755(c).

(c) The gas collection and control system must be monitored in accordance with the provisions specified in 40 Code of Federal Regulations §60.756.

§330.995. Recordkeeping and Reporting Requirements for all Municipal Solid Waste Landfill Sites.

(a) A copy of this subchapter along with any claimed permit by rule, the applicable general conditions of Chapter 106, Subchapter A of this title (relating to General Requirements), and any claimed standard permits must be kept at the site.

(b) The operator will keep records for any permit by rule or standard permit claimed containing sufficient information to demonstrate compliance with Chapter 106, Subchapter A of this title and all applicable permit by rule or standard permit conditions. This information must include, but is not limited to, production records and operating hours.

(c) The owner or operator will maintain additional records specified in 40 Code of Federal Regulations (CFR) Part 60, Subpart WWW or 40 CFR 63, Subpart AAAA, if applicable, including:

(1) an initial design capacity report required by 40 CFR §60.757(a)(2), or an amended design capacity report required by 40 CFR §60.757(a)(3);

(2) records of the non-methane organic compound emission rates, determined annually using the procedures specified in 40 CFR §60.754(a)(1), or every five years using the procedures of 40 CFR §60.757(b)(1)(ii), as applicable, and submit the non-methane organic compound emissions rate report within 90 days of exceeding 2.5 million megagrams and 2.5 million cubic meters and annually thereafter, or every five years in accordance with 40 CFR §60.757(b); and

(3) all records in accordance with the provisions of 40 CFR §60.758, Recordkeeping Requirements.

(d) A semiannual compliance report must be submitted to the Texas Commission on Environmental Quality's Office of Compliance and Enforcement, in accordance with the provisions of 40 CFR §63.1981 [~~§63.1980~~].

(e) Records must be maintained at the site and made available at the request of representatives of the executive director, the United States Environmental Protection Agency, or any local air pollution control program having jurisdiction over the site.

(f) Records must be retained for at least 60 months.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402119
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Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §§335.1, 335.206, 335.325, and 335.329.

Background and Summary of the Factual Basis for the Proposed Rules

Promulgation of House Bill 3060

The commission proposes this rulemaking to implement House Bill (HB) 3060, 88th Texas Legislature, 2023. HB 3060 amended Texas Health and Safety Code (THSC), §361.003 (Definitions), §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste), and §361.119 (Regulation of Certain Facilities as Solid Waste Facilities). These statutory enactments expanded the existing conditional exclusion from the definition of solid waste and regulations applicable to owners and operators of facilities that convert plastics and certain other nonhazardous recyclable material through pyrolysis and gasification to include the processes of depolymerization and solvolysis. The conditional exclusion is dependent upon two conditions being satisfied: (1) an advanced recycling facility owner or operator must demonstrate that the primary function of the facility is to convert materials into products for subsequent beneficial use; and (2) that all solid waste generated from converting the materials is disposed of at a solid waste management facility authorized by the commission. The commission's proposed implementation of HB 3060 in Chapter 335 would only be applicable to material that would be classified as nonhazardous industrial solid waste if discarded. Implementation of provisions enacted by HB 3060 applicable to material that would be classified as municipal solid waste if discarded is proposed in Chapter 330 (Municipal Solid Waste).

Rule Citation Corrections

In addition to HB 3060 implementation, this rulemaking would make minor and non-substantive updates to incorrect rule citations or references.

As part of this rulemaking, the commission is also proposing revisions to 30 Texas Administrative Code (TAC) Chapter 281 (Applications Processing); Chapter 328 (Waste Minimization and Recycling); and Chapter 330 (Municipal Solid Waste), concurrently in this issue of the *Texas Register.*

Section by Section Discussion

§335.1, Definitions

The commission proposes to amend §335.1 to add three new definitions as paragraphs in alphabetical order, remove two definition paragraphs, and renumber the subsequent definition paragraphs accordingly to account for these amendments.

The commission proposes §335.1(8) to add the definition of "Advanced recycling facility." This amendment would implement HB 3060 by adding the definition of "Advanced recycling facility" to implement the new definition of "Advanced recycling facility" in THSC, §361.003.

The commission proposes §335.1(50) to add the definition of "Depolymerization." This amendment would implement HB 3060 by adding the definition of "Depolymerization" to implement the new definition of "Depolymerization" in THSC, §361.003.

The commission proposes to amend renumbered §335.1(76) to revise the definition of "Gasification" to implement the amended definition of "Gasification" in THSC, §361.003, as amended by HB 3060. The definition of "Gasification" in §361.003 was amended to remove crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or other fuels from the list of valuable raw materials, valuable intermediate products, and valuable final products that the process of gasification may convert recoverable feedstocks into.

The commission proposes to delete existing §335.1(75) to remove the definition of "Gasification facility." This amendment would implement HB 3060 which removed the definition of "Gasification facility" from THSC, §361.003.

The commission proposes to amend renumbered §335.1(89)(B), the definition of "Incinerator," by removing "Gasification facility" and "Pyrolysis facility" and establishing that incinerators are not an "Advanced recycling facility" managing "Recoverable feedstock." These amendments would also implement the new definition of "Advanced recycling facility" and the removal of the definitions of "Gasification facility" and "Pyrolysis facility" from THSC, §361.003 as enacted by HB 3060.

The commission proposes to amend renumbered §335.1(137) to revise the definition of "Post-use polymers" to implement the definition of "Post-use polymers" in THSC, §361.003, as amended by HB 3060, and clarify that post-use polymers would be classified as nonhazardous waste if discarded. HB 3060 amended the definition of "Post-use polymers" in §361.003 by: replacing the term plastic polymers with the term plastics; adding agricultural, preconsumer recovered materials and postconsumer materials to the sources of plastics that post-use polymers may be derived from; removing a list of wastes, medical waste, electronic waste, tires, and construction or demolition debris, that when mixed with used polymers would not meet the definition of post-use polymers; identifying that post-use polymers are sorted from solid waste and other regulated waste and may contain residual amounts of organic material; specifying that plastics mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility do not meet the definition of post-use polymers; identifying that post-use polymers are used or intended for use as a feedstock or for the production of feedstocks, raw materials, intermediate products or final products using advanced recycling; and adding that post-use polymers are processed or held prior to processing at an advanced recycling facility.

The commission proposes to amend renumbered §335.1(143) to revise the definition of "Pyrolysis" to implement the definition of "Pyrolysis" in THSC, §361.003, as amended by HB 3060. The definition of "Pyrolysis" in §361.003 was amended to clarify which materials are included and excluded from the list of valuable raw materials, valuable intermediate products, and valuable final products that the process of pyrolysis converts post-use polymers into. The amended definition clarified this list by adding the term "polymers," and by removing a comma between the terms "plastic" and "monomer" which omitted "plastic" from the list; and by removing "crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel" from the list.

The commission proposes to delete existing §335.1(143) to remove the definition of "Pyrolysis facility." This amendment would implement HB 3060 which removed the definition of "Pyrolysis facility" from THSC, §361.003.

The commission proposes to amend §335.1(146) to revise the definition of "Recoverable feedstock" to implement the definition of "Recoverable feedstock" in THSC, §361.003, as amended by HB 3060. The definition of "Recoverable feedstock" in §361.003 was amended to clarify that recoverable feedstock may be processed to be used as feedstock in an advanced recycling facility or through gasification by removing the term gasification facility, excluding materials and post-industrial wastes containing post-use polymers that have been processed into a fuel, and including post-industrial waste that the commission or EPA has determined are feedstocks and not solid waste.

The commission proposes to amend §335.1(160)(A)(v) to revise the definition of "Solid waste" to implement revisions to the definition of "Solid waste" in THSC, §361.003, as amended by HB 3060. HB 3060 expanded the existing conditional exclusions from the definition of "Solid waste" applicable to post-use polymers and recovered feedstocks processed through pyrolysis and gasification that are not classified as hazardous waste to also include post-use polymers and recovered feedstocks processed through solvolysis or depolymerization that are not classified as hazardous waste. The conditional exclusion requires that the facility operator keep records on-site demonstrating that post-use polymers and recovered feedstocks are converted into products for subsequent beneficial reuse and that solid waste generated from converting the materials is disposed of at a solid waste management facility authorized by the commission under THSC, Chapter 361.

The commission proposes §335.1(162) to add the definition of "Solvolysis." This amendment would implement HB 3060 by adding a new definition of "Solvolysis" to implement the new definition of "Solvolysis" in THSC, §361.003. The proposed definition would also implement HB 3060 by clarifying that the conditional exclusions from classification and regulation as solid waste applicable to plastics recycling is not applicable to a solvolysis manufacturing process that produces fuel products.

§335.206, Petitions for Rulemaking

The commission proposes to amend §335.206 by removing an extra comma and replacing the reference to 30 TAC §275.78 with the correct citation, 30 TAC §20.15. The rules regarding rule petitions were previously moved from §275.78 to §20.15 without substantive revisions in accordance with a procedural rule reorganization project (21 TexReg 4719).

§335.325, Industrial Solid Waste and Hazardous Waste Management Fee Assessment

The commission proposes to amend §335.325(d) and (m) by replacing the reference to 30 TAC §335.69 with the correct citation, 30 TAC §335.53. The conditional exemptions from permitting requirements for hazardous waste generators were repealed from 30 TAC §335.69 and adopted in 30 TAC §335.53 as part of the commission's adoption of the federal Hazardous Waste Generator Improvements Rule (47 TexReg 318). The Generator Improvements Rule (81 FR 85732) reorganized 40 Code of Federal Regulations Part 262 and defined "condition for exemption" as requirements that must be met in order to obtain an exemption from any applicable requirement.

§335.329, Records and Reports

The commission proposes to amend §335.329(a)(2) by replacing the reference to 30 TAC §361.326 with the correct citation, 30 TAC §335.326. The reference to §361.326 is a typographical error.

Fiscal Note: Costs to State and Local Government

Kyle Girten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no costs are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

Public Benefits and Costs

Mr. Girten determined that for each year of the first five years the proposed rules are in effect, the public benefit will be compliance with state law, specifically HB 3060 from the 88th Regular Legislative Session (2023). Additionally, the public will benefit from the update of citations or references of state rules.

Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Rural Community Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation to be consistent with state law, and it does not create, expand, repeal, or limit an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225 applies to a "Major environmental rule" which

is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rulemaking is to add, remove, and revise definitions in Chapter 335 so that they are consistent with the definitions in THSC Chapter 361 and to make minor and non-substantive updates to incorrect rule citations or references in Chapter 335.

Second, the proposed rulemaking does not meet the statutory definition of a "Major environmental rule" because the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the proposed rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Finally, the proposed rulemaking does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a Major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This proposed rulemaking does not meet any of the four preceding applicability requirements.

This proposed rulemaking does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invites public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these proposed rules in

accordance with Texas Government Code, §2007.043. The commission's preliminary assessment is that implementation of these proposed rules would not constitute a taking of real property. The commission proposes this rulemaking for the purpose of adding, removing, and revising definitions in Chapter 335 so that they are consistent with the definitions in THSC Chapter 361 and to make minor and non-substantive updates to incorrect rule citations or references in Chapter 335.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these proposed rules based upon an exception to applicability in TGC, §2007.003(b)(5). The proposed rules would add, remove, and revise definitions in Chapter 335 so that they are consistent with the definitions in THSC Chapter 361 and make minor and non-substantive updates to incorrect rule citations or references in Chapter 335, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these proposed rule changes because the proposed rulemaking falls within the exception under Texas Government Code, §2007.003(b)(5).

Further, the commission determined that promulgation of these proposed rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the proposed rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. Therefore, the proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the rulemaking would not have direct or significant adverse effect on any coastal natural resource areas; would not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments would not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on June 20, 2024, at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by June 14, 2024. To register for the hearing, please email Rules@tceq.texas.gov and provide the following in-

formation: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on June 18, 2024, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at: https://teams.microsoft.com/l/meetup-join/19%3ameeting_Zjg1MDI0YmYtNGYwYi00ZWU4LTg5MWYtMDg3MTBiNTc1ODc4%40thread.v2/0?context=%7B%22Tid%22%3A%22871a83a4-a1ce-4b7a-8156-3bcd93a08fba%22%2C%22Oid%22%3A%22e74a40ea-69d4-469d-a8ef-06f2c9ac2a80%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to *fax4808@tceq.texas.gov.* Electronic comments may be submitted at: https://tceq.commentinput.com/comment/search. File size restrictions may apply to comments being submitted via the TCEQ Public Comments system. All comments should reference Rule Project Number 2023-135-330-WS. The comment period closes at 11:59 p.m. on June 25, 2024. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jarita Sepulvado, Waste Permits Division, (512) 239-4413.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §335.1

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC, Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities.

The proposed amendment implements House Bill 3060, 88th Texas Legislature, 2023.

§335.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings.

(1) Aboveground tank--A device meeting the definition of "Tank" in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(2) Act--Texas Health and Safety Code, Chapter 361.

(3) Active life--The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

(4) Active portion--That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "Closed portion" and "Inactive portion.")

(5) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "Natural gas" and "Storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "Hydrocarbons" and "Underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency in accordance with the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 *et seq.*).

(6) Acute hazardous waste--Hazardous wastes that meet the listing criteria in 40 Code of Federal Regulations (CFR) §261.11(a)(2) and therefore are either listed in 40 CFR §261.31 with the assigned hazard code of (H) or are listed in 40 CFR §261.33(e).

(7) Administrator--The administrator of the United States Environmental Protection Agency or his designee.

(8) Advanced recycling facility--A manufacturing facility that receives, stores, and converts post-use polymers and recoverable feedstocks into valuable raw materials, valuable intermediate products, or valuable final products using advanced recycling technologies and processes including pyrolysis, gasification, solvolysis, and depolymerization. An advanced recycling facility is not a solid waste facility, final disposal facility, waste-to-energy facility, or incinerator.

(9) [~~(8)~~] Aerosol can--A non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

(10) [~~(9)~~] AES filing compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the *Federal Register,* on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System platform.

(11) [~~(10)~~] Airbag waste--Any hazardous waste airbag modules or hazardous waste airbag inflators.

(12) [~~(11)~~] Airbag waste collection facility--Any facility that receives airbag waste from airbag handlers subject to regulation under §335.281 of this title (relating to Airbag Waste) and accumulates the waste for more than ten days.

(13) [~~(12)~~] Airbag waste handler--Any person, by site, who generates airbag waste that is subject to regulation under this chapter.

(14) [~~(13)~~] Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on site, or to a point of shipment for disposal off site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(15) [~~(14)~~] Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(16) [~~(15)~~] Area of concern--Any area of a facility under the control or ownership of an owner or operator where a release to the environment of hazardous wastes or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration.

(17) [~~(16)~~] Authorized representative--The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(18) [~~(17)~~] Battery--As defined in §335.261 of this title (relating to Universal Waste Rule).

(19) [~~(18)~~] Boiler--An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units;

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler).

(20) [~~(19)~~] Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(21) [~~(20)~~] Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(22) [~~(21)~~] Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(23) [~~(22)~~] Carbon dioxide stream--Carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(24) [~~(23)~~] Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(25) [~~(24)~~] Cathode ray tube (CRT)--A vacuum tube, composed primarily of glass, which is the visual or video display compo-

nent of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means its glass has been removed from its housing, or casing whose vacuum has been released.

(26) [~~(25)~~] Cathode ray tube (CRT) collector--A person who receives used, intact CRTs for recycling, repair, resale, or donation.

(27) [~~(26)~~] Cathode ray tube (CRT) exporter--Any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

(28) [~~(27)~~] Cathode ray tube (CRT) glass manufacturer--An operation or part of an operation that uses a furnace to manufacture CRT glass.

(29) [~~(28)~~] Cathode ray tube (CRT) processing--Conducting all of the following activities:

(A) receiving broken or intact CRTs;

(B) intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(C) sorting or otherwise managing glass removed from CRT monitors.

(30) [~~(29)~~] Central accumulation area--Any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either 40 Code of Federal Regulations (CFR) §262.16 or §262.17, as these sections are adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste). In accordance with 40 CFR Part 262, Subpart K, as adopted by reference under §335.59 of this title (relating to Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities), a central accumulation area at an eligible academic entity that chooses to operate under 40 CFR Part 262, Subpart K, is also subject to 40 CFR §262.211 as adopted by reference under §335.59 of this title when accumulating unwanted material and/or hazardous waste.

(31) [~~(30)~~] Certification--A statement of professional opinion based upon knowledge and belief.

(32) [~~(31)~~] Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(33) [~~(32)~~] Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(34) [~~(33)~~] Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(35) [~~(34)~~] Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. *(See* also "Active portion" and "Inactive portion.")

(36) [~~(35)~~] Closure--The act of permanently taking a waste management unit or facility out of service.

(37) [~~(36)~~] Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(38) [~~(37)~~] Component--Either the tank or ancillary equipment of a tank system.

(39) [~~(38)~~] Conditionally exempt small quantity generator--A conditionally exempt small quantity generator (CESQG) is a very small quantity generator as defined in this section that meets the independent requirements and the conditions for exemption for a very small quantity generator under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste). A reference to a conditionally exempt small quantity generator, "CESQG", or a person who generates no more than 100 kilograms of hazardous waste in a calendar month is a reference to a very small quantity generator.

(40) [~~(39)~~] Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(41) [~~(40)~~] Contained--Hazardous secondary materials held in a unit (including a "Land-based unit" as defined in this section) that meets the following criteria:

(A) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(B) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit;

(C) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions; and

(D) hazardous secondary materials in units that meet the requirements of 40 Code of Federal Regulations Parts 264 and 265 are presumptively contained.

(42) [~~(41)~~] Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(43) [~~(42)~~] Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.112(a)(21) or §335.152(a)(19) of this title (relating to Standards).

(44) [~~(43)~~] Contaminant--Includes, but is not limited to, "Solid waste," "Hazardous waste," and "Hazardous waste constituent" as defined in this section;" "Pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code

(THSC),"§361.401; "Hazardous substance" as defined in THSC, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.267.

(45) [~~(44)~~] Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(46) [~~(45)~~] Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(47) [~~(46)~~] Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(48) [~~(47)~~] Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(49) [~~(48)~~] Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(50) Depolymerization--A manufacturing process through which post-use polymers are broken down into:

(A) smaller molecules, including monomers and oligomers; or

(B) raw materials, intermediate products, or final products, including plastic feedstocks, chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, or coatings; and

(C) does not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel.

(51) [~~(49)~~] Designated facility--A hazardous waste treatment, storage, or disposal facility which: has received a permit (or interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 124 and 270; has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271; or is regulated under 40 CFR §261.6(c)(2) or 40 CFR Part 266, Subpart F and has been designated on the manifest by the generator pursuant to 40 CFR §262.20. For hazardous wastes, if a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. For Class 1 wastes, a designated facility is any treatment, storage, or disposal facility authorized to receive the Class 1 waste that has been designated on the manifest by the generator. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with 40 CFR §264.72(f) as adopted under §335.152 of this title (relating to Standards) or 40 CFR §265.72(f) as adopted under §335.112 of this title (relating to Standards).

(52) [~~(50)~~] Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(53) [~~(51)~~] Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(54) [~~(52)~~] Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(55) [~~(53)~~] Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(56) [~~(54)~~] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(57) [~~(55)~~] Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "Disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(58) [~~(56)~~] Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(59) [~~(57)~~] Electronic import-export reporting compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the *Federal Register,* on or after which exporters, importers, and receiving facilities are required to submit certain export and import related documents to EPA using EPA's waste Import Export Tracking System, or its successor system.

(60) [~~(58)~~] Electronic manifest or e-Manifest--The electronic format of the hazardous waste manifest that is obtained from the United States Environmental Protection Agency's (EPA's) national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

(61) [~~(59)~~] Electronic manifest system or e-Manifest system--The United States Environmental Protection Agency's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(62) [~~(60)~~] Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of nonhazardous industrial solid waste; and

(B) meets the definition of "Tank," "Tank system," "Container," or "Transport vehicle," as defined in this section; or "Vessel" as defined in 40 CFR §260.10.

(63) [~~(61)~~] Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the *Federal Register*.

(64) [~~(62)~~] Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(65) [~~(63)~~] Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(66) [~~(64)~~] Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(67) [~~(65)~~] Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(68) [~~(66)~~] Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(69) [~~(67)~~] Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(70) [~~(68)~~] Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(71) [~~(69)~~] Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste, or for the management of hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) or §335.602(a)(5) of this title (relating to Standards), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste);

(C) regardless of subparagraph (B) of this paragraph, a "Remediation" waste management site," as defined in 40 Code of Federal Regulations §260.10, is not a facility that is subject to §335.167 of this title, but is subject to corrective action requirements if the site is located within such a facility.

(72) [~~(70)~~] Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(73) [~~(71)~~] Food-chain crops--Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(74) [~~(72)~~] Freeboard--The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(75) [~~(73)~~] Free liquids--Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(76) [~~(74)~~] Gasification--A process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw materials, valuable intermediate products, or valuable final products, which include plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks; and do not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel. [~~a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.~~]

[~~(75) Gasification facility--A facility that receives, separates, stores, and converts post-use polymers and recoverable feedstocks using gasification.~~]

(77) [~~(76)~~] Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(78) [~~(77)~~] Groundwater--Water below the land surface in a zone of saturation.

(79) [~~(78)~~] Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(80) [~~(79)~~] Hazardous secondary material--A secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as "Hazardous waste" as defined in this section.

(81) [~~(80)~~] Hazardous secondary material generator--Any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of 40 Code of Federal Regulations §261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

(82) [~~(81)~~] Hazardous substance--Any substance designated as a hazardous substance under 40 Code of Federal Regulations Part 302.

(83) [~~(82)~~] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*

(84) [~~(83)~~] Hazardous waste constituent--A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR §261.24.

(85) [~~(84)~~] Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(86) [~~(85)~~] Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(87) [~~(86)~~] In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(88) [~~(87)~~] Inactive portion--That portion of a facility which is not operated after November 19, 1980. *(See* also "Active portion" and "Closed portion.")

(89) [~~(88)~~] Incinerator--

(A) Any enclosed device that:

(i) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(ii) meets the definition of "Infrared incinerator" or "Plasma arc incinerator."

(B) Does not include an "Advanced recycling facility" [~~a "Gasification facility" or "Pyrolysis facility"~~] managing "Recoverable feedstock" as defined in this section.

(90) [~~(89)~~] Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(91) [~~(90)~~] Individual generation site--The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

(92) [~~(91)~~] Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for "Hazardous waste" burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(93) [~~(92)~~] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include "Hazardous waste" as defined in this section.

(94) [~~(93)~~] Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(95) [~~(94)~~] Inground tank--A device meeting the definition of "Tank" in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(96) [~~(95)~~] Injection well--A well into which fluids are injected. *(See* also "Underground injection.")

(97) [~~(96)~~] Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(98) [~~(97)~~] Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(99) [~~(98)~~] Intermediate facility--Any facility that stores hazardous secondary materials for more than ten days, other than a hazardous secondary material generator or reclaimer of such material.

(100) [~~(99)~~] International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

(101) [~~(100)~~] Lamp--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(102) [~~(101)~~] Land-based unit--When used to describe recycling of hazardous secondary materials, an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(103) [~~(102)~~] Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(104) [~~(103)~~] Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(105) [~~(104)~~] Landfill cell--A discrete volume of a solid waste or 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.

(106) [~~(105)~~] Large quantity generator--A generator who generates any of the following amounts in a calendar month:

(A) greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste; or

(B) greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 Code of Federal Regulations (CFR) §261.31 or §261.33(e); or

(C) greater than 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

(107) [~~(106)~~] Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(108) [~~(107)~~] Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(109) [~~(108)~~] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(110) [~~(109)~~] Liner--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 solid waste or hazardous waste, hazardous waste constituents, or leachate.

(111) [~~(110)~~] Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(112) [~~(111)~~] Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed by the generator or offeror in accordance with the applicable requirements of this chapter and 40 Code of Federal Regulations Parts 262 - 265.

(113) [~~(112)~~] Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the manifest by a registered source.

(114) [~~(113)~~] Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rock-

ets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(115) [~~(114)~~] Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

(116) [~~(115)~~] Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(117) [~~(116)~~] Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(118) [~~(117)~~] Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(119) [~~(118)~~] New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. *(See* also "Existing tank system.")

(120) [~~(119)~~] No free liquids--As used in 40 Code of Federal Regulations §261.4(a)(26) and (b)(18), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference at §335.31 of this title (relating to Incorporation of References), and that there is no free liquid in the container holding the wipes.

(121) [~~(120)~~] Non-acute hazardous waste--All hazardous wastes that are not acute hazardous waste, as defined in this section.

(122) [~~(121)~~] Off-site--Property which cannot be characterized as on-site.

(123) [~~(122)~~] Onground tank--A device meeting the definition of "Tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(124) [~~(123)~~] On-Site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(125) [~~(124)~~] Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. *(See* also "Incinerator" and "Thermal processing.")

(126) [~~(125)~~] Operator--The person responsible for the overall operation of a facility.

(127) [~~(126)~~] Owner--The person who owns a facility or part of a facility.

(128) [~~(127)~~] Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(129) [~~(128)~~] PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(130) [~~(129)~~] Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, or disposal facility in accordance with specified limitations.

(131) [~~(130)~~] Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

(132) [~~(131)~~] Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(133) [~~(132)~~] Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "Petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq.*)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels--i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils--i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils--i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils--i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils--i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants--i.e., automotive and industrial lubricants;

(x) building materials--i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials--i.e., transformer oils and cable oils; and

(xii) used oils--See definition for "Used oil" in this section.

(B) For the purposes of this chapter, a "Petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, *et seq.*)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(134) [~~(133)~~] Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(135) [~~(134)~~] Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(136) [~~(135)~~] Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation and Recovery Act and solid waste management units.

(137) [~~(136)~~] Post-use polymers--Plastics: [~~Plastic polymers that derive from industrial sources or activities that would be classified as a nonhazardous industrial solid waste if not converted into a valuable raw, intermediate, or final product. Post-use polymers include used polymers that contain incidental contaminants or impurities such as paper labels or metal rings but do not include used polymers mixed with solid waste, medical waste, hazardous waste, electronic waste, tires, or construction or demolition debris.~~]

(A) derived from any industrial, commercial, agricultural, or domestic activity, including preconsumer recovered materials and postconsumer materials;

(B) that would be classified as nonhazardous solid waste if discarded;

(C) that have been sorted from solid waste and other regulated waste and may contain residual amounts of organic material and incidental contaminants or impurities such as paper labels or metal rings;

(D) not mixed with solid waste or hazardous waste on-site or while being processed at an advanced recycling facility;

(E) used or intended for use as a feedstock or for the production of feedstocks, raw materials, intermediate products, or final products using advanced recycling; and

(F) processed or held prior to being processed at an advanced recycling facility.

(138) [~~(137)~~] Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(139) [~~(138)~~] Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(140) [~~(139)~~] Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(141) [~~(140)~~] Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of "Processing" does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.,* as amended.

(142) [~~(141)~~] Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the federal Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(143) [~~(142)~~] Pyrolysis--A manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere and the pyrolysis product is converted into valuable raw materials, valuable intermediate products, or valuable final products, which include plastic monomers, chemicals, naphtha, waxes, polymers, plastic feedstocks, or chemical feedstocks; and do not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel. [~~until melted and thermally decomposed and then cooled, condensed, and converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.~~]

~~[(143) Pyrolysis facility--A manufacturing facility that receives, separates, stores, and converts post-use polymers using pyrolysis.]~~

(144) Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(145) Recognized trader--A person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

(146) Recoverable feedstock--One or more of the following materials, derived from recoverable nonhazardous [~~industrial solid~~] waste, other than coal refuse, that has been processed so that it may be used as feedstock in an "Advanced recycling facility" or through "Gasification" [~~a "Gasification facility" or "Pyrolysis facility"~~] as these terms are defined in this section:

(A) post-use polymers; [~~and~~]

(B) material, including municipal solid waste and other post-industrial waste: [~~containing post-use polymers and other post-industrial waste containing post-use polymers, that has been processed into a fuel or feedstock for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 Code of Federal Regulations §241.3(c), as amended through February 8, 2016 (81 FR 6742).~~]

(i) for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 Code of Federal Regulations §241.3(c); or

(ii) that the commission or the United States Environmental Protection Agency has otherwise determined are feedstocks and not solid waste; and

(C) excluding fuels.

(147) Regional administrator--The regional administrator for the United States Environmental Protection Agency region in which the facility is located, or his designee.

(148) Remanufacturing--Processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(149) Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(150) Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under §335.166(5) of this title (relating to Corrective Action Program) or §335.167(c) of this title.

(151) Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, or disposal.

(152) Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency or state approved corrective action.

(153) Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(154) Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(155) Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(156) Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.

(157) Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means offsite.

(158) Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(159) Small quantity generator--A generator who generates the following amounts in a calendar month:

(A) greater than 100 kilograms (220 pounds) but less than 1,000 kilograms (2,200 pounds) of non-acute hazardous waste;

(B) less than or equal to 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 Code of Federal Regulations (CFR) §261.31 or §261.33(e); and

(C) less than or equal to 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

(160) Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from "Activities associated with the exploration, development, or production of oil or gas or geothermal resources," as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with the Texas Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) in accordance with the federal Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq.,* as amended;

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §§261.4(a), 261.39, or 261.40, as adopted under §335.504 of this title (relating to Hazardous Waste Determination), subject to the changes in this clause, by variance, or by non-waste determination granted under §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations), and §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations). For the purposes of the exclusions under 40 CFR §261.39 and §261.40, 40 CFR §261.41 is adopted by reference under §335.504 of this title; or

(v) recoverable feedstocks including post-use polymers that are processed through pyrolysis, gasification, solvolysis, or depolymerization at an advanced recycling facility where the owner or operator keeps records on-site in accordance with subparagraph (I) of this paragraph demonstrating: that the primary function of the facility is to convert recoverable feedstocks into valuable raw materials, valuable intermediate products, or valuable final products for subsequent beneficial use; and that solid waste generated from converting materials has been disposed of at an authorized solid waste management facility. [~~that are processed through pyrolysis or gasification at a pyrolysis facility or gasification facility, where the primary function of the facility is to convert recoverable feedstocks into materials that have a resale value greater than the cost of processing the recoverable feedstock for subsequent beneficial use and where solid waste generated from converting recoverable feedstock is disposed of at an authorized solid waste management facility.~~]

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated;

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or

(iv) sham recycling as explained in subparagraph (J) of this paragraph.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of "Solid waste" provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself re-

mains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33, but that exhibit one or more of the hazardous waste characteristics, or will be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (unless they meet the requirements of 40 CFR §261.4(a)(17), (23), (24), or (27)). Materials without an asterisk in Column 3 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) are not solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) are solid wastes when accumulated speculatively. Figure: 30 TAC §335.1(160)(D)(iv) (No change.)

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2).

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that will otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as will be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel, or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Subchapter R of this chapter (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Subchapter R of this chapter; and

(-b-) does not exceed a concentration limit under §312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

(viii) with the exception of the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations and facility operators who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials).

(K) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(L) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(M) Steel slag may not be considered as solid waste if the steel slag is an intended output or result of the use of an electric arc furnace to make steel, introduced into the stream of commerce, and managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

(N) Foundry sand from the iron and steel casting industry may not be considered as solid waste if the sand is an intended output or result of the use of an iron or steel casting process to make cast iron and steel products, introduced into the stream of commerce, and managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

(161) Solvent-contaminated wipe--A wipe that, after use or after cleaning up a spill, either:

(A) contains one or more of the F001 through F005 solvents listed in 40 Code of Federal Regulations (CFR) §261.31 or the corresponding P- or U-listed solvents found in 40 CFR §261.33;

(B) exhibits a hazardous characteristic found in 40 CFR Part 261, Subpart C, when that characteristic results from a solvent listed in 40 CFR Part 261; and/or

(C) exhibits only the hazardous waste characteristic of ignitability found in 40 CFR §261.21 due to the presence of one or more solvents that are not listed in 40 CFR Part 261. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at 40 CFR §261.4(a)(26) and (b)(18).

(162) Solvolysis--A manufacturing process that includes hydrolysis, aminolysis, ammonolysis, methanolysis, and/or glycolysis through which post-use polymers are purified with the aid of solvents while heated at low temperatures, pressurized, or both heated at low temperatures and pressurized, to remove additives and contaminants and make useful products, which include monomers, intermediates, valuable chemicals, plastic feedstocks, chemical feedstocks, and raw materials; and do not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel.

(163) [~~(162)~~] Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(164) [~~(163)~~] Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(165) [~~(164)~~] Staging pile--An accumulation of solid, nonflowing "Remediation waste," as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(166) [~~(165)~~] Standard permit--A Resource Conservation and Recovery Act permit authorizing management of hazardous waste issued under Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units) and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit). The standard permit may have two parts, a uniform portion issued in all cases and a supplemental portion issued at the executive director's discretion.

(167) [~~(166)~~] Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(168) [~~(167)~~] Sump--Any pit or reservoir that meets the definition of "Tank" in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(169) [~~(168)~~] Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(170) [~~(169)~~] Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(171) [~~(170)~~] Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(172) [~~(171)~~] TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(173) [~~(172)~~] Thermal processing--The processing of solid waste or 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 solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (*See* also "Incinerator" and "Open burning.")

(174) [~~(173)~~] Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(175) [~~(174)~~] Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(176) [~~(175)~~] Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste or hazardous secondary materials are held during the normal course of transportation.

(177) [~~(176)~~] Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(178) [~~(177)~~] Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(179) [~~(178)~~] Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the exemptions under 40 Code of Federal Regulations §261.4(e) and (f) and §335.2 of this title (relating to Permit Required) are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

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

(181) [~~(180)~~] Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(182) [~~(181)~~] Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (*See* also "Injection well.")

(183) [~~(182)~~] Underground tank--A device meeting the definition of "Tank" in this section whose entire surface area is totally below the surface of and covered by the ground.

(184) [~~(183)~~] Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

(185) [~~(184)~~] United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D and to each characteristic identified in 40 CFR Part 261, Subpart C.

(186) [~~(185)~~] United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(187) [~~(186)~~] Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(19)(F) of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(188) [~~(187)~~] Universal waste handler--Has the definition adopted as "Large quantity handler of universal waste" and "Small quantity handler of universal waste" under §335.261 of this title (relating to Universal Waste Rule).

(189) [~~(188)~~] Universal waste transporter--Has the definition adopted under 40 Code of Federal Regulations §273.9.

(190) [~~(189)~~] Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(191) [~~(190)~~] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(192) [~~(191)~~] Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, very small quantity generator hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(193) [~~(192)~~] User of the electronic manifest system--A hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(A) is required to use a manifest to comply with:

(i) any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(ii) any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(B) elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the United States Environmental Protection Agency electronic manifest system; or

(C) elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with 40 Code of Federal Regulations (CFR) §264.71(a)(2)(v) as adopted under §335.152 of this title (relating to Standards) or 40 CFR §265.71(a)(2)(v) as adopted under §335.112 of this title (relating to Standards). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(194) [~~(193)~~] Very small quantity generator--A generator who generates less than or equal to the following amounts in a calendar month:

(A) 100 kilograms (220 pounds) of non-acute hazardous waste; and

(B) 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 Code of Federal Regulations (CFR) §261.31 or §261.33(e); and

(C) 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

(195) [~~(194)~~] Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (federal Clean Water Act), 33 United States Code, §§466 *et seq.,* §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of "Tank" or "Tank system" as defined in this section.

(196) [~~(195)~~] Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(197) [~~(196)~~] Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(198) [~~(197)~~] Wipe--A woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(199) [~~(198)~~] Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402106
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER G. LOCATION STANDARDS FOR HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL

30 TAC §335.206

Statutory Authority

The amendment is proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC, Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; and Texas Government Code, §2001.021, which requires the commission by rule to prescribe the form and procedure for the submission, consideration, and disposition of a request made by an interested person to the commission to adopt a rule.

The proposed amendment implements House Bill 3060, 88th Texas Legislature, 2023, and Texas Government Code, §2001.021.

§335.206. Petitions for Rulemaking.

Local governments may petition the commission for a rule which restricts or prohibits the siting of a new hazardous waste management facility in areas including, but not limited to, those meeting one or more of the characteristics delineated in Texas Health and Safety Code, [,] §361.022, and §335.204 of this title (relating to Unsuitable Site Characteristics). Such petitions shall be submitted in writing and shall comply

with the requirements of §20.15 [§275.78] of this title (relating to Petition for Adoption of Rules). No rule adopted by the commission under this section shall affect the siting of a new hazardous waste management facility if an application or a notice of intent to file an application with respect to such facility has been filed with the commission prior to the filing of a petition under this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402107
Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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SUBCHAPTER J. HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

30 TAC §335.325, §335.329

Statutory Authority

The amendments are proposed under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities.

The proposed amendments implement House Bill 3060, 88th Texas Legislature, 2023. The provisions regarding the conditional exemption from permitting requirements for hazardous waste generators were readopted in 30 TAC §335.53 in accordance with a state rule reorganization project (47 TexReg 318) necessitated by the federal reorganization of 40 Code of Federal Regulations Part 262 associated with the federal Hazardous Waste Generator Improvements Rule (81 FR 85732).

§335.325. Industrial Solid Waste and Hazardous Waste Management Fee Assessment.

(a) A fee is hereby assessed on each owner or operator of a waste storage, processing, or disposal facility, except as provided in subsections (b) - (e) of this section. A fee is assessed for hazardous wastes which are stored, processed, disposed, or otherwise managed and for Class 1 industrial wastes which are disposed at a commercial facility. For the purpose of this section, the storage, processing, or disposal of hazardous waste for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope and Applicability) is not subject to a hazardous waste management fee.

(b) A fee imposed on the owner or operator of a commercial hazardous waste storage, processing, or disposal facility for hazardous wastes which are generated in this state and received from an affiliate or wholly owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this section, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(c) The storage, processing, or disposal of industrial solid waste or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(d) A fee shall not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes if such wastes are stored in compliance with the conditions for exemption for a small quantity generator in 40 Code of Federal Regulations (CFR) §262.16 or the conditions for exemption for a large quantity generator in 40 CFR §262.17 as adopted in §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste) [~~within the time periods allowed by and in accordance with the provisions of §335.69 of this title (relating to Accumulation Time)~~].

(e) A fee may not be imposed under this section on the operation of a facility permitted under the Texas Water Code, Chapter 26, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface waters of the state. For the purpose of this section, the management of a hazardous waste in a surface impoundment which is not exempt from assessment under this subsection will be assessed the fee for processing under subsection (j) of this section.

(f) The waste management fee authorized under this section shall be based on the total weight or volume of a waste except for wastes which are disposed of in an underground injection well, in which case the fee shall be based on the dry weight of the waste, measured in dry weight tons (dwt), as defined in §335.322 of this title (relating to Definitions) and §335.326 of this title (relating to Dry Weight Determination).

(g) The hazardous waste management fee for wastes generated in this state shall not exceed $40 per ton for wastes which are landfilled.

(h) The operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed the fee amount required on wastes generated in state plus an additional increment to be established by rule, except as provided in subsection (k) of this section.

(i) For the purposes of subsection (j) of this section, energy recovery means the burning or incineration of a hazardous waste fuel and fuel processing means the handling of a waste fuel, including storage and blending, prior to its disposal by burning.

(j) Except as provided in subsections (k) - (q) of this section, waste management fees shall be assessed up to the maximum fee ac-

cording to the schedules in the tables in Figure: 30 TAC §335.325(j)(1) and (2) in this subsection.

(1) Table 1: Hazardous Waste Schedule.
Figure: 30 TAC §335.325(j)(1) (No change.)

(2) Table 2: Class 1 Nonhazardous Waste Schedule
Figure: 30 TAC §335.325(j)(2) (No change.)

(3) The executive director may adjust fees at or below the fee specified in the fee schedule, on an annual basis, and will notify fee payers of the upcoming fee rate before the rates go into effect.

(k) For wastes which are generated out-of-state, the fee will be that specified in subsection (j) of this section, except that the fee for the storage, processing, incineration, and disposal of hazardous waste fuels shall be the same for wastes generated out-of-state and in-state.

(l) Except as provided in subsection (m) of this section, only one waste management fee shall be paid for a waste managed at a facility. In any instance where more than one fee could be applied under this section to a specific volume of waste, the higher of the applicable fees will be assessed.

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other waste management methods at a facility. No fee shall be assessed under this section for the storage of a hazardous waste for a period of less than 90 days as determined from the date of receipt or generation of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section shall apply to the quantity of waste in any month which has been in storage for more than 90 days or the number for which an extension has been granted under 40 CFR §262.17(b) as adopted in §335.53(f) of this title [~~§335.69 of this title~~].

(n) A facility which receives waste transferred from another facility shall pay any waste management fee applicable under this section and shall not receive credit for any fee applied to the management of the waste at the facility of origin.

(o) The fee rate for incineration of aqueous wastes containing 5.0% or less of total organic carbon will be 10% of the fee for incineration under the schedule in subsection (j) of this section.

(p) A commercial waste disposal facility receiving solid waste not subject to assessment under this section shall pay any assessment due under Chapter 330, Subchapter P of this title (relating to Fees and Reporting). No fee for disposal of a solid waste under Chapter 330, Subchapter P of this title, shall be assessed in addition to a fee for disposal under this section.

(q) An operator of a hazardous waste injection well electing to separately measure inorganic salts in the determination of dry weight under the provisions of §335.326(c) of this title shall pay a fee equivalent to 20% of the fee for underground injection assessed in subsection (j) of this section for the components of the waste stream determined to be inorganic salts.

§335.329. Records and Reports.

(a) Generators are required to:

(1) keep records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed on-site or shipped off-site for storage, processing or disposal in accordance with the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators);

(2) keep records of the dry weight amount of each waste designated for disposal in an underground injection well and records of the amounts of any solidification agents, brine, or other authorized material added to a waste stream which may be excluded from the determination of dry weight under §335.326 [~~§361.326~~] of this title (relating to Dry Weight Determination);

(3) provide each operator of an underground injection well a certificate of computation of the dry weight of a waste to be disposed. For each off-site shipment, the dry weight amount of each hazardous waste to be disposed in an underground injection well is to be recorded in Item J of the Uniform Hazardous Waste Manifest as required under §335.30 of this title (relating to Appendix I); and

(4) submit the appropriate reports required under §335.13(b) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) on forms furnished or approved by the executive director.

(b) Owners or operators of waste storage, processing, or disposal facilities are required to:

(1) for on-site facilities, keep records of all hazardous waste and industrial solid waste activities regarding the quantities stored, processed, and disposed on site or shipped off site for storage, processing, or disposal in accordance with the requirements of §335.9 of this title;

(2) for off-site facilities, submit the appropriate reports required under §335.15(2) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(3) record the dry-weight amount of each waste disposed in an underground injection well at the facility;

(4) document the basis for the assessment of any applicable fee as determined under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment), including any adjustment to or exemption from assessment; and

(5) except as provided in §335.328 of this title (relating to Fees Payment), submit a monthly summary of on-site waste management activities subject to the assessment of fees under §335.325 of this title on forms furnished or approved by the executive director. This summary report shall be due by the 25th day following the end of the month (or quarter) for which a report is made. An owner or operator required to comply with this subsection shall continue to prepare and submit monthly (or quarterly) summaries, regardless of whether any storage, processing, or disposal was made during a particular month (or quarter), by preparing and submitting a summary indicating that no waste was managed during that month (or quarter).

(c) Records or reports required to be kept under this section shall be retained for a minimum of three years after the date the record or report is made.

(d) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 13, 2024.

TRD-202402108

Charmaine Backens
Deputy Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 239-2678

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 151. OPERATIONS OF THE SCHOOL LAND BOARD

31 TAC §151.6

The School Land Board (Board) proposes amendments to 31 TAC §151.6, concerning new procedures for the release of funds from the Real Estate Special Fund Account, pursuant to Texas Natural Resources Code, Section 51.413(b). The proposed amendments create new procedures for the release of funds from the Real Estate Special Fund Account to reflect legislative changes that have occurred since the current rule was adopted in 2016.

At its May 7, 2024 meeting, the Board unanimously approved a recommendation from its staff to amend 31 TAC §151.6.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT: Mr. David Repp, Chief Financial Officer for the General Land Office, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for the state or local governments as a result of the proposed amendments.

PUBLIC BENEFITS AND PROBABLE ECONOMIC COSTS: Mr. Repp has determined that for each year of the first five years the proposed amendments are in effect, there will be no economic effect on businesses or individuals. The public benefit will be the potential increase in funds available to the state's schoolchildren.

LOCAL EMPLOYMENT IMPACT STATEMENT: Mr. Repp has determined that the proposed amendments will not affect a local economy, so the Board is not required to prepare a local employment impact statement under Texas Government Code, §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES: The Board has determined there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed amendments, therefore preparation of an economic impact statement and a regulatory flexibility analysis, as detailed under Texas Government Code, §2006.002, is not required.

GOVERNMENT GROWTH IMPACT STATEMENT: Pursuant to Texas Government Code, §2001.0221, Mr. Repp provides the following Government Growth Impact Statement for the proposed amendments. For each year of the first five years the proposed amendments will be in effect, the Board has determined the following:

(1) the proposed amendments will not create or eliminate a government program;

(2) implementation of the proposed amendments will not require the creation or elimination of existing employee positions;

(3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the Board;

(4) the proposed amendments will not require an increase or decrease in fees paid to the Board;

(5) the proposed amendments do not create a new regulation;

(6) the proposed amendments will not expand, limit, or repeal an existing regulation;

(7) the proposed amendments will not increase or decrease the number of individuals subject to the rules; and

(8) the proposed amendments will not affect this state's economy.

PUBLIC COMMENT REQUEST: Written comments on the proposed amendments may be submitted by mail to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711, facsimile number (512) 463-6311 or email to *walter.talley@glo.texas.gov.* Written comments must be received no later than 5:00 p.m., thirty (30) days from the date of publication of the proposed amendments in the *Texas Register.*

The amendments are proposed under Section 51.413(b) of the Texas Natural Resources Code, which requires the Board to adopt rules to establish the procedure that will be used by the Board to determine the date a transfer will be made and the amount of the funds that will be transferred to the available school fund or to the Texas Permanent School Fund Corporation for investment in the permanent school fund from the real estate special fund account. Jeff Gordon, GLO General Counsel, has determined and certifies that the proposed amendment is within the Board's authority to adopt.

§151.6. Procedures for the Release of Funds from the Real Estate Special Fund Account.

Procedures for the Release of Funds from the Real Estate Special Fund Account.

(1) These rules shall establish the procedures to be used by the School Land Board (SLB) to determine the dates that releases will be made and the amounts of money that will be released on those dates from the Real Estate Special Fund Account (RESFA) to either the Available School Fund (ASF) or the Texas Permanent School Fund Corporation (TXPSF) for investment in the Permanent School Fund (PSF), as required by Section 51.413(b) of the Texas Natural Resources Code.

(2) Not later than September 1 of each even-numbered year, the Chief Financial Officer (CFO) of the General Land Office will provide to the SLB at a regularly scheduled SLB meeting the amount of funds available in the RESFA for release, effective September 1. At such regularly scheduled meeting, the SLB will adopt a resolution detailing the actual amounts, if any, to be released from the RESFA to either the ASF or the TXPSF for investment in the PSF in each of the individual years of the next-approaching fiscal biennium and the actual dates of the releases.

(3) Not later than September 1 of each even-numbered year, the SLB, in consultation with the CFO, will submit a report to the Legislature, Comptroller, TXPSF, and Legislative Budget Board that states the dates and amounts approved by the SLB for release from the RESFA to either the ASF or TXPSF for investment in the PSF during the next-approaching fiscal biennium.

[These rules shall establish the procedures to be used by the School Land Board (SLB) to determine the dates that releases will be made and the amounts of money that will be released on those dates from the Real Estate Special Fund Account (RESFA) to either the Available School Fund (ASF) or the State Board of Education (SBOE) for investment in the Permanent School Fund (PSF), as required by Section 51.413(b) of the Texas Natural Resources Code.]

[(1) Not later than July 31 of each even-numbered year, the Chief Investment Officer (CIO) of the General Land Office (GLO) will perform an analysis, using March 31 GLO investment valuation data, as follows:]

[(A) Determine an amount equal to 6% of the average market value of the GLO PSF Real Assets Investment Portfolio (Portfolio) over the trailing sixteen-quarter measurement period.]

[(B) Round the amount calculated in paragraph (1)(A) of this section up or down to the nearest $5,000,000 increment.]

[(C) Determine the average quarterly change in the amount determined in paragraph (1)(A) of this section over the trailing sixteen-quarter measurement period. Multiply this amount times 4 and add the resulting product to the amount determined in paragraph (1)(A) of this section. Round the resulting amount up or down to the nearest $5,000,000 increment.]

[(2) Not later than September 1 of each even-numbered year, the CIO will provide to the SLB at a regularly scheduled SLB meeting the results of the analysis performed in accordance with paragraph (1) of this section and make recommendations to the SLB regarding the release of funds from the RESFA. At such regularly scheduled meeting, the SLB will adopt a resolution detailing the actual amounts to be released to either the ASF or the SBOE for investment in the PSF in each of the individual years of the next-approaching fiscal biennium and the actual dates of the releases.]

[(3) Not later than September 1 of each even-numbered year, the SLB, in consultation with the CIO, will submit a report to the Legislature, Comptroller, SBOE, and Legislative Budget Board that states the dates and amounts approved by the SLB for release from the RESFA to either the ASF or SBOE for investment in the PSF during the next-approaching fiscal biennium.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 10, 2024.

TRD-202402092
Mark Havens
Chief Clerk, Deputy Land Commissioner
School Land Board
Earliest possible date of adoption: June 23, 2024
For further information, please call: (512) 475-1859

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