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Pages 1697-1783

In This Issue

LIBRARY
TEXAS WATER COMMISSION
AUSTIN, TEXAS

Office of the Governor

Appointments Made February 20, 1992

Texas State Board of Physical Therapy Examiners.....1707

Texas State Board of Podiatry Examiners1707

Appointments Made February 21, 1992

Battleship Texas Advisory Board.....1707

Texas Funeral Service Commission.....1707

Texas State Library and Archives Commission.....1707

Department of Information Resources Board of Directors.....1707

State Board of Registration for Professional Engineers.....1707

Governor's Committee on People With Disabilities.....1707

Executive Orders

AWR 92-1.....1709

AWR 92-2.....1709

Proposed Sections

Texas Incentive and Productivity Commission

Productivity Bonus Program

1 TAC §275.7, §275.81713

Texas Department of Health

Chronic Diseases

25 TAC §§61.31-61.421713

Hospital Licensing

25 TAC §133.321713

Texas Department of Insurance

Agents Licensing

28 TAC §§19.1501-19.15041714

Withdrawn Section

Polygraph Examiners Board

General Rules of Practice and Procedure

22 TAC §397.401717

Texas State Board of Public Accountancy

Registration

22 TAC §513.84 1717

Texas Department of Insurance

Health Maintenance Organizations

28 TAC §§11.701-11.707 1717

Adopted Sections

Texas Department of Health

Hospital Licensing

25 TAC §133.21 1719

Water Hygiene

25 TAC §§337.201, 337.202, 337.204-337.212 1720

25 TAC §337.211 1732

Texas Department of Insurance

Property and Casualty Insurance

28 TAC §5.6701 1732

Surplus Lines Insurance

28 TAC §15.3 1733

Agents' Licensing

28 TAC §§19.202, 19.302, 19.601, 19.706, 19.1311 1733

Texas Parks and Wildlife Department

Fisheries

31 TAC §§57.111-57.121 1734

Texas Air Control Board

Control of Air Pollution from Sulfur Compounds

31 TAC §112.5 1734

Texas Water Commission

Industrial Solid Waste and Municipal Hazardous Waste

31 TAC §335.202 1737

31 TAC §§335.321-335.332 1739

31 TAC §§335.325-335.333 1744

Comptroller of Public Accounts

Tax Administration

34 TAC §3.286 1744

Texas Department of Human Services

Income Assistance Services

40 TAC §3.1601 1745

Texas Department of Transportation

Administration

43 TAC §§1.80-1.84 1745

Open Meetings

Texas State Board of Public Accountancy 1747

Texas Department on Aging 1747

Texas Air Control Board 1748

Texas Alcoholic Beverage Commission 1748

Child Care Development Board 1749

Texas Department of Commerce 1749

Texas State Board of Dental Examiners 1749

Educational Economic Policy Center 1749

Texas Education Agency 1749

Texas Employment Commission 1750

Texas Ethics Commission 1750

General Land Office 1750

Office of the Governor, Criminal Justice Division 1750

Governor's Health Policy Task Force 1750

Texas Department of Health 1751

Texas Department of Insurance 1751

Texas Department of Licensing and Regulation 1751

Texas Council on Offenders with Mental Impairments 1751

State Board of Plumbing Examiners 1752

Public Utility Commission of Texas 1752

Railroad Commission of Texas 1753

Texas Rehabilitation Commission 1753

Commenting for the sections was the Texas Association of Life Underwriters. No comments were received against these sections.

The Texas Association of Life Underwriters stated that it is committed to the protection of the insurance-buying public and takes the position that adequate licensing requirements and fees play an important role in the enhancement of professional sales and services rendered by agents, and unanimously endorses the rules to increase agent licensing fees. The board agrees that licensing fees should be increased.

The amendments are adopted under the Texas Insurance Code, Article 1.04, which authorizes the State Board of Insurance to issue rules in accordance with the laws of this state, and under the following articles of the Texas Insurance Code, which authorize the board to determine the amount of fees for various types of licenses, namely: Article 3.75, §7 (variable contract agent); Article 21.07 (Group II insurance agent); Article 21.07-1 (Group I legal reserve life insurance agent); Article 21.07-4 (insurance adjuster); and Article 21.14-1 (risk manager).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 2, 1992.

TRD-9203016

Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of
Insurance

Effective date: March 23, 1992

Proposal publication date: November 8, 1991

For further information, please call: (512) 463-6327

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

Potentially Harmful, Fish, Shellfish and Aquatic Plants

• 31 TAC §§57.111-57.121

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing on January 23, 1992, adopted without changes the repeal of §§57.111-57.121, concerning harmful or potentially harmful exotic fish, shellfish, and aquatic plants published in the December 20, 1991, issue of the *Texas Register* (16 TexReg 7446).

Proposed changes in rules concerning harmful or potentially harmful exotic fish, shellfish, and aquatic plants were extensive. To facilitate ease in understanding of new proposed rules, the existing rules were repealed. New rules (§§57.111-57.130) were adopted subsequent to repeal of §§57.111-57.121.

Repeal of these sections will greatly facilitate understanding of new rules concerning exotic species and will provide greater protection of the states aquatic resources.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Parks and Wildlife Code, Chapter 66, which authorizes the commission to adopt rules to regulate harmful or potentially harmful exotic fish, shellfish, and aquatic plants.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 27, 1992.

TRD-9202882

Paul M. Shinkawa
Director, Legal Services
Texas Parks and Wildlife
Department

Effective date: March 19, 1992

Proposal publication date: December 20, 1991

For further information, please call: 1-800-792-1112, ext. 4860 or (512) 389-4860

Part III. Texas Air Control Board

Chapter 112. Control of Air Pollution from Sulfur Compounds

Control of Sulfur Dioxide

• 31 TAC §112.5

The Texas Air Control Board (TACB) adopts an amendment to §112.5, with changes to the proposed text as published in the August 30, 1991, issue of the *Texas Register* (16 TexReg 4730).

The adopted amendment to §112.5, concerning allowable emissions from solid fossil fuel-fired boilers, makes an editorial correction to the title of the section, deletes outdated interim emission limits, and replaces the "new proven technology" terminology. This terminology will be replaced with a requirement for certain older power plants to meet emission limits by July 31, 1996 or for the owner/operator of the units to fund a study that would determine whether or not sulfur dioxide (SO₂) emissions from the affected sites contribute significantly to adverse health or welfare effects in the Dallas-Fort Worth (DFW) area. If the contribution is determined to be significant, then controls would be required in the year 2000. If the contribution is determined to be insignificant, then no site emissions reduction would be required.

The amendment is adopted in response to a formal petition by the Sierra Club to enforce provisions of §112.5 which requires the application of new proven technology in the control of SO₂ emissions from coal-fired electric generation plants. The Sierra Club petition requested that the TACB take

action to enforce existing §112.5; however, the TACB staff was concerned that the "proven technology" terminology was outdated and unenforceable as written. Consequently, the staff developed an alternative proposal which was approved for hearing by the Regulation Development Committee on June 6, 1991 and was also acceptable to the Sierra Club. There are four power plant units, all owned by Texas Utilities Electric (TU), that would be affected by these amendments.

A public hearing was held in Austin on September 25, 1991. Testimony was received from 282 commenters during the comment period which closed October 4, 1991. Comments received from the Lone Star Chapter of the Sierra Club (Sierra), the American Lung Association (ALA), the League of Women Voters (LWV), the City of Rockdale, the Rockdale Chamber of Commerce, the county judge of Milam County, the City of Cameron, a state senator, 63 individuals, and seven Sierra Club petitions signed by 199 individuals in the DFW area all gave general support to the proposal. TU, the Public Utility Commission (PUC), the Aluminum Company of America (ALCOA), the county judge of Freestone County, a medical doctor, a state representative, the Titus County Health department, the City of Fairfield, the City of Mount Pleasant, and the Forsite Corporation (Forsite) opposed the proposal. Two commenters supported TU without actually commenting on the proposal itself. The following discussion categorizes the testimony into health and welfare issues, Federal Clean Air Act (FCAA) issues, cost issues, and miscellaneous issues.

Health and Welfare Issues. Sierra, ALA, and seven individuals suggested that SO₂ emissions from the TU Monticello and Big Brown facilities are contributing to white haze which causes a reduction in visibility resulting in an adverse impact on the aesthetic enjoyment of air resources and the quality of life, and are contributing to a respiratory aggravation to asthmatics. While recognizing that the TACB-sponsored Dallas Winter Visibility Study (DWVS) was not a long-term definitive study, Sierra pointed out that the findings indicated visibility impairment was due to sulfate particles. Sierra, LWV, and an individual stated that SO₂ emissions are converted to sulfate particles which are detrimental to health. Sierra, five individuals, and the 199 individuals that signed the Sierra Club petitions claim that the TU facilities generate massive quantities of SO₂ that should be reduced. Fifty individuals supported the limitation of these emissions to improve air quality. Sierra further stated that controls will be even more important after particulate control equipment is installed and the units return to full capacity. Sierra argued that future SO₂ emissions will be more than the current 160,000 tons per year. Sierra commented that all major utilities in Texas use low sulfur coal, scrubbers, or both, with the exception of these four facilities. TU and Forsite argued that the DWVS is flawed and inconclusive. TU, the county judge of Freestone County, a medical doctor, and the Titus County health officer claimed that TU has caused no adverse health effects.

At present, the staff finds insufficient verifiable scientific evidence to demonstrate a

quantitative link between the TU emissions and either the white haze or any aggravation of asthma experienced in the DFW area. The National Ambient Air Quality Standards have been set for SO₂ to protect the health of the general population to include exercising asthmatics. Since 1974, SO₂ has been monitored in the DFW area and SO₂ concentrations there are less than 10% of the level allowed under the health standard. Furthermore, SO₂ levels in the DFW area are lower than those in any other metropolitan area in the state. This indicates that the current SO₂ levels in the DFW area are not detrimental to public health. The full impact of sulfates and other compounds created in the atmosphere from SO₂ are not known at this time. Health standards for sulfates have not been established by the TACB or the U.S. Environmental Protection Agency (EPA).

The staff agrees that the DWVS was inconclusive because of resource limitations and limited scope. Nevertheless, the DWVS and other research does point to the possibility that sulfates from power plants may contribute to visibility problems. The DWVS indicated that the DFW visibility impairment is due in part to sulfate particles. The TU facilities are the largest identified sources of SO₂ emissions which could affect the DFW area. SO₂ is a known precursor of sulfates. The staff believes that a future study is needed to determine if there is a quantitative link between TU emissions and sulfates in the DFW area. If a link is confirmed, reduction in TU emissions could improve visibility as well as reduce the potential for health problems.

The proposed amendment has been changed to allow TU to have the option to control emissions by July 31, 1996 or to fund a study for the purpose of documenting whether an adverse health or welfare effect exists. The study should be completed by July 31, 1996, and if a significant contribution to the visibility problem in the DFW area from one or both of the subject TU sites is found, then the contributing sites will reduce SO₂ emissions to 1.2 pounds of SO₂ per million Btu (MMBtu) by the year 2000. If the study finds that SO₂ emissions from the TU sites are not significantly contributing to visibility problems in the DFW area, then no site emission reductions would be required.

If TU elects the study option, it would be required to submit a formal proposal of the study design for evaluation, modification and approval or rejection by the TACB. The study shall be directed by a steering committee comprised of experts chosen from several disciplines. The study shall have specific milestones and a commitment to provide conclusive results. In the last few years, there have been significant improvements in atmospheric sampling and analysis technology and atmospheric modeling. These advances, along with adequate funding, will be expected to yield a study that is conclusive. The study provides an opportunity to substantiate an adverse health or welfare effect prior to requiring emission reductions.

FCAA Issues. TU and ALCOA claim that a TACB requirement for scrubbing SO₂ emissions would be inconsistent with FCAA requirements to meet a 1.2 pounds per MMBtu average among all units owned by a company.

TU claims that FCAA requirements allow each utility to analyze its own system and make SO₂ reductions with methods that are most cost-effective and least disruptive to the company. TU claims that congress specifically considered this flexibility and obviously decided not to deny it to "grandfathered" units not subject to new source performance standards (NSPS). TU and a state representative argued that under the FCAA, reductions are not required in Texas before the year 2000 and that no program benefits or bonus allowances are allowed for making early reductions. They further argued that controls should not be required at this time since Texas has been federally designated under Title IV as a "Clean Air State."

Since the TACB received the Sierra petition, the FCAA Title IV Acid Rain program has provided an SO₂ reduction schedule, a classification of states and individual facilities, regulatory flexibility, and the opportunity for utilities to receive federal credit allowances for any reductions. The program has a goal of reducing acid rain pollutants by 10 million tons in the U. S. by the year 2000. These reductions are to be accomplished in two phases. The first phase would require controls to be installed at units with the highest rates of emissions compared rates of emissions compared to electricity generated. Nationwide, there are 261 of these units in 21 states identified for control by January 1, 1995. None of these units are located in Texas.

Phase two of the program targets all remaining units with emissions rates higher than what is now allowed for new units. The schedule for these units is January 1, 2000. There are four such units in Texas, all operated by TU.

The FCAA, however, does not rely on mandating control equipment or setting emissions limits to accomplish the 10-million ton reduction goal. Instead, a market-based allowance trading system is established. A ton of SO₂ represents an allowance, and a utility would hold rights to a certain number based on the amount of electricity generated by the company during the late 1980's. Actual SO₂ emissions would be audited annually and compared to the corporation's allowances. Deficiencies in allowances would result in penalties, while excesses could be sold or leased. Control options available to a company to reduce actual emissions to levels adequately covered by the company's allowances include: lower emitting fuels; installing control equipment; and/or shutting down older, higher emitting units.

Additionally, Texas qualifies as a clean state since the statewide average emission rate is substantially below the cut-off point for eligibility established by the FCAA. By virtue of this designation, Texas utilities are eligible for bonus allowances.

Under the federal program, TU is required to achieve an overall reduction in SO₂

emissions to meet a 1.2 pounds of SO₂ per MMBtu systemwide average by "bubbling" all their facilities. Bubbling involves a procedure which enables a utility to average all its steam-electric station (SES) emissions together. In Texas, TU may not necessarily need to reduce the emissions from Monticello and Big Brown SES under the FCAA because of companywide averaging. TU could obtain the required companywide average by reductions at other plants, by adding new SES sites fired by natural gas, or by purchasing reduction credits from other companies. The staff has decided that bubbling between the TU sites would not be appropriate if an individual site is demonstrated to be significantly contributing to the DFW area visibility problems. SO₂ reductions achieved prior to 2000 would preclude TU from taking advantage of the federal credit allowances. Consequently, it appears to the staff to be less reasonable to require controls prior to 2000, unless TU significantly contributes to a visibility problem. A study to determine if TU makes a significant contribution to the DFW visibility problem would resolve this issue.

The control of SO₂ emissions for visibility or health purposes is not addressed by the FCAA. The FCAA Title IV program cited by the commenter is designed to achieve overall reductions throughout the U.S. to assist in alleviating the air pollution problem known as acid rain. The TACB rule change will assist in achieving that nationwide overall SO₂ reduction and will go significantly beyond the FCAA mandate if it is determined that TU makes a significant contribution to the DFW visibility problem. To achieve more consistency with Title IV of the FCAA while addressing the potential contribution the TU units may be making to the DFW visibility problem, the proposed requirement has been replaced by a requirement to meet 1.2 pounds per MMBtu at each site. This will allow TU to meet the lower emission standard with flexibility that is more consistent with the FCAA.

TU contends that the TCB standard of 3.0 pounds per MMBtu is much more restrictive than that of many other states. The TACB agrees that the current 3.0 pounds per MMBtu standard is more restrictive than those in many other states. The fact that emissions averaged over Texas as a whole are below 0.8 pound per MMBtu has resulted in Texas being designated a federal clean air state with respect to acid rain. The TACB will continue to go beyond the federal and other states' requirements wherever a demonstrated problem exists.

Cost Issues. Sierra, ALA, and seven individuals argued that improved visibility and reduced health problems will justify any increase in electricity costs that are passed on to the ratepayer. Sierra and an individual suggested that since these plants generate the state's lowest cost energy due to local mining of lignite, the incremental cost of controls would not put them at a disadvantage. Eleven individuals expressed a willingness to pay any increase in personal utility bills that might result from the cost of control. TU and PUC claimed that the required technology will result in unnecessary costs being passed on to the rate-payer.

The TACB is mandated by the Texas Clean Air Act (TCAA) to: "...safeguard the state's air resources from pollution by controlling or abating air pollution and emissions of air contaminants consistent with the protection of public health, general welfare, and physical property, including the aesthetic enjoyment of air resources by the public and the maintenance of adequate visibility." Further, the TCAA says: "The board shall seek to accomplish the purposes...through the control of air contaminants by all practical and economically feasible methods." The costs involved in executing these mandates are ultimately passed on to the general public through increased costs of goods and services. The public and the legislature have decided that such costs are necessary for protection of the air, and public health and welfare, if the need exists.

TU contends that the TACB has not followed the CAA requirement to require controls that are both technologically feasible and economically reasonable. TU claims that there has been no analysis or demonstration to show that the costs and benefits are reasonable for a requirement to retrofit the "latest and most expensive technology" on old units with limited lives. Sierra commented that the operating life of these units can be extended 20 years and that costs can be amortized during that period.

The staff has carefully considered both issues of technological feasibility and economic reasonableness in the proposal to require controls for emission reduction. SO₂ scrubbing has been available and required on new units since the promulgation of NSPS, Subpart Da by the EPA in 1979. SO₂ removal is technologically feasible by scrubbing or several alternative technologies retrofitted to existing combustion units of SES. Nationwide, other existing SES units have been required to install SO₂ scrubbers. Economic reasonableness is based on the cost per ton or emissions reduced or on whether other units have been required to install the controls. Amortized equipment and operational costs were estimated in the proposal to be \$250 million per year and the estimated reductions of 75,000 to 100,000 tons per year of SO₂ would yield a cost of \$2,500 to \$3,500 per ton of SO₂ removed. The staff has determined that this cost per ton is reasonable when compared with other reasonably available control technology. Actually, this cost would be expected to be lower since a recalculation using a new EPA data base shows the cost of retrofit and the cost per ton removed will be significantly less.

Miscellaneous Issues. TU contended that the existing "new proven technology" requirement could be interpreted by the TACB to require the industry to retrofit using any new technology, at any time and on any unit, without consideration of cost, environmental benefit, or technical practicability. Also, the commenter argued that no similar provisions exist in any other TACB rule. Two individuals stated that this rule has been on the books for a decade and should be enforced.

The TACB legal staff has concluded that the rule is outdated and unenforceable as written. The adopted amendment will delete the "proven technology" clause and replace it

with enforceable rule language. The current wordings of subsections (a) and (b) which require "new proven technology" are being deleted.

An individual argued that NSPS regulations are inferior as control rules, are often obsolete when promulgated, and relate only to an average in pollution control. The commenter further argued that new control technology should be required on all retrofit facilities as soon as the technology is marketed. Other commenters also argued that massive control action is required immediately.

Both economic and political reality require governmental regulatory agencies like the TACB to employ all practical and economically feasible methods for protecting the air resources without either unreasonably burdening the American industry, crippling its competitive ability, or arbitrarily creating real economic hardships for part of the general public. The staff intends an equitable, practical, and evenhanded approach to pollution control while still resolving local and regional problems. The NSPS regulations, Subpart Da, currently require 90% removal of SO₂ (for all emissions in excess of 1.2 pounds per MMBtu) for large SES units constructed after 1979. Such control requirements require technologically sophisticated and very effective control equipment. A study of the NSPS regulations (Code of Federal Regulations 40, Parts 53 to 60) will show that air pollution control nationwide is, as previously stated, balanced by economic and political realities.

Finally, the wording in §112.5 has been changed for clarity and consistency. In the section title, the term "Steam Generators" is more appropriate than "Boilers" for use in this section. In subsection (a), the abbreviation "(MMBtu)" is added after the words "million Btu," and in subsections (b) and (c), the staff has changed "million Btu" for consistency.

The amendment is adopted under the TCAA, §382.017, Texas Health and Safety Code (Vernon 1990), which provides the TACB with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§112.5. Allowable Emissions from Solid Fossil Fuel-Fired Steam Generators.

(a) Except as provided in subsection (b) of this section, no person may cause, suffer, allow, or permit emissions of sulfur dioxide (SO₂) from any solid fossil fuel-fired steam generator to exceed 3.0 pounds per million Btu (MMBtu) heat input.

(b) No person may cause, suffer, allow, or permit emissions of SO₂ from any solid fossil fuel-fired steam generator located in Milam County, which began operation prior to January 1, 1955, to exceed 4.0 pounds per MMBtu heat input.

(c) Units having a design heat input of greater than 1500 MMBtu per hour and, which on January 1, 1991, were not subject to new source performance stan-

dards, shall meet one of the following requirements.

(1) After July 31, 1996, no person may cause, suffer, allow, or permit emissions of SO₂ from any solid fossil fuel-fired steam generator to exceed 1.2 pounds per MMBtu heat input or an equivalent in total allowable annual site emissions,

(2) The owner/operator of the unit(s) shall fund and support a research study of atmospheric haze, also known as "white haze," in the Dallas-Fort Worth (DFW) area, to be completed by July 31, 1996. Within 90 days from the effective date of this rule, the owner/operator shall submit a formal proposal for this study designed to allow successful completion of this study by the date specified previously. The proposal shall include milestone dates, the study's general approach and objectives, and shall include minimum and maximum financial responsibilities on the part of the owner/operator. The Texas Air Control Board (TACB) executive director shall approve or reject the study within 120 days from date of the proposal submittal. The TACB shall base its approval or rejection on the technical merits and adequacy of approach to the research study. Should the proposal be rejected, an extension, not to exceed 60 days, for renegotiation may be granted at the discretion of the executive director. Should this extension expire without proposal approval, then subsection (c)(1) shall apply. Following such approval, the study shall be directed by a steering committee selected by TACB in consultation with the owner/operator of the unit(s) and shall be controlled, comprehensive, state-of-the-art, and quality-assured. The steering committee shall define the scope of the study and establish appropriate milestones to assure completion of the study by July 31, 1996. The study shall be designed to demonstrate conclusively whether or not a reduction of SO₂ emissions from the affected unit(s) to 1.2 pounds per MMBtu will significantly improve visibility in the DFW area. No later than October 31, 1996, TACB shall make a finding based on the study as follows, either:

(A) that reductions of SO₂ emissions from the affected unit(s), as defined in subsection (c) of this section, will significantly improve visibility in the DFW area. If such finding is made, then the affected unit(s) shall achieve compliance with a SO₂ emission limit of 1.2 pounds per MMBtu or an equivalent in total allowable annual site emissions by July 31, 2000; or

(B) that reductions of SO₂ emissions from the affected unit(s), as defined in subsection (c) of this

section, will not significantly improve visibility in the DFW area. If such a finding is made or if TACB can not make a finding on the basis of the study by October 31, 1996, then the affected unit(s) shall maintain compliance with subsection (a) of this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1992.

TRD-9202970 Lane Hartsock
Deputy Director, Air Quality
Planning Program
Texas Air Control Board

Effective date: March 20, 1992

Proposal publication date: August 30, 1991

For further information, please call: (512) 908-1451

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

Subchapter G. Location Standards for Hazardous Waste Storage, Processing, or Disposal

• 31 TAC §335.202

The Water Commission (TWC) adopts an amendment to §335.202, concerning industrial solid waste and municipal hazardous waste, without changes to the proposed text as published in the October 25, 1991, issue of the *Texas Register* (16 TexReg 6041).

The amendment is adopted in order to clarify the siting requirements imposed by new provisions of the Texas Solid Waste Disposal Act (TSWDA), Chapter 361, Texas Health and Safety Code (Vernon Supplement 1991), recently promulgated by the legislature in Senate Bill 1099, 72nd Legislature, 1991.

Section 335.202 is amended by the definition of residence. The amendments to this section are adopted without changes and will not be republished.

Written comments to the proposed amendment were submitted by the following: the law firm of Brown Maroney & Oaks Hartline; and the law firm of Hutcheson & Grundy.

One commenter stated that the setting of a specific distance figure appears to be reasonable for this rule, but in order to provide a perimeter of safety around all residences, the TWC should expand, rather than shorten, the 100-foot distance. This commenter cited numerous cases in support of the contention that the concept of curtilage should be relied upon in determining which parts of the real property and fixtures should be included in the area considered to be the residence. Cur-

tilage has been defined as a yard, courtyard, or other piece of ground included as part of a residence. This commenter urges that the cases cited by him have illustrated that distances of 200 feet or more have been recognized by various jurisdictions with respect to the property included within a residence. He therefore urged expansion of the distance involved in this rule from 100 feet to 200 feet.

In response to this comment, the TWC states that the distance included in the proposed rule is calculated to include a 100-foot perimeter of safety around the structure, and should be ample in view of the distance restrictions imposed by §335.205 of this title (relating to Prohibition of Permit Issuance).

Another commenter claims that in the TSWDA, §361.102(c), the statute refers to a residence as a "structure," thus indicating that the state legislature's intent was that the structure itself, without any additional area, be considered as the residence.

The Act, §361.102(c) states, in pertinent part, that distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or park was in place at the time the distance was certified for the original permit.

The TWC believes that the term "such structure" was meant to apply to the existence or nonexistence of a residence, church, school, or day care center on the property located within 1/2 mile of a new commercial hazardous waste management facility or an areal expansion of an existing commercial hazardous waste management facility. The TWC's interpretation of this language does not restrict the measurement of this language does not restrict the measurement of the 1/2 mile distance to the "structure" of a residence, church, school, day care center, surface water body used for a public drinking water supply, or park. Instead, the term "structure" appears to limit this provision to the inclusion of those enumerated residences or community facilities which existed on the property within 1/2 mile of the proposed commercial hazardous waste management facility at the time the distance was certified for the original permit.

This commenter also claims that the TWC cannot use a distance greater than 75 feet in drafting this rule. The Act, §361.102(f) states that the measurement of distances required by §361.102(a), (b), (c), and (d) shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit. This commenter argues that this 75-foot limitation should be imputed to the distance from a residence. The TWC disagrees. The 75-foot limitation in the Act, §361.102(f) applies expressly to the perimeter from the edge of the proposed hazardous waste management unit. This provision of the Act does not reference how the distance should be measured from a residence or other building, water, source, or park. The TWC, therefore, does not find this provision limiting with respect to the distance from a residence at which the 1/2 mile buffer zone should be measured.

In addition, the TWC staff was instructed by the commission to inquire of the City of Austin Planning and Zoning Division as to the calculation of distances under their zoning and subdivision regulations. TWC staff was informed that all distances are measured from the property line.

The amendment is adopted under the Texas Water Code, §5.104 and §28.011, which gives the commission the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The section is also adopted under the TSWDA, §361.017 and §361.024, which gives the commission the authority to regulate industrial solid wastes and hazardous municipal solid wastes and to adopt rules and promulgate rules consistent with the general intent and purposes of the Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1992.

TRD-9202939 Mary Ruth Holder
Director, Legal Division
Texas Water Commission

Effective date: March 20, 1992

Proposal publication date: October 25, 1991

For further information, please call: (512) 463-8069

Subchapter J. Industrial Solid Waste and Hazardous Waste Fee System

The Texas Water Commission adopts amendments to §§335.321-335.324, the repeal of §§335.325-335.333, and new §§335.325-335.332, concerning the industrial solid waste and hazardous waste fee system. Amendments §§335.321-335.324 and new §§335.325, 335.328, and 335.329 are adopted with changes to the proposed text as published in the January 14, 1992, *Texas Register* (17 TexReg 299). New §§335.326, 335.327, 335.330-335.332, and the repeal of §§335.325-335.333 are adopted without changes and will not be republished.

The Health and Safety Code, Chapter 361, Subchapter D authorizes the commission to establish a hazardous waste fee system related to the generation and disposition of hazardous waste and the operation of hazardous waste facilities subject to permits. House Bill 1986, Acts of the 72nd Legislature, 1991, amended the Health and Safety Code, Chapter 361, Subchapter D, to restructure and expand the hazardous waste fee program. The commission adopted rules on an emergency basis effective August 28, 1991 (16 TexReg 4780) to implement the provisions of House Bill 1986 and restructure the existing hazardous waste fee program. These emergency rules were renewed for a 60-day period by notice filed December 18, 1991 with the *Texas Register*. These permanent rules will replace the emergency rules on their effective date.