

**SUBCHAPTER G: ADDITIONAL CONDITIONS FOR HAZARDOUS AND INDUSTRIAL
SOLID WASTE STORAGE, PROCESSING, OR DISPOSAL PERMITS**

§§305.141 - 305.145, 305.147 - 305.150

Effective October 29, 2009

§305.141. Applicability.

(a) Unless otherwise stated, the conditions contained in this subchapter apply to all hazardous and industrial solid waste storage, processing, or disposal permits. These conditions are in addition to those set forth in §305.66 of this title (relating to Revocation and Suspension).

(b) In addition to the conditions established under §305.127(4) of this title (relating to Conditions to be Determined for Individual Permits), each permit for a facility used for the storage, processing and disposal of hazardous waste shall include:

(1) each of the applicable requirements specified in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities); and

(2) a list of the wastes or classes of wastes which will be processed, stored, or disposed of at the facility, and a description of the processes to be used for the processing, storage, or disposal of such hazardous wastes at the facility, including the design capacity of each storage, processing, and disposal unit. Except in the case of containers, the description must identify the particular wastes or classes of wastes which will be processed, stored, or disposed of in particular equipment or locations (e.g., "halogenated organics may be stored in Tank A" and "metal hydroxide sludges may be disposed of in landfill cells B, C, and D").

Adopted: May 22, 1996

Effective: June 14, 1996

§305.142. Duty to Comply.

The permittee need not comply with the conditions of the permit to the extent and for the duration such noncompliance is authorized in an emergency order issued by the commission.

Effective June 19, 1986

§305.143. Recordkeeping.

For those permits containing a groundwater monitoring requirement, the permittee shall maintain records from all groundwater monitoring wells and associated groundwater surface elevations, for the active life of the facility, and for disposal facilities for the post-closure care period as well.

Effective June 19, 1986

§305.144. Certification and Inspection.

For a new facility, the permittee may not commence storage, processing, or disposal of solid waste; and for a facility being modified, the permittee may not process, store, or dispose of solid waste in the modified portion of the facility, except as provided in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) until:

(1) the permittee has submitted to the executive director by certified mail or hand delivery a letter signed by the permittee and a Texas licensed professional engineer stating that the facility has been constructed or modified in compliance with the permit; and

(2) the executive director has inspected the modified or newly constructed facility and finds it is in compliance with the conditions of the permit; or if within 15 days of submission of the letter required by paragraph (1) of this section, the permittee has not received notice from the executive director of an intent to inspect, prior inspection is waived, and the permittee may commence processing, storage, or disposal of solid waste.

Adopted October 7, 2009

Effective October 29, 2009

§305.145. Release or Discharges of Solid Waste.

(a) The following shall be included as information which must be reported orally within 24 hours pursuant to §305.125(9) of this title (relating to Standard Permit Conditions):

(1) information concerning release of any solid waste that may cause an endangerment to public drinking water supplies;

(2) any information of a release or discharge of solid waste, or of a fire or explosion from a facility, which could threaten the environment or human health or safety outside the facility. The description of the occurrence and its cause shall include:

(A) name, address, and telephone number of the owner or operator;

(B) name, address, and telephone number of the facility;

(C) date, time and type of incident;

(D) name and quantity of material(s) involved;

(E) the extent of injuries, if any;

(F) an assessment of actual or potential hazards to the environment and human health or safety outside the facility, where this is applicable; and

(G) estimated quantity and disposition of recovered material that resulted from the incident.

(b) The executive director may waive the five-day written notice requirement under §305.125(9) of this title (relating to Standard Permit Conditions) in favor of a written report pursuant to this section within 15 days.

Effective April 8, 1987

§305.147. Monitoring of Commercial Hazardous Waste Management Facility Operations.

Any issued, amended, modified, transferred, extended, or renewed commercial hazardous waste management facility permit shall include the following requirements.

(1) Within the first year after commission action on the permit the facility owner or operator shall provide notice to affected persons of intent to have an independent annual environmental audit of the facility performed. The notice shall be issued in accordance with the following procedure:

(A) the notice shall state the names of at least three independent inspectors nominated by the facility owner or operator to perform the environmental audit and shall be published in the newspaper of the largest general circulation that is published in the county in which the facility is located and all adjacent counties or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The facility owner or operator shall not nominate an inspector who is employed or who has been employed by the facility;

(B) the notice shall announce a meeting time and place, to be located near the facility location, be held within 15 days of the published notice in order for the facility to receive comments from and allow for participation by interested affected persons in the selection of the independent inspector. The interested affected persons may either agree to one of the nominated independent inspectors or nominate other independent inspectors if they do not approve of the nominee list. The selection of the independent inspector shall be agreed to by the facility owner or operator and the interested affected persons no later than 30 days from the date of the meeting. The name of the selected independent inspector shall be submitted to the commission no later than 15 days from the date of selection for the commission's approval. The commission shall approve the independent inspector after it has determined that the independent inspector has the necessary expertise to perform the audit and does not have a conflict of interest with any of the parties involved in the inspector selection;

(C) the published notice may not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches and shall contain, at a minimum, the following information:

- (i) the facility owner's or operator's name;
- (ii) the location of the facility;
- (iii) the facility permit number;
- (iv) the time and date of the scheduled annual environmental audit;

(v) the names of at least three nominated independent inspectors;

(vi) the date and time and location of the selection meeting; and

(vii) the name and telephone number of a facility contact person;

(D) the facility owner or operator shall provide a copy of the published notice to local jurisdictions where the facility is located; and

(E) the facility owner or operator shall provide the commission with an affidavit including a newspaper tear sheet of the published notice and sworn statement of the editor or publisher certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

(2) If the facility owner or operator and interested affected persons cannot agree on the selection of an independent inspector within the time frame specified in paragraph (1)(B) of this section, the commission shall select an independent inspector. The commission's selection, however, shall not be limited to either the facility owner or operator's nominee list or the interested affected persons' nominee list. The commission shall take steps necessary to assure that the independent inspector or entity selected to perform the audit has the necessary expertise to perform the audit, is not a business competitor of the facility, and does not have a conflict of interest with any of the parties involved in the inspector selection.

(3) The facility owner or operator shall pay the cost of notice required to be provided under this section.

(4) The facility owner or operator shall be responsible for the costs of an independent annual environmental audit. The facility owner or operator shall also maintain responsibility for procuring the selected independent inspector. The commission shall not be a party to such procurement nor warrant the workmanship of the selected inspector.

(5) The facility owner or operator shall submit the results of an independent annual environmental audit in writing to the executive director and must mail a copy of the audit to those affected persons who participated in the selection of the independent inspector.

(6) The scope of the independent annual environmental audit may encompass any and all provisions of environmental permits required for the facility and all relevant statutes and regulations regarding the management of the facility.

(7) The facility is not required to perform the annual independent environmental audit if the facility does not receive any comments from affected persons. If the facility performs the independent audit despite lack of response, the facility must obtain the commission's approval of the selected independent inspector prior to the audit.

(8) The facility shall provide for fence line and ambient air quality monitoring if and as required by the commission.

Effective November 7, 1991

§305.148. Impact of New Hazardous Waste Management Facilities on Local Land Use.

Based on its assessment of an application for a new hazardous waste management facility permit, in accordance with §335.180 (relating to Impact of New Hazardous Waste Management Facilities on Local Land Use), the commission may impose permit conditions deemed to be necessary to minimize or mitigate detrimental impacts on local land use.

Effective November 7, 1991

§305.149. Time Limitation for Construction of Commercial Hazardous Waste Management Units.

(a) Applicability. This section applies to facilities which provide commercial capacity for the storage, processing or disposal of hazardous waste and for which permit applications, Class 3 permit modification requests or major permit amendment requests are filed after the effective date of this rule.

(b) Schedule for construction of commercial hazardous waste management units.

(1) The facility owner or operator shall construct all permitted units within two years of final administrative and judicial disposition of the permit, modification or amendment referenced in subsection (a) of this section. Within 90 days after the end of the two-year construction period time limit, the facility owner or operator shall certify to the executive director that the unit has been constructed in accordance with applicable permit provisions.

(2) A one-time six-month extension to the two-year construction period time limit may be requested as a Class 2 permit modification. All modification requests and subsequent procedures must comply with applicable provisions of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request. The request must be made within the initial two-year period and, if granted, the six-month extension shall begin at the end of the initial two-year construction period time limit specified under paragraph (1) of this subsection. Construction of the unit is authorized under this subsection until the commission takes final action on the modification request; however, in no event shall authorization continue under this subsection beyond six months following the end of the initial two-year construction period specified under paragraph (1) of this subsection. Within 90 days of the end of the authorized extension period, the facility owner or operator shall certify to the executive director that the unit has been constructed in accordance with applicable permit provisions.

(3) Extensions for greater than six months, or any extension to the construction period time schedule authorized under an approved Class 2 permit modification pursuant to paragraph (2) of this subsection, shall be requested as a Class 3 permit modification. All requests and subsequent procedures must comply with applicable provisions of §305.69 of this title (relating to Solid Waste Permit

Modification at the Request of the Permittee) and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request.

(A) Extension requests made under this paragraph shall be submitted during the periods authorized under paragraph (1) or (2) of this subsection. Construction of the unit is authorized under this subsection until the commission takes final action on the modification request.

(B) The commission shall not consider requests made under this paragraph which are submitted after the expiration of the time periods authorized under paragraph (1) or (2) of this subsection.

(4) Under circumstances which require a delayed or staged-unit construction schedule longer than that specified under paragraph (1) of this subsection, justification for the proposed extended schedule shall be submitted with the permit application. The submitted schedule shall become part of the permit only upon the approval of the commission. Requests for changes to the approved schedule submitted during the period covered by the approved schedule shall comply with Class 2 or Class 3 permit modification rules, pursuant to §305.69. The class of the modification shall be determined by the length of the extension requested. An extension request of six months or less shall be a Class 2 modification and an extension request of greater than six months shall be a Class 3 modification request. All requests and subsequent procedures must comply with applicable provisions of §305.69 and must comply with any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of the modification request.

(c) Authorization status. Unit construction or management of hazardous waste in a unit is not authorized under any of the following conditions:

(1) the permittee has not constructed the unit within the time period specified under subsection (b)(1) of this section and:

(A) the permittee does not submit a modification request as specified in subsection (b)(2) or (3) of this section; or

(B) the commission has denied a request for an extension under subsection (b)(2) or (3) of this section and the construction period time limit specified in subsection (b)(1) or (2) of this section has expired;

(2) the unit has not been constructed within the time period specified in the permit as per subsection (b)(4) of this section and:

(A) the permittee does not submit a modification request as specified in subsection (b)(4) of this section; or

(B) the commission has denied a request for an extension under subsection (b)(4) of this section and the construction period time limit specified in the permit has expired.

§305.150. Incorporation of References.

When used in this chapter, the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended through October 12, 2005 (70 Federal Register 59402).

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