

§§7.101 - 7.104, 7.110 - 7.119, 7.121 - 7.127
Effective September 26, 2013

§7.101. Memorandum of Understanding between the Texas Department of Commerce and the Texas Natural Resource Conservation Commission.

(a) Need for agreement. Texas Health and Safety Code, §382.0365(e) directs the Texas Natural Resource Conservation Commission (TNRCC) to enter into a Memorandum of Understanding (MOU) with the Texas Department of Commerce (TDOC) to coordinate assistance to any small business applying for permits from the commission. Texas Government Code, §481.028(b)(6) directs the TDOC to develop an MOU with the TNRCC to cooperate in program planning and budgeting regarding small business finance and permits, the marketing of recyclable products, and business permits.

(b) Responsibilities.

(1) The TNRCC:

(A) is the agency of the state given primary responsibility for implementing the Constitution and laws of this state relating to the conservation of natural resources and the protection of the environment;

(B) sets standards, criteria, levels, and limits for pollution to protect the air and water quality of the state=s natural resources and the health and safety of the state=s citizens;

(C) protects the air, land, and water resources through the development, implementation, and enforcement of control programs as necessary to satisfy all federal and state environmental laws and regulations;

(D) maintains a Small Business Assistance Program as defined in Texas Health and Safety Code, §382.0365;

(E) establishes programs designed to encourage Texas businesses to reduce, reuse, and recycle industrial and hazardous wastes; and

(F) has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.

(2) The TDOC:

(A) is the state agency designated to promote economic development and tourism and provide business services for small business owners;

(B) serves as an information center and referral agency for information on various state and federal programs affecting small businesses, including local governments, local economic development organizations, and small business development centers to promote business development in the state;

(C) supports small business ownership and development for the state;

(D) collects, publishes, and disseminates information useful to small businesses, including data on employment and business activities and trends; and

(E) has the powers and duties specifically prescribed and other powers necessary or convenient to carry out these and other responsibilities.

(c) Activities.

(1) The TNRCC will, in a timely manner:

(A) refer small business owners to the TDOC for information on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;

(B) provide the TDOC with information regarding environmental permitting processes, registration timelines, fee schedules, reporting requirements, pollution prevention techniques; as well as scheduled workshops, seminars, and conferences that educate small businesses on environmental concerns;

(C) provide speakers and educational materials, as requested and subject to staff availability, for seminars, conferences, and workshops sponsored by the TDOC;

(D) maintain current information supplied by the TDOC on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;

(E) research the requirements and costs of pollution control equipment and environmental audits needed by small businesses for compliance with environmental regulations;

(F) train TDOC staff, as requested and subject to staff availability, on environmental regulations, environmental management techniques, and pollution prevention and recycling practices that apply to small businesses;

(G) share information with the TDOC to ensure non-duplication of agency efforts;

(H) provide the necessary permit applications and forms to the TDOC, upon request, so that the TDOC may complete a comprehensive application request by a business; and

(I) analyze and evaluate alternatives for improving permit processes within the TNRCC, and submit jointly with the TDOC any report required by Texas Government Code, §481.129.

(2) The TDOC will, in a timely manner:

(A) refer small business owners and prospective owners to the TNRCC Small Business Assistance Program for help with environmental permitting, registration, compliance, and reporting requirements and pollution prevention techniques;

(B) provide information to the TNRCC regarding information on financial and loan assistance; business licenses, permits, registrations; or certificates necessary to operate a place of business in Texas;

(C) provide speakers and educational materials, as requested and subject to staff availability, for seminars, conferences, and workshops sponsored by the TNRCC;

(D) maintain current information supplied by the TNRCC on the application process and timelines for environmental permits, registrations, certifications, or other general environmental compliance information needed to operate a place of business in Texas;

(E) incorporate the TNRCC information concerning businesses= rights, obligations, and requirements under environmental regulations into the general material distributed by the TDOC to people establishing business operations in Texas;

(F) identify and provide information to the TNRCC on financial assistance programs that make loans to small businesses for the purchase of new equipment or process upgrades necessary to operate in compliance with environmental regulations;

(G) serve as a point of contact, when requested, between the TNRCC and the Small Business Administration, Farmers Home Administration, the Small Business Development Centers, the Texas Manufacturing Assistance Centers, Community Development Corporations, and other business and financial assistance programs;

(H) maintain the information produced by the TNRCC about the impacts of environmental regulations on the state's economy and small business community;

(I) share information with the TNRCC to ensure non-duplication of agency efforts; and

(J) analyze and evaluate alternatives for improving permit processes within the TNRCC, and submit jointly with the TNRCC any report required by Texas Government Code, §481.129.

(d) Review of MOU. This memorandum shall terminate August 31, 1999, unless extended by mutual agreement. The TNRCC and the TDOC by rule shall adopt the memorandum and all revisions to the memorandum.

Adopted July 10, 1996

Effective August 5, 1996

§7.102. Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(1) Whereas, the Texas State Soil and Water Conservation Board, here within called the Board, is the state agency with the primary responsibility for activities relating to agricultural and silvicultural nonpoint source (NPS) pollution abatement; and

(2) Whereas, the board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on matters relating to agricultural and silvicultural nonpoint source pollution abatement; and

(3) Whereas, for purposes of this MOU, the board is responsible for NPS pollution abatement activities on all agricultural and silvicultural land as defined by Senate Bill (SB) 503, Texas 73rd State Legislature; and

(4) Whereas, the board has established and implemented a water quality management plan certification program, in accordance with SB 503 of the Texas 73rd State Legislature for agricultural and silvicultural lands; and

(5) Whereas, the Texas Natural Resource Conservation Commission here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

(6) Whereas, the commission has been designated as the lead agency for the Federal Clean Water Act, §319 program administered by the EPA; and

(7) Whereas, the commission shall coordinate all its activities related to this MOU with the board; and

(8) Whereas, consistent with the intent of Federal Clean Water Act, §319, the board and the commission are committed to the development and implementation of a coordinated NPS pollution program for the State; and

(9) Whereas, for the purpose of this MOU, the commission is responsible for the enforcement of all point source and NPS pollution regulations, including that on agricultural and silvicultural lands; and

(10) Whereas, consistent with Texas law and public policy, the board and commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and

(11) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The Texas Natural Resource Conservation Commission agrees to:

(1) Administer, for the State, the Federal Clean Water Act, ' 319 grant program for NPS pollution. The commission will be responsible for coordinating the preparation of grant work programs.

(2) Execute cooperative agreements and associated amendments, and grant awards and contracts. The commission will be responsible for monitoring

implementation of work programs and providing EPA with necessary financial and programmatic reporting information for non-agricultural/silvicultural surface and ground water work program elements.

(3) Implement the provisions of the EPA-approved Federal Clean Water Act, §319 management programs for non-agricultural/silvicultural surface and ground water NPS pollution.

(4) Complete, under current administrative procedures, all projects and programs for which grant funds have been awarded, under Federal Clean Water Act, §319. All future projects and programs implementing the EPA-approved Federal Clean Water Act, §319 management program for agricultural/silvicultural NPS pollution, and supported by §319 federal grants, will be administered by the board via a separate grant with EPA.

(5) Develop and maintain state guidance for all NPS pollution abatement projects other than agricultural or silvicultural NPS pollution projects as described by this MOU and SB 503.

(6) Coordinate with the board those compliance and enforcement actions relative to agricultural and silvicultural pollution.

(7) Provide to the board all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

(8) Provide the board with access to the commission's electronic database for all current agricultural waste management plans.

(9) Investigate and/or monitor compliance of all animal feeding operations (AFO), as defined under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations), other than those covered by subsection (c)(12) of this section.

(10) In response to a general complaint, investigate a facility to determine whether a permit or written authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) is required of the facility. If problems are documented or conditions exist which have the potential to adversely impact the environment, the facility owner or operator will have the option of being referred to the board for the purpose of obtaining a certified water quality management plan or obtaining authorization under Chapter 321 of this title from the commission. If the owner or operator of a facility requests referral to the board in order to obtain a certified

water quality management plan, the commission will send the board all pertinent documentation within five (5) working days of the investigation.

(11) Retain the responsibility for pursuing any enforcement action related to a violation of a commission rule or order which occurred prior to the facility operator/owner obtaining a certified water quality management plan.

(12) Pursue appropriate enforcement action in accordance with commission rules against any person referred in accordance with subsection (c)(10) of this section.

(c) The Texas State Soil and Water Conservation Board agrees to:

(1) Serve as the recipient of grants from EPA for agricultural and silvicultural NPS pollution projects as described in this MOU and SB 503 and funded through Federal Clean Water Act, §319.

(2) Coordinate directly with the EPA on matters relating to programmatic and financial issues of agricultural and silvicultural projects funded by the board through separate grants from EPA under Federal Clean Water Act, §319. Notify the commission in writing on any decision made that results in a change in the programmatic or financial status of a project.

(3) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the board by the Federal Clean Water Act, §319. Reports will be submitted in accordance with EPA requirements.

(4) Develop and maintain state guidance for agricultural or silvicultural NPS pollution as described by this MOU and SB 503.

(5) Provide to the commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the NPS Management Plan.

(6) Process citizen complaints related to agricultural and silvicultural NPS pollution in a manner that is consistent with the practices and standards of the commission.

(7) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural NPS pollution project/program activities as negotiated with EPA.

(8) Develop and maintain a current electronic database to track and document the proceedings of all water quality management plans and corrective action plans. Data recorded will include, but not be limited to, the identification of applicant(s), date of application for each plan, and approval date of each plan.

(9) Provide the commission with access to the board's electronic database for all water quality management plans. Software and equipment necessary to facilitate electronic transfer of data should be compatible with that of the commission.

(10) Refer to the commission for possible enforcement action any complaint or violation related to a certified water quality management plan for an AFO, a law or rule relating to agricultural or silvicultural nonpoint source pollution for which the board has determined that the necessary corrective action has not been taken. The board, upon referral, shall provide the commission documentation, including but not limited to, any original documents or "certified copies" of the original documents and hard copies of all photographs, sample analyses, correspondence, records and other documents relating to the complaint.

(11) Provide the commission with documentation (board rules, policies, guidance, etc.) for development, supervision, and monitoring of individual certified water quality management plans.

(12) Investigate complaints and monitor compliance of all AFOs operating under a certified water quality management plan or any facility covered by law or board rule relating to agricultural or silvicultural nonpoint source pollution.

(13) Investigate any complaint received by the board to determine whether such a facility will need to obtain authorization from the commission. Those facilities which are determined to require authorization from the commission under Chapter 321 of this title (relating to Control of Certain Activities by Rule) will be referred to the commission within five (5) working days from the date of investigation. If it is determined that the potential for a water quality violation exists at a facility that does not need authorization under Chapter 321 of this title, and the facility owner/operator does not implement a corrective action plan or does not file an application for a certified water quality management plan to resolve the complaint within 45 days of notification of the investigation outcome, the board shall automatically refer the facility to the commission for possible enforcement action, written authorization, or a permit.

(14) Refer to the Commission for possible enforcement action, complaints which were initially resolved by an agreement to develop a site specific certified water quality management plan for the involved facility and for which the facility owner/operator has not signed such a plan within ninety (90) days of the date their

request for planning assistance was approved by the Soil and Water Conservation District.

(15) Refer to the Commission for possible enforcement any complaint received for which there has been an immediate impact to aquatic life. Any investigation by the Board of a complaint related to an AFO holding a certified water quality management plan and for which a violation is documented that causes a situation in which exposure of contaminants to the air, water or land is affecting human health and safety, or will cause serious impact to the environment unless immediate actions are taken, shall be automatically referred to the Commission for possible enforcement action.

(d) Both parties agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals to be funded under Federal Clean Water Act, §319.

(2) Coordinate efforts in the development and submission of an annual work program to EPA for Federal Clean Water Act, §319, funding.

(3) Maintain each party's existing level of effort required by the EPA for the implementation of §319 programs/projects.

(4) Communicate and coordinate directly with each other and the EPA on matters relating to program/project planning and implementation of NPS pollution activities/projects funded by Federal Clean Water Act, §319.

(5) Provide required reports to the EPA on NPS pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

(6) Meet semi-annually to review and discuss the state's NPS water quality program and to refine agency coordination mechanisms.

(7) Work together to develop criteria for the development of water quality management programs that satisfy the state water quality standards as established by the Commission.

(8) Comply with all relevant state and federal statutes and procedures, and grant conditions, including financial audits, data quality assurance and quality control, and progress reports.

(9) Cooperate on activities related to the implementation of the "Texas State Management Plan for Agricultural Chemicals in Ground Water".

(e) General conditions:

(1) Term of MOU. The term of this MOU shall be from the effective date until termination.

(2) Notice of Termination. Any party may terminate this MOU upon a 90 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of the other agency can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the board and the commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective agency as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.

(6) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Adopted May 14, 1997

Effective June 9, 1997

§7.103. Memorandum of Understanding (MOU) between the Texas Natural Resource Conservation Commission (commission), the Texas Parks and

Wildlife Department (TPWD), and the Texas Department of Agriculture (TDA).

(a) Need for agreement.

(1) The commission, TPWD, and TDA seek to ensure that regulation of aquaculture is conducted in a manner that is both collaborative and responsible.

(2) The commission, TPWD, and TDA are concerned about issues relating to the raising of non-native aquatic species and the attendant concern about escape into natural ecosystems, including the introduction of disease into natural ecosystems.

(3) The commission, TPWD, and TDA are concerned about the quality of wastewater discharges from aquaculture facilities and their effects on receiving waters in reservoirs, streams, bays, and estuaries.

(4) The commission, TPWD, and TDA seek to establish an interagency review procedure for applications requesting authorization to discharge wastewater from aquaculture facilities.

(5) The commission, TPWD, and TDA seek to institute an effective system by which coordination and collaboration can be achieved to expedite enforcement actions in response to discharges from aquaculture facilities that are found to contain contagious disease that may impact state waters.

(6) Texas Water Code, §5.104, authorizes the commission to enter into an MOU with any other state agency.

(7) Texas Agriculture Code, §134.031, directs the commission, TPWD, and TDA to enter into an MOU for the regulation of matters relating to aquaculture.

(8) It is the intention of this MOU to provide a formal mechanism by which TPWD and TDA may review and provide feedback on aquaculture issues that are subject to regulation by the commission and that have the potential to affect natural resources and the regulation of aquaculture within the jurisdiction of TPWD or TDA. This exchange of information would assist the commission in making environmentally sound decisions and would improve coordination between the commission, TPWD, and TDA.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings.

(1) **Aquaculture** - The business of producing or rearing aquatic species (fish, crustaceans, and other organisms in either fresh or marine waters) utilizing ponds, lakes, fabricated tanks and raceways, or other similar structures.

(2) **Memorandum of Understanding (MOU)** - A formal document that clarifies and provides for the respective duties, responsibilities, or functions of the state agencies who are signatories on any matter or matters under their jurisdiction that are not expressly assigned to either one of them.

(3) **Application** - A request submitted by an aquaculture facility to the commission for authorization to discharge under an individual permit or registration; a Notice of Intent (NOI) to seek authorization under a general permit; or a request for an exemption.

(c) Responsibilities.

(1) The commission. The responsibilities of the commission relate primarily to its role as the natural resource agency with primary responsibility over conservation of natural resources and the protection of the environment, under Texas Water Code, §5.012.

(A) The commission has general jurisdiction over the state's water quality program including issuance of waste discharge permits, water quality planning, and enforcement of water quality rules, standards, orders, and permits.

(B) The commission seeks to maintain the quality of water in the state consistent with public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state, and to require the use of all reasonable methods to implement this policy.

(C) The commission is responsible for review of NOIs and requests for exemption, and review of applications and subsequent issuance of waste discharge permits, temporary orders, emergency orders, and registrations.

(2) TPWD. The responsibilities of TPWD relate primarily to its functions as a natural resource agency, including its resource protection functions, as designated by the Parks and Wildlife Code, §12.001.

(A) TPWD is the state agency with primary responsibility for protecting the state's fish and wildlife resources.

(B) TPWD provides recommendations that will protect fish and wildlife resources to local, state, and federal agencies that approve, permit, license, or construct developmental projects.

(C) TPWD provides information on fish and wildlife resources to any local, state, and federal agencies or private organizations that make decisions affecting those resources.

(D) TPWD regulates the taking, possession, and conservation of all kinds of marine life and other aquatic life.

(E) TPWD regulates the introduction of fish, shellfish, and aquatic plants into public water, under Texas Parks and Wildlife Code, §66.015(b).

(F) TPWD regulates the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a).

(G) TPWD is responsible for review of applications and subsequent issuance of permits relating to the importation, possession, and placing into state water of harmful or potentially harmful exotic species of fish, shellfish, or aquatic plants, under Texas Parks and Wildlife Code, §66.007(a).

(3) TDA. The responsibilities of TDA relate primarily to its functions as a regulatory agency that oversees the licensing and regulation of aquaculture operations under Texas Agriculture Code, Chapter 134.

(A) TDA is responsible for establishing recordkeeping requirements for commercial aquaculture facilities.

(B) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, to aquaculture facilities that produce and sell cultured species.

(C) TDA is responsible for the review of applications and subsequent issuance of aquaculture licenses under Texas Agriculture Code, Chapter 134, for fish farm vehicles selling cultured species from the vehicle.

(d) Provisions. This MOU is to facilitate the coordination and collaboration between the commission, TPWD, and TDA with regard to aquaculture facilities.

(1) Coordination procedures for NOIs, applications for registrations, and requests for exemptions.

(A) The executive director will provide copies of all NOIs, registration applications, and requests for exemption to TPWD and TDA within 14 days of the stamped date of receipt.

(i) Within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, each will complete its initial assessment, and by letter shall:

(I) provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or

(II) indicate that it has no comments; or

(III) request additional information from the commission.

(ii) If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the NOI, registration application, or request for exemption, by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.

(B) Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If the additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to the commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.

(C) Upon receipt of additional information from the executive director or the applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate by letter that it has no comments. If formal written comments or additional information is not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and will continue normal processing of the application.

(2) Coordination procedures for individual permit applications.

(A) The executive director will provide notification to TPWD and TDA of each application received which requests individual permit authorization for the discharge or disposal of wastewater from aquaculture facilities. Notification shall be transmitted within 14 days of a request received from either TPWD or TDA, or after the permit application has been assigned to a permit writer. Notification shall include a copy of the application and any comments, memoranda, letters, or other information incorporated in the application file following date of application receipt so that TPWD and TDA may complete an initial assessment of the proposed operation.

(i) Within 45 days of the date of receipt of notification by TPWD and TDA, each will complete its initial assessment, and by letter shall:

(I) provide the executive director with formal written recommendations designed to protect fish and wildlife resources; or

(II) indicate that it has no comments; or

(III) request additional information from the commission.

(ii) If the commission does not receive formal written comments from TPWD or TDA within 45 days of the date of receipt of the notification by TPWD and TDA, the executive director will conclude that there are no comments and continue normal processing of the application.

(B) Upon receipt of a request from TPWD or TDA for additional information, the executive director will immediately provide such information if it is contained in the application materials. If additional information is not included in the application materials, and if the information is necessary for TPWD or TDA to make its evaluation, the TPWD or TDA will request such additional information from the applicant, notify the executive director of this request, and ask the applicant to send a copy of its reply to commission. If the applicant does not provide the additional information to the TPWD or TDA within 30 days of a request, the TPWD or TDA may request that the executive director suspend processing of the application. If the executive director determines that this additional information is essential to complete the technical review, the executive director will determine whether it is appropriate to either suspend processing or deem the application incomplete and return it to the applicant.

(C) Upon receipt of additional information from the executive director or applicant, the TPWD and TDA will each have 30 days to complete its review and either make final recommendations or indicate that it has no comments. If formal written comments are not received from the TPWD or TDA within 30 days, the executive director will conclude that there are no comments and continue normal processing of the application.

(D) In coordination with the TPWD and TDA, the commission shall, within 120 days of the date of adoption of this MOU, establish guidelines for a site assessment environmental report for new commercial shrimp facilities located within the coastal zone. This report shall describe the existing environmental conditions at the proposed site including aquatic habitat and the conditions of water in the state into which a discharge is proposed. The report must provide an assessment of any potential impacts of wastewater discharges on sensitive aquatic habitats in the area of the proposed site, and significant impacts related to the construction or operation of the facility, and any mitigation actions proposed by the applicant.

(3) Coordination procedures applicable to all applications.

(A) The scope of review by TPWD may include, but is not limited to: consideration of especially sensitive receiving water conditions (aquatic habitat); impacts of the discharge on substrate (scouring, sedimentation) and water transparency; alteration of receiving water flow characteristics; existing or attainable biological and recreational uses; discharge rate and volume; and the likelihood of disease transmission. Comments may be addressed directly to the applicant by TPWD.

(B) The scope of review by TDA may include, but is not limited to, whether or not an application for the discharge or disposal of wastewater from aquaculture facilities should be approved.

(C) Formal written comments received from TPWD and TDA will be considered by the executive director in making decisions on applications requesting authorization for the discharge or disposal of wastewater from aquaculture facilities. TPWD=s and TDA=s comments will be evaluated in conjunction with all other applicable factors and will be incorporated by the executive director whenever it is consistent with the commission=s responsibilities. In accordance with the responsibilities of the commission as described in this document, the executive director reserves the right to determine the final disposition of applications. Upon making a preliminary recommendation regarding an application, the executive director will provide a response to TPWD and TDA that contains a copy of the initial draft permit, draft order, or final decision on an exemption or registration, and documentation providing an explanation on why any of TPWD=s and TDA=s comments were not incorporated. A final draft permit will be transmitted to the TPWD and the TDA.

(D) TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines identifying sensitive aquatic habitat within the coastal zone. TPWD will provide the guidelines it develops to the executive director and TDA. The executive director will consider the sensitive aquatic habitat guidelines when reviewing wastewater discharge applications for new aquaculture facilities or expansion of existing facilities in the coastal zone.

(E) TPWD shall, within 120 days of the date of adoption of this MOU, develop guidelines which list the type of information it needs from permit applicants, in addition to the commission wastewater permit application, in order to make a determination as to whether the proposed discharges will not adversely affect a bay, an estuary, or other water in the state. This additional information will be used during the review of the permit application. The TPWD will develop these guidelines with input from the stakeholders, the commission, and TDA. When the guidelines are finalized by TPWD, the agencies will make them available to stakeholders and applicants, and it is expected that the requested information will routinely be required as part of any wastewater discharge application. It is understood that occasions may arise when information beyond that which is listed in the guidelines may be required by TPWD.

(F) A new exotic species permit will not be issued by TPWD to any aquaculture facility that proposes to discharge wastewater until a commission waste discharge permit or other authorization has been issued or it is determined that the facility is exempted from such requirements.

(G) TDA will provide a copy of each aquaculture license application received to the commission and TPWD. An aquaculture license will not be issued by TDA to any aquaculture facility until a commission waste discharge permit or other authorization has been issued, or it is determined that the facility is exempted from such requirements.

(H) An interagency work group will be formed whose function will be to meet at least annually to address aquaculture issues relating to water quality, fish and wildlife resources, and receiving stream habitat and uses. This work group will serve to strengthen coordination of the commission, TPWD, and TDA activities related to the aquaculture industry and provide a conduit for shared information. The work group shall be composed of members of each agency and staffed at levels which are mutually agreeable as adequate to accomplish the stated goals. Each agency shall designate a primary contact person for this group and notify the other agencies of any changes to the primary contact person.

(I) The executive director and TPWD will coordinate studies related to applications that request authorizations for the discharge and disposal of wastewater. This may include on-site visits, receiving water assessments, sample collection, data analysis and related activities. Notification of these activities will be provided at least five days prior to the activity or as soon as is practicable. TPWD will notify the appropriate commission regional office and the Wastewater Permitting Section. The executive director will notify TPWD Resource Protection Regional Office and headquarters.

(J) The executive director and TPWD will strive to coordinate responses to emergency conditions, investigation of unauthorized waste discharges, and compliance inspections of aquaculture facilities. The executive director and TPWD will provide notice to each other regarding site inspections, so as to allow the other agency to participate if desired. Notifications of scheduled compliance inspections will be provided at least five days before the inspection. Notification of other activities will be provided as soon as practicable. TPWD will notify the commission regional office and the executive director will notify TPWD Resource Protection Regional Office.

(K) The executive director, TPWD, and TDA will strive to provide to each agency notification of public meetings, public hearings, and contested case hearings that relate to aquaculture applications.

(L) The executive director and TPWD will continue to develop and provide to applicants, permit conditions and, as appropriate, guidance related to disease, quarantine conditions, and emergency plans.

(e) Application Review Committee.

(1) Purpose.

(A) The application review committee (ARC) will review wastewater discharge authorization applications to ensure that the proposed discharges will not adversely affect a bay, an estuary, or other water in the state.

(B) The commission, TPWD, and TDA recognize the importance of integrating and coordinating among themselves to ensure that this ultimate goal, stated in subparagraph (A) of this paragraph, is achieved.

(C) In order to accomplish this, the ARC will function as a forum for discussion, answering questions and resolving differences, in an attempt to come to consensus regarding the controls needed to meet the ultimate goal.

(D) The ARC shall primarily be used as a means for settling unresolved disputes concerning aquaculture between the agencies.

(2) Membership.

(A) Each agency, the commission, TPWD, and TDA, will appoint one member to the ARC.

(B) Each agency shall appoint an alternate member of the committee.

(C) If a member or alternate is unable to attend a meeting, then that member or alternate will temporarily delegate his or her decision-making authority to other staff of that agency for that meeting only.

(D) At meetings of the ARC, technical specialists representing the agencies may participate in or contribute to the committee's discussions and other activities.

(E) Within two weeks of the adoption of this MOU, each agency will inform the other two agencies of the member and alternates.

(F) An agency may change its member or alternate by providing notice to each of the other members and alternates.

(3) Applicability. The ARC may consider any wastewater discharge application when disputes can not be resolved at the staff level.

(4) Functioning of the ARC.

(A) Meetings.

(i) Meetings will be on an as needed basis.

(ii) Any member of the ARC may request a meeting of the committee to consider one or more discharge applications.

(iii) Any meeting of the ARC to consider a specific discharge permit application should, whenever possible, be requested prior to the public notice of the application and preliminary decision.

(iv) It is the responsibility of the member requesting the meeting to notify all the members and alternates, and to establish a mutually agreeable meeting time and location.

(v) The meeting shall take place within seven calendar days of the request.

(vi) It is the responsibility of the agency requesting the meeting to take minutes of the meeting, to provide the minutes for review and comment by the other parties, and to provide a final version of the minutes which reflects any comments received.

(B) Decision making. The ARC will strive for unanimous consent on all decisions. In the event that unanimous agreement cannot be reached among members of the committee, the matter under consideration may be referred to officials of the agencies for resolution in an expeditious manner. The agencies agree that, while recognizing the areas of expertise and authority of the members, decision-making deliberations will focus on the agencies= mutual purpose of ensuring that the proposed discharge will not adversely affect a bay, an estuary, or other water in the state.

(C) Confidentiality. The ARC supports an open government policy and it is understood and agreed that information subject to public disclosure under the Texas Public Information Act shall be released upon written request.

(f) General conditions.

(1) The term of this MOU shall be from the effective date until termination of this agreement. Any amendment to the MOU shall be made by mutual agreement of the parties and shall be adopted by rule by all parties.

(2) Each party shall adopt the MOU by rule. All amendments shall also be adopted by rule. This MOU, and any subsequent amendment, shall become effective 20 days after the date on which the rule is filed in the Office of the Secretary of State.

(3) By signing this MOU, the signatories acknowledge that they are acting upon proper authority from their governing bodies.

(4) Reservation of rights. Each agency has and reserves the right to take whatever actions necessary to pursue or preserve any legal remedies available to that agency, and nothing in this MOU is intended to waive or foreclose any such right.

Adopted December 20, 2000

Effective January 9, 2001

§7.104. Memorandum of Understanding Between the Texas Water Development Board and the Texas Natural Resource Conservation Commission.

The commission adopts by reference the rules of the Texas Water Development Board in 31 TAC §371.5 (relating to Memorandum of Understanding between Texas Water Development Board and Texas Natural Resource Conservation Commission).

Adopted June 25, 1997

Effective July 22, 1997

§7.110. Memorandum of Understanding between the Texas Natural Resource Conservation Commission (commission) and the Texas Department of Public Safety (department).

(a) Need for agreement.

(1) Executive Order GWB 96-1, authorized by Senate Bill 178 (Chapter 34, Acts of the 74th Legislature, Regular Session, 1995), directs the commission to enter into an agreement with the department to provide for the establishment of an Inspection/Maintenance (I/M) program in accordance with Executive Order GWB 96-1, the Texas Clean Air Act (TCAA), and federal regulations.

(2) The commission and the department have agreed to develop this Memorandum of Understanding between these agencies. This agreement will supplement any previous Memoranda of Understanding between these two agencies or including these two agencies as participating parties.

(3) The agencies entering into this Memorandum of Understanding are establishing a formal mechanism by which they will coordinate I/M program planning, implementation, oversight, evaluation, and areas of primary responsibility. This Memorandum of Understanding also provides for a system by which information developed by the commission and the department may be exchanged for the benefit of the I/M program.

(b) Definitions. Unless specifically defined in the TCAA, 37 Texas Administrative Code §23.93 relating to Vehicle Emissions Inspection Requirements, the department Rules and Regulations Manual for Official Vehicle Inspection Stations and Certified Inspectors, 30 Texas Administrative Code §114.3 relating to Vehicle Emissions Inspection Requirements, or in other rules of the commission or the department, the terms used in this Memorandum of Understanding shall have the meanings commonly ascribed to them in the fields of air pollution control and vehicle inspection unless the context clearly indicates otherwise.

(c) Responsibilities.

(1) The commission:

(A) is the state agency responsible for conservation of natural resources;

(B) is the principal state authority on matters relating to the state's air quality; and

(C) shall have authority to make rules for the I/M program on matters that relate directly to:

(i) emissions reduction credits awarded by the United States Environmental Protection Agency (EPA);

(ii) computer modeling of the emissions reduction credits available to the Texas I/M Program;

(iii) data collection efforts required by 40 CFR Part 51 or the Texas I/M State Implementation Plan (SIP); and

(iv) responsibilities of the commission identified in this agreement.

(2) The department:

(A) is the state agency responsible for the safety of the motoring public;

(B) is the principal authority on matters relating to testing motor vehicles for safety and emissions compliance; and

(C) shall have authority to make rules for the implementation and operation of the I/M program.

(3) Both agencies agree to comply with the provisions of the Texas I/M SIP, including the most recent proposed revision signed by the Governor and submitted to the EPA on June 21, 1996, and the provisions of Executive Order GWB 96-1.

(4) It is neither the department's nor the commission's intention to direct the other agency's activities by rule or otherwise.

(d) Activities.

(1) In consultation with the department, the commission will:

(A) develop and design an I/M program for the State of Texas that satisfies the requirements of the Federal Clean Air Act and 40 CFR Part 51, Executive Order GWB 96-1 and other relevant legislation, including any amendments made to these requirements;

(B) develop, update, and amend the Texas I/M SIP and program rules as necessary to support state and federal requirements;

(C) evaluate the Texas I/M Program;

(D) develop criteria for emissions testing equipment required for use in emissions testing facilities;

(E) serve as the state=s liaison with the EPA;

(F) provide the department with timely reports and data analysis as requested; and

(G) set fees for the Texas I/M Program by rule.

(2) In consultation with the commission, the department will:

(A) implement the Texas Motorist=s Choice Program, including the adoption of necessary rules and procedures;

(B) actively enforce the Texas Motorist=s Choice Program;

(C) serve as the state=s liaison with participating emissions testing facilities;

(D) license emissions testing facilities;

(E) provide the commission with timely reports and data analysis as requested;

(F) implement Repair Effectiveness provisions of the Texas I/M SIP; and

(G) collect emissions testing and other applicable fees for the Texas Motorist=s Choice Program.

(3) In order for both agencies to fulfill their respective program responsibilities, both agencies agree:

(A) to share information necessary for maintaining program effectiveness, quality, and approvability by the EPA;

(B) to allow the EPA to audit their program records;

(C) to jointly determine, within 60 days of the effective date of this Memorandum of Understanding, a list of information to be shared along with a schedule and acceptable format for its provision. This list may be amended by mutual agreement of the agencies.

(D) to consult on an appropriate course of action if an analysis of program data indicates that the Texas Motorist=s Choice Program is not meeting commitments made in the Texas I/M SIP. Consultation requests may be made by the program director in either agency.

(e) Dispute resolution. In the event that the commission and the department are not able to decide on a mutually agreeable plan of action with regard to the terms of this agreement, each agency shall inform the other of its concerns, in writing, and make a good faith effort to address the major concerns of the other party.

(f) Reviews of and changes to the Memorandum of Understanding.

(1) This Memorandum of Understanding shall be reviewed and updated, at a minimum, every fifth year from its effective date. Either party may suggest amendments when it feels such changes are warranted.

(2) If a change in state or federal law or a change in the Texas SIP necessitates a change in this Memorandum of Understanding, then both the Director of the Mobile Source Division of the commission and the Director of the Vehicle Inspection and Emissions program of the department or their respective staffs will meet to work out a mutually agreeable amendment to the Memorandum of Understanding. If such an amendment is not possible, then either party may require dispute resolution under subsection (e) of this section.

(3) This Memorandum of Understanding may be terminated by either agency upon at least 30 days written notice.

Adopted November 20, 1996

Effective December 13, 1996

§7.111. Adoption of Memoranda of Understanding between the Texas Department of Mental Health and Mental Retardation and the Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas Department of Mental Health and Mental Retardation and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR ' 60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the Texas Department of Mental Health and Mental Retardation, here within called the MHMR, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which may be in the floodplains of the state; and

(6) Whereas, the MHMR shall represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the MHMR's structures and activities in the floodplains of the state; and

(7) Whereas, the MHMR shall establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the MHMR is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, §16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP; and

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the MHMR and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the MHMR and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the state's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the MHMR floodplain management plan, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the MHMR.

(4) Provide to the MHMR all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the MHMR those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the MHMR with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The Texas Department of Mental Health and Mental Retardation agrees to:

(1) Seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Ensure state appropriations requests for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the MHMR may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Prepare, maintain, and update an inventory of the MHMR's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) From the effective date of this MOU, maintain a permanent record system which shows the date, location, and amount of flood losses to MHMR's state-owned properties and structures.

(8) In the event of future flood damage to existing state-owned structures, evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The MHMR will work with the community to resolve any floodplain management issues.

(10) Provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the state's implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.

(2) Coordinate efforts in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.

(3) Communicate and coordinate directly with each other and FEMA on matters relating to program/project planning and implementation of MHMR activities/projects in the floodplains of the state.

(4) Meet semi-annually to review and discuss the state's floodplain management program.

(5) Work together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.

(6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.

(7) Cooperate on activities related to the implementation of the ATexas State Floodplain Management Plan for State Agencies.

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30-day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: Executive Director, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas Department of Mental Health and Mental Retardation, Attn: Executive Director, P.O. Box 12668 Austin, TX 78711-2668.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Adopted December 3, 1997

Effective January 1, 1998

§7.112. Adoption of Memoranda of Understanding between the Texas Department of Criminal Justice and the Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas Department of Criminal Justice and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR §60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the Texas Department of Criminal Justice, here within called the TDCJ, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which may be in the floodplains of the state; and

(6) Whereas, the TDCJ shall represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the TDCJ's structures and activities in the floodplains of the state; and

(7) Whereas, the TDCJ shall establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the TDCJ is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, §16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP.

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the TDCJ and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the TDCJ and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the state's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the TDCJ floodplain management plan, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the TDCJ.

(4) Provide to the TDCJ all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the TDCJ those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the TDCJ with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The Texas Department of Criminal Justice agrees to:

(1) Seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Ensure state appropriations requests for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such

facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the TDCJ may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Prepare, maintain, and update an inventory of the TDCJ's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) From the effective date of this MOU, maintain a permanent record system which shows the date, location, and amount of flood losses to TDCJ's state-owned properties and structures.

(8) In the event of future flood damage to existing state-owned structures, evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The TDCJ will work with the community to resolve any floodplain management issues.

(10) Provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the State's Implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.

(2) Coordinate efforts in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.

(3) Communicate and coordinate directly with each other and FEMA on matters relating to program/project planning and implementation of TDCJ activities/projects in the floodplains of the state.

(4) Meet semi-annually to review and discuss the state's floodplain management program.

(5) Work together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.

(6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.

(7) Cooperate on activities related to the implementation of the ATexas State Floodplain Management Plan for State Agencies.

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30-day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: Executive Director, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas Department of Criminal Justice, Attn: Executive Director, P.O. Box 99, Huntsville, TX 77340.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Adopted December 3, 1997

Effective January 1, 1998

§7.113. Adoption of Memoranda of Understanding between the Texas Parks and Wildlife Department and the Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas Parks and Wildlife Department and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR ' 60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source

by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the Texas Parks and Wildlife Department, here within called the TPWD, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which maybe in the floodplains of the state; and

(6) Whereas, the TPWD shall represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the TPWD's structures and activities in the floodplains of the state; and

(7) Whereas, the TPWD shall establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the TPWD is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, §16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP; and

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the TPWD and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the TPWD and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the state's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the TPWD floodplain management plan, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the TPWD.

(4) Provide to the TPWD all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the TPWD those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the TPWD with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The Texas Parks and Wildlife Department agrees to:

(1) Seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Ensure state appropriations requests for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the TPWD may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Prepare, maintain, and update an inventory of the TPWD's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) From the effective date of this MOU, maintain a permanent record system which shows the date, location, and amount of flood losses to TPWD's state-owned properties and structures.

(8) In the event of future flood damage to existing state-owned structures, evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The TPWD will work with the community to resolve any floodplain management issues.

(10) Provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the State's Implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.

(2) Coordinate efforts in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.

(3) Communicate and coordinate directly with each other and FEMA on matters relating to program/project planning and implementation of TPWD activities/projects in the floodplains of the state.

(4) Meet semi-annually to review and discuss the state's floodplain management program.

(5) Work together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.

(6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.

(7) Cooperate on activities related to the implementation of the ATexas State Floodplain Management Plan for State Agencies.@

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination. of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30-day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: Executive Director, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas Parks and Wildlife Department, Attn: Executive Director, 4200 Smith School Road Austin, TX 78744.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Adopted December 3, 1997

Effective January 1, 1998

§7.114. Adoption of Memoranda of Understanding between The Texas A&M University System and the Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas A&M University System and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and

procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR §60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the Texas A&M University System, here within called the TAMU, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which maybe in the floodplains of the state; and

(6) Whereas, the TAMU shall represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the TAMU's structures and activities in the floodplains of the state; and

(7) Whereas, the TAMU shall establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the TAMU is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, §16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP; and

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the TAMU and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the TAMU and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the state's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the TAMU floodplain management plan, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the TAMU.

(4) Provide to the TAMU all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the TAMU those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the TAMU with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The Texas A&M University System agrees to:

(1) Seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Ensure state appropriations requests for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the TAMU may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Prepare, maintain, and update an inventory of the TAMU's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) From the effective date of this MOU, maintain a permanent record system which shows the date, location, and amount of flood losses to TAMU's state-owned properties and structures.

(8) In the event of future flood damage to existing state-owned structures, evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The TAMU will work with the community to resolve any floodplain management issues.

(10) Provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the State's Implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

(1) Work together to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.

(2) Coordinate efforts in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.

(3) Communicate and coordinate directly with each other and FEMA on matters relating to program/project planning and implementation of TAMU activities/projects in the floodplains of the state.

(4) Meet semi-annually to review and discuss the state's floodplain management program.

(5) Work together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.

(6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.

(7) Cooperate on activities related to the implementation of the ATexas State Floodplain Management Plan for State Agencies.@

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30-day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: Executive Director, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas A&M University System, Attn: Executive Director, USMS 1586 College Station, TX 77843.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Adopted December 3, 1997

Effective January 1, 1998

§7.115. Adoption of Memoranda of Understanding between the Texas Low-Level Radioactive Waste Disposal Authority and the Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the Texas Low-Level Radioactive Waste Disposal Authority and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR §60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply, with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the Texas Low-Level Radioactive Waste Disposal Authority, here within called the TLLRWDA, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which maybe in the floodplains of the state; and

(6) Whereas, the TLLRWDA shall represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the TLLRWDA's structures and activities in the floodplains of the state; and

(7) Whereas, the TLLRWDA shall establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the TLLRWDA is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, §16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP; and

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the TLLRWDA and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the TLLRWDA and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the State's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the TLLRWDA floodplain management plan, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the TLLRWDA.

(4) Provide to the TLLRWDA all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the TLLRWDA those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the TLLRWDA with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The Texas Low-Level Radioactive Waste Disposal Authority agrees to:

(1) Seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Ensure state appropriations requests for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the TLLRWDA may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Prepare, maintain, and update an inventory of the TLLRWDA's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) From the effective date of this MOU, maintain a permanent record system which shows the date, location, and amount of flood losses to TLLRWDA's state-owned properties and structures.

(8) In the event of future flood damage to existing state-owned structures, evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The TLLRWDA will work with the community to resolve any floodplain management issues.

(10) Provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the State's Implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

- (1) Work together to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.
- (2) Coordinate efforts in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.
- (3) Communicate and coordinate directly with each other and FEMA on matters relating to program/project planning and implementation of TLLRWDA activities/projects in the floodplains of the state.
- (4) Meet semi-annually to review and discuss the state's floodplain management program.
- (5) Work together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.
- (6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.
- (7) Cooperate on activities related to the implementation of the ATexas State Floodplain Management Plan for State Agencies."

(e) General Conditions:

- (1) Term of MOU. The Term of this MOU shall be from the effective date until termination. of this agreement, as hereinafter provided.
- (2) Notice of Termination. Any party may terminate this MOU upon a 30-day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.
- (3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.
- (4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and

other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: Executive Director, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas Low-Level Radioactive Waste Disposal Authority, Attn: Executive Director, 7701 North Lamar Blvd, Austin, TX 78752.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Adopted December 3, 1997

Effective January 1, 1998

§7.116. Adoption of Memoranda of Understanding between the General Services Commission and the Texas Natural Resource Conservation Commission.

(a) This rule contains the memorandum of understanding (MOU) between the General Services Commission and the Texas Natural Resource Conservation Commission, which sets forth the coordination of program responsibility and procedural mechanisms for the National Flood Insurance Program (NFIP) minimum regulations.

(1) Whereas, under 44 CFR §60.12 of Rules and Regulations pertaining to the NFIP, the State of Texas is regarded as a community and therefore must comply, with minimum floodplain management standards established for future state developments within identified 100-year floodplains in order to participate in the Program; and

(2) Whereas, floodplain or 100-year floodplain, as these terms are used in the MOU, means any land area susceptible to being inundated by water from any source by that flood which has a one percent chance of being equaled or exceeded in any given year; and

(3) Whereas, a condition of receiving future federal disaster relief loans and obtaining flood insurance coverage for insurable state-owned structures depends on the state's compliance with the National Flood Insurance Act of 1968, as amended; and

(4) Whereas, the State of Texas has extensive and continuing programs for the construction of buildings, roads, and other facilities and annually acquires and disposes of lands in flood hazard areas, all of which activities significantly influence patterns of commercial, residential, and industrial development; and

(5) Whereas, the General Services Commission, here within called the GSC, is a state agency with direct responsibility for the planning, location, or construction of certain state buildings, roads, or other facilities which maybe in the floodplains of the state; and

(6) Whereas, the GSC may represent the state before the Federal Emergency Management Agency, (FEMA), or other federal agencies on matters relating to the GSC's structures and activities in the floodplains of the state; and

(7) Whereas, the GSC will cooperate with other state agencies to establish a floodplain management plan for all its existing and proposed structures and activities in the floodplains of the state; and

(8) Whereas, for purposes of this MOU, the GSC in conjunction with other state agencies is responsible for its structures and activities in the floodplains of the state as defined by the NFIP and related Regulations (44 CFR Chapter 1); and

(9) Whereas, the Texas Natural Resource Conservation Commission, here within known as the commission, is the state agency with primary responsibility for implementing the constitution and laws of the state related to floodplain management; and

(10) Whereas, the commission has previously been designated as the State Coordinating Agency for the NFIP under the Texas Water Code, §16.311 et seq.; and

(11) Whereas, under §16.318 of the Texas Water Code, the commission has statutory authority to adopt and promulgate reasonable rules which are necessary for the state's participation in the NFIP;

(12) Whereas, consistent with the intent of §16.311 et seq. of the Texas Water Code, the GSC and the commission are committed to the development and implementation of a coordinated floodplain management program for the state; and

(13) Whereas, consistent with Texas law and public policy, the GSC and commission mutually desire to protect and maintain a high quality environment and the health of the people of the state;

(14) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:

(b) The commission agrees to:

(1) Provide leadership in developing a broad and unified effort to encourage sound and economical utilization of the state's floodplains and, in particular, to lessen the risk of flood losses.

(2) Administer, for the state, the cooperation with FEMA in the planning and carrying out of state participation in the NFIP; however, the responsibility for qualifying in the NFIP belongs to any interested political subdivision.

(3) Monitor, through the executive director of the commission, implementation of the floodplain management plan developed by the GSC and other state agencies, and provide FEMA with necessary programmatic reporting information on such floodplain management plans established by the GSC in cooperation with other state agencies.

(4) Provide to the GSC all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing complaints related to floodplain management of the state's floodplains.

(5) Coordinate with the GSC and other state agencies those compliance and enforcement issues that FEMA may raise relative to floodplain management of the state's floodplains.

(6) Provide the GSC and other state agencies with access to the commission's electronic database for all current Texas communities participating in the NFIP and other information pertaining to designated floodplains.

(7) Develop and maintain state guidance for state agency structures and activities in the floodplains of the state.

(c) The General Services Commission agrees to:

(1) Cooperate with other state agencies to seek compliance with the FEMA's minimum floodplain management standards in the location and construction of its state-owned facilities within identified floodplains.

(2) Cooperate with other state agencies to consider flood hazards in state appropriations request for construction or modification of buildings, roads, or other facilities transmitted to the Legislative Budget Board and the Governor's Budget and Planning Office shall evaluate flood hazards when planning the modification to existing or the location of new facilities and, as far as practicable, shall consider the economic, safe and prudent use of floodplains in connection with such facilities.

(3) Cooperate with other state agencies to consider economic, safe, and prudent use of floodplains in the administration of state grant or loan programs involving the construction of buildings, structures, roads, or other facilities; and evaluate flood hazards in connection with such facilities in order to minimize the exposure of the above facilities and upstream and downstream properties to potential flood damage and the need for future state expenditures for flood protection and flood disaster relief.

(4) Cooperate with other state agencies to evaluate flood hazards in connection with lands or properties proposed for sale to other public entities or private interests and shall, to the extent permitted by state law, attach appropriate restrictions with respect to uses of the lands or properties for sale. In carrying out this paragraph, the GSC may make appropriate allowance for any estimated loss in sales price resulting from the incorporation of use restrictions in the sale documents.

(5) Cooperate with other state agencies to take flood hazards into account when evaluating plans, projects, and requests for loans or grants for programs which affect land use planning, including state permit programs, and shall encourage land use appropriate to the degree of hazard involved.

(6) Cooperate with other state agencies to prepare, maintain, and update an inventory of the GSC's respective state-owned structures and their contents which are located in identified 100-year floodplains. The inventory shall include the replacement costs and/or estimated fair market value of each structure and its contents.

(7) Cooperate with other state agencies to maintain a permanent record system which shows the date, location, and amount of flood losses to GSC's state-owned properties and structures.

(8) Cooperate with other state agencies to evaluate the economic benefits of incorporated flood mitigation measures into the rehabilitation of the structure such that FEMA's minimum floodplain management standards are met. Where physically

possible, economically beneficial, and environmentally feasible, federal disaster relief loans or grants received by the state will be used to implement mitigation measures to reduce the potential for future flood damage.

(9) Cooperate with other state agencies to provide the local participating community in which the modification to existing or new facility is located all necessary information and data for the community to document the project and to update FEMA on flood map changes that may be applicable. The GSC will work with the community to resolve any floodplain management issues.

(10) Cooperate with other state agencies to provide the executive director of the commission with documentation (rules, policies, guidance, etc.) for development, supervision, and monitoring of floodplain management plans for projects in the floodplains of the state.

(11) Cooperate with other state agencies to provide to the executive director of the commission information about modification to existing and new facilities in the floodplains of the state required for the annual evaluation of the State's Implementation of a State Floodplain Management Plan.

(d) Both Parties Agree to:

(1) Work together and with other state agencies to refine the existing process for screening and prioritization of project proposals located in the floodplains of the state.

(2) Coordinate efforts with other state agencies in the development and submission of reports as requested by FEMA to demonstrate compliance with the minimum NFIP regulations.

(3) Communicate and coordinate and with other state agencies and FEMA on matters relating to program/project planning and implementation of activities/projects in the floodplains of the state.

(4) Meet and with other state agencies semi-annually to review and discuss the state's floodplain management program.

(5) Work and with other state agencies together to develop criteria for the development of floodplain management programs, that satisfy the state floodplain management standards as established by the commission.

(6) Comply with all relevant state and federal statutes in addition to this MOU as it relates to the management of floodplains in the state.

(7) Cooperate on activities related to the implementation of the ATexas State Floodplain Management Plan for State Agencies.@

(e) General Conditions:

(1) Term of MOU. The Term of this MOU shall be from the effective date until termination. of this agreement, as hereinafter provided.

(2) Notice of Termination. Any party may terminate this MOU upon a 30-day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of both parties can this MOU be modified.

(3) Cooperation of Parties. It is the intention of the parties that the details of providing the services in support of this MOU shall be worked out, in good faith, by both parties.

(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which aggregately provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective party as follows: Texas Natural Resource Conservation Commission, Attn: Executive Director, P.O. Box 13087, Austin, TX 78711-3087 and to the General Services Commission, Attn: Executive Director, P.O. Box 13047, Capitol Station , Austin, TX 78711-3047.

(6) Effective Date of Agreement. This Agreement is effective upon execution by both parties. By signing this Agreement, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Adopted December 3, 1997

Effective January 1, 1998

§7.117. Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality.

The Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality, concerning cooperation and the division of jurisdiction between the agencies regarding wastes that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil, is adopted by reference as adopted in Texas Railroad Commission rule 16 TAC §3.30 (concerning Memorandum of Understanding between the Railroad Commission of Texas and the Texas Commission on Environmental Quality) effective May 1, 2012. If a copy of this document cannot be obtained from the internet, a copy can be requested from the Texas Commission on Environmental Quality, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

Adopted December 5, 2012

Effective December 27, 2012

§7.118. Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

The Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission regarding radiation control functions and mutual cooperation is adopted by reference as in complete text in Texas Department of Health rule 25 TAC §289.101 (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions). If a copy of this document cannot be obtained from the Internet, a copy can be requested from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

Adopted November 4, 1998

Effective November 30, 1998

§7.119. Memorandum of Understanding Between the Texas Department of Transportation and the Texas Commission on Environmental Quality.

The commission adopts by reference the rules of the Texas Department of Transportation in 43 TAC §§2.301 - 2.308 (relating to Memorandum of Understanding with the Texas Commission on Environmental Quality).

Adopted September 4, 2013

Effective September 26, 2013

§7.121. Adoption by Reference.

(a) The Texas Natural Resource Conservation Commission adopts by reference a memorandum of understanding between the commission and the Attorney General of Texas. The memorandum contains the commission's and the Attorney General's interpretation concerning intervention in the civil enforcement process under the Texas Solid Waste Disposal Act.

(b) Copies of the memorandum of understanding are available upon request from the Policy and Regulations Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

(c) The effective date of the memorandum of understanding is October 9, 1993.

Adopted August 11, 1999

Effective September 5, 1999

§7.122. Adoption of Memorandum of Understanding Between the Texas Natural Resource Conservation Commission (commission) and the Texas Department of Health (TDH) Regarding Emissions Related to Asbestos Demolition and Renovation Activities.

(a) The Texas Natural Resource Conservation Commission adopts a memorandum of understanding (MOU) between the Texas Department of Health (TDH) and the Texas Natural Resource Conservation Commission (TNRCC). The memorandum contains the agreement of the TNRCC to inspect asbestos disposal sites under its jurisdiction for conformance with 40 CFR Part 61, Subpart M, §61.154 and provide copies of inspection and enforcement documentation to the TDH. This effort will support the TDH in the regulation of emissions related to asbestos demolition and renovation activities per 40 CFR Part 61, Subpart M.

(b) Need for agreement. Section 1 of H.B. 1680, passed by the 73rd Legislature, 1993, transferred responsibility for emissions related to asbestos demolition and renovation activities to the Texas Department of Health (TDH). It also required the TDH and the Texas Natural Resource Conservation Commission (TNRCC) to adopt, by rule, a joint memorandum of understanding concerning the inspection of solid waste facilities that receive asbestos.

(c) The TDH will:

(1) Maintain overall responsibility for the asbestos demolition and renovation activities related to 40 Code of Federal Regulations (CFR), Part 61, Subpart M, §§61.140, 61.141, 61.143, 61.145, 61.146, 61.148, 61.150, 61.152, and 61.157.

(2) Negotiate with the Environmental Protection Agency (EPA) on the work to be performed in agreement with TNRCC.

(3) Provide funding to pay for initial inspector training in Fiscal Year 1995.

(4) Report to the EPA on the number of asbestos disposal site inspections performed by TNRCC.

(d) The TNRCC will:

(1) Maintain an up-to-date listing of municipal landfills authorized to accept regulated asbestos and provide an up-to-date copy to the TDH.

(2) Inspect asbestos disposal sites for conformance with 40 CFR Part 61, Subpart M, §61.154. The TDH will be notified within 30 days that an inspection has been performed by TNRCC and will be provided a copy of the inspection results within 60 days.

(3) Perform the number of inspections negotiated between the TDH and the EPA related to 40 CFR §61.154.

(4) Pursue all enforcement action related to §61.154 violations and provide notification to the TDH within 30 days of the inspection if a violation will be issued and provide to the TDH a copy of the Notice of Violation within 60 days.

(5) Provide copies of all applicable documentation related to 40 CFR §61.154 to: Texas Department of Health, Division of Occupational Health, 1100 West 49th, Austin, TX 78756. The memorandum contains the agreement of the TNRCC to inspect asbestos disposal sites under its jurisdiction for conformance with 40 CFR Part 61, Subpart M, §61.154 and provide copies of inspection and enforcement documentation to the TDH. This effort will support the TDH in the regulation of emissions related to asbestos demolition and renovation activities per 40 CFR Part 61, Subpart M.

(e) The effective date of the MOU is May 3, 1995.

Adopted August 11, 1999

Effective September 5, 1999

§7.123. Memorandum of Understanding between the Texas Natural Resource Conservation Commission and the Texas Department of Health concerning Special Wastes from Health Care Related Facilities.

(a) Authority concerning special wastes from health care related facilities. Texas Natural Resource Conservation Commission and the Texas Department of Health,

hereinafter "agencies," agree that pursuant to Texas Water Code, §5.012; Texas Health and Safety Code, Chapter 361; and Texas Health and Safety Code, §12.001, §12.032, §§81.081-81.092, §142.012, §241.026, §243.009, §244.009, §245.009, §245.010, §694.001, and §773.050, both agencies possess authority regarding special waste from health care related facilities. The agencies also agree that special expertise resides in each agency related to its area of authority and responsibility. The Texas Natural Resource Conservation Commission possesses authority over the treatment, handling, storage, processing and/or disposal of these wastes, including enforcement authority. The Texas Department of Health possesses authority over the approval of methods for the treatment of special waste from health care related facilities, identifying entities that are subject to its approval provisions and the orderly application of its approval provisions to the covered entities.

(b) Understanding concerning special waste from health care related facilities.

(1) The Texas Natural Resource Conservation Commission will:

(A) keep the Texas Department of Health informed of any need to amend the Texas Natural Resource Conservation Commission rules related to special waste from health care related facilities, and, if needed, will work closely with the Texas Department of Health to revise its rules;

(B) inform the Texas Department of Health of all treatment technologies, equipment or processes that fail to meet the Department of Health's Performance Standards;

(C) notify the Texas Department of Health concerning formal enforcement actions that involve treatment technologies, equipment or processes;

(D) allow the Texas Department of Health's approved methods for the treatment of special waste from health care related facilities to be used to process said waste in Municipal Solid Waste Type V facilities;

(E) allow special wastes from health care related facilities that have been treated by a Texas Department of Health approved process to be disposed of at Municipal Solid Waste Type I facilities; and

(F) apply the Texas Department of Health's standards for special waste from health care- related facilities.

(2) The Texas Department of Health will:

(A) keep the Texas Natural Resource Conservation Commission informed of any need to amend the Texas Department of Health Rules for Special Waste from Health Care Related Facilities, and, if needed, will work closely with the Texas Natural Resource Conservation Commission to revise its rules;

(B) provide the Texas Natural Resource Conservation Commission with a listing of the approved alternative treatment technologies by manufacturer, model identification, and other specifics as needed;

(C) upon request, provide the Texas Natural Resource Conservation Commission with documentation provided by the manufacturers of commercially-available technologies, equipment, or processes approved for the treatment of special waste from health care- related facilities; and

(D) provide the Texas Natural Resource Conservation Commission with a listing of the waste categories that may be treated with each approved alternative technology.

(c) Disclaimer. This Memorandum of Understanding is being entered into by the Texas Natural Resource Conservation Commission and the Texas Department of Health, and is not intended to affect the jurisdiction of any other governmental entities.

Adopted August 11, 1999

Effective September 5, 1999

§7.124. Natural Resource Trustees Memorandum of Understanding.

(a) Purpose. The Texas Risk Reduction Program (TRRP) rules (30 Texas Administrative Code (TAC) Chapter 350) and the preamble to those rules (24 TexReg 7436) reference certain interactions between the Texas Natural Resource Conservation Commission (TNRCC) and the natural resource trustees (Trustees) in regard to an ecological risk assessment and an ecological services analysis. The purpose of this memorandum of understanding (MOU) is to facilitate these interactions between the TNRCC and the Trustees in both these processes. In addition, the parties recognize the following as pertinent to the development of this MOU.

(1) The TNRCC is the agency of the State of Texas given the primary responsibility for implementing the constitution and laws of the state relating to the conservation of natural resources and the protection of the environment.

(2) As public trustees for natural resources, the Trustees have statutory authority to pursue claims for injury to, destruction of, or loss of natural resources as a result of a release of a hazardous substance or a discharge of oil, seek restoration or

replacement of such natural resources, and pursue recovery of reasonable assessment costs.

(3) Due to some dependent and even overlapping responsibilities, it is beneficial for the TNRCC and the Trustees to coordinate on the performance of certain tasks concerning the ecological risk assessment and ecological services analysis.

(4) Integration of natural resource damages considerations into risk reduction decisions may efficiently and cost effectively resolve certain natural resource damages liability and alleviate the need for further investigations or legal proceedings.

(b) Parties. The parties to this MOU are as follows:

(1) TNRCC, both as administrator of TRRP and a natural resource trustee;

(2) Texas Parks and Wildlife Department, solely as a natural resource trustee;

(3) Texas General Land Office, solely as a natural resource trustee;

(4) National Oceanic and Atmospheric Administration of the United States Department of Commerce, solely as a natural resource trustee; and

(5) United States Department of the Interior, solely as a natural resource trustee.

(c) Authorities.

(1) The Trustees enter into this MOU in accordance with the legal authorities provided to each Trustee by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 United States Code (USC) §§9601 et seq.; the Clean Water Act (CWA), 33 USC §§1251 et seq.; the Oil Pollution Act of 1990 (OPA), 33 USC §§2701 et seq.; the National Contingency Plan, 40 Code of Federal Regulations (CFR) Part 300; the Natural Resource Damage Assessment Regulations, 43 CFR Part 11; and 15 CFR Part 990; and any other applicable laws or authorities.

(2) The State of Texas Trustees also enter into this MOU in accordance with the legal authorities provided by the Texas Natural Resources Code, Oil Spill Prevention and Response Act of 1991, §40.107; the Texas Natural Resource Damage Assessment Regulations, 31 TAC Chapter 20; and any other applicable laws or authorities.

(3) The TNRCC additionally enters into this MOU in accordance with the legal authority provided to it by the Texas Water Code, §5.104 and Texas Health and Safety Code, §361.016.

(d) Acronyms.

- (1) COCs - chemicals of concern;
- (2) CFR - Code of Federal Regulations;
- (3) CERCLA - Comprehensive Environmental Response, Compensation, and Liability Act;
- (4) CWA - Clean Water Act;
- (5) LOAEL - lowest observed adverse effect level;
- (6) MOA - memorandum of agreement;
- (7) MOU - memorandum of understanding;
- (8) NOAEL - no observed adverse effect level;
- (9) OPA - Oil Pollution Act of 1990;
- (10) PCLs - protective concentration levels;
- (11) TAC - Texas Administrative Code;
- (12) TNRCC - Texas Natural Resource Conservation Commission;
- (13) TRRP - Texas Risk Reduction Program;
- (14) TNRCC PM - Texas Natural Resource Conservation Commission Remedial/Corrective Actions Project Manager; and
- (15) TTT B Trustee technical team.

(e) Definitions. Any words not specifically defined herein which are defined in 30 TAC §350.4, shall have the same meaning as defined in that section.

(1) **Person** - An individual, corporation, organization, government, or governmental subdivision or agency, business trust, partnership, association, or any other legal entity utilizing the TRRP rules or any other equivalent TNRCC rules.

(2) **Paragraph 7** - 30 TAC §350.77(c)(7) corresponds to a point in the Tier 2 screening-level ecological risk assessment where the initial risk estimate is refined based on the use of less conservative exposure assumptions. Paragraph 7 is a requirement that the person must perform as part of the Tier 2 screening-level ecological risk assessment if the assessment progresses past 30 TAC §350.77(c)(6). Paragraph 7 reads as follows: (The person shall:) A...justify the use of less conservative assumptions to adjust the exposure and repeat the hazard quotient exercise in paragraph (6) of this subsection, once again eliminating COCs that pose no unacceptable risk and adding comparisons to the LOAELs for those COCs indicating a potential risk (i.e., NOAEL hazard quotient >1); however, when multiple members of a class of COCs are present which exert additive effects, it is also appropriate to utilize an ecological hazard index methodology (if all COCs are eliminated at this point, the ecological risk assessment process ends and the items listed in paragraphs (8) - (9) of this subsection are not required); Any reference in this MOU to Paragraph 7 shall not only include the current 30 TAC §350.77(c)(7) but also the point at which the equivalent actions occur under other TNRCC risk reduction rules in the event that TRRP is amended or replaced and the specific reference is revised.

(3) **Trustees** - The federal agencies as designated by the President of the United States and the state agencies as designated by the Governor of the State of Texas pursuant to the OPA and CERCLA to act on behalf of the public as trustees of natural resources (e.g., water, air, land, wildlife).

(4) **Parties** - The signatories to this MOU as specified in subsection (b) of this MOU.

(f) **Trustee contacts.** The TNRCC Natural Resource Trustee Program (TNRCC Trustee) shall designate a primary TNRCC Trustee contact in writing to the other Trustees no later than ten calendar days after the effective date of this MOU. The TNRCC shall designate a secondary TNRCC Trustee contact in the initial notifications of both an ecological risk assessment and an ecological services analysis. Each of the other Trustees shall designate a primary and a secondary contact in writing to the other Trustees no later than ten calendar days after the effective date of this MOU. Initial notifications and all subsequent electronic mail correspondence shall be sent to both the primary and secondary contacts for each Trustee. The TNRCC Trustee shall send copies of pertinent documents to the primary contacts by regular mail (unless an alternate contact or method is identified in advance). A Trustee may change its primary or secondary contact by providing the other Trustees not less than ten calendar days written notice of such change.

(g) Ecological risk assessment process. The preamble to TRRP rules (24 TexReg 7455) states that the Trustees may choose to participate in the ecological risk assessment process to ensure that natural resources under their jurisdiction are adequately protected. The preamble also states that the TNRCC will notify the Trustees of affected property with chemicals of concern (COCs) which remain after a particular stage of development within the Tier 2 screening-level ecological risk assessment. The purpose of an ecological risk assessment is to characterize the ecological setting of the affected property, identify complete or reasonably anticipated to be completed exposure pathways and representative ecological receptors, scientifically eliminate COCs that pose no unacceptable risk, and develop protective concentration levels (PCLs) for selected ecological receptors where warranted. The parties agree that an ecological risk assessment should be conducted in a manner that is designed to result in the protection of ecological receptors that may be subject to management by federal and state agencies. Furthermore, the Trustees acknowledge that the potential for continuing injury to ecological resources should be negligible at sites where the remedial decisions were based on appropriate application of the proposed ecological risk assessment process.

(1) Initial notification. After the TNRCC learns through a person=s submittal that the ecological risk assessment at an affected property has progressed to Paragraph 7 and prior to approval of the ecological risk assessment by the TNRCC, the TNRCC Trustee shall provide timely notification to the other Trustees. The parties agree that further evaluation of ecological risk at an affected property is not warranted for purposes of making response or corrective action decisions under the TRRP rules when: 1) an appropriately applied ecological risk assessment is conducted consistent with the most recent TNRCC guidance on the subject at the time the ecological risk assessment is performed; and 2) the affected property does not progress to Paragraph 7.

(A) Method of initial notification. Notification by the TNRCC Trustee shall be provided via electronic mail, or via another mutually agreed upon method, to the primary and secondary contacts for each Trustee.

(B) Content of initial notification. The initial notification shall include the affected property name, location, status of the ecological risk assessment, and to the extent practical, the type of habitat, receptors at risk, COCs, and other relevant information necessary to allow the Trustees to evaluate their level of interest in the affected property. The TNRCC secondary contact, the TNRCC ecological risk assessor, and the deadline constraints of the TNRCC remedial/corrective actions project manager (TNRCC PM) shall also be provided in the initial notification.

(C) Trustee response to initial notification. A written response (electronic mail is acceptable) from each Trustee to the initial notification must be provided to both the primary and secondary TNRCC Trustee contacts within five

working days of the initial notification. This response shall specifically state the Trustee=s intent as to whether or not the Trustee chooses to participate in the ecological risk assessment process. In the event that any Trustee fails to respond within the five working days, the TNRCC will proceed as if the Trustee chose not to participate in the ecological risk assessment process for that affected property. Subsection (j) of this MOU explains how a Trustee may enter the process at a later date.

(2) Documents. After the timely receipt of a Trustee=s written intent to participate in the ecological risk assessment process, the TNRCC Trustee shall send copies of pertinent documents to the primary contacts by regular mail (unless an alternate contact or method is identified in advance). The TNRCC Trustee shall provide the primary and secondary contacts with electronic mail notification (unless an alternate method of notification has been mutually agreed to in advance) that the documents have been mailed. The TNRCC shall provide documents in a timely manner to ensure that the Trustees have the maximum time available for the review of documents. The TNRCC Trustee shall coordinate the review of ecological risk assessment work plans, reports, and other relevant documents with the Trustees.

(3) Trustee comments. Unless otherwise mutually agreed, the participating Trustees shall submit a unified set of written comments, if any, on the ecological risk assessment to the TNRCC ecological risk assessor. Trustee comments on ecological risk assessment documents must be technically defensible and relevant to the ecological risk assessment process.

(A) Deadline for comments and extensions.

(i) The Trustees shall have 20 calendar days from the date of postmark on any documents received to respond to both the TNRCC Trustee contacts with comments. This time period may be reduced to coincide with a deadline of less than 20 calendar days if necessary to meet the TNRCC PM=s deadline. In the event that a greater period of time is available, as determined by the TNRCC PM, an extended deadline shall be provided to the Trustees.

(ii) The Trustees may request an extension of the comment period of up to seven calendar days by writing (electronic mail is acceptable) to both the TNRCC Trustee contacts not less than three calendar days prior to the comment deadline. The TNRCC may, in its sole discretion, grant or deny such requests for extensions. The TNRCC will respond to all participating Trustees regarding such requests within 24 hours after receipt. If the Trustees do not receive a response from the TNRCC, the request for an extension is presumed to be denied.

(iii) In the event that any Trustee fails to provide comments within the prescribed deadline (including any extension), the TNRCC will proceed as if the Trustee has no comments.

(B) Reconciliation of comments. Prior to submitting comments to the TNRCC ecological risk assessor, the participating Trustees shall first coordinate all comments among themselves and provide a unified Trustee response through a mutually agreed upon Trustee representative. In the event that the TNRCC ecological risk assessor or TNRCC PM disagrees with any comments provided by the Trustees, the TNRCC will make diligent efforts to reach resolution between the parties. The TNRCC ecological risk assessor shall be responsible for coordinating the resolution of conflicting comments and shall schedule and coordinate comment resolution meetings as appropriate. Each participating Trustee=s primary contact shall be copied on all ecological risk assessment related correspondence to the person and shall be provided copies of all ecological risk assessment related correspondence from the person to the TNRCC. In the event that differences cannot be resolved, the Trustees maintain the right to independently provide comments to the TNRCC PM and/or person conducting the ecological risk assessment, either as a unified group of two or more Trustees or as a single Trustee.

(C) Recognition of comments. The TNRCC ecological risk assessor shall evaluate the Trustee comments and the TNRCC PM shall incorporate them into the TNRCC=s response to the person, as appropriate. The TNRCC shall use its regulatory authority to ensure that the incorporated Trustee comments are recognized in the development of the ecological risk assessment. If any Trustee comments are not incorporated, the Trustees shall be informed.

(4) Coordination of meetings. After the timely receipt of a Trustee=s written intent to participate in the ecological risk assessment process, the TNRCC shall, to the extent practical, coordinate with the Trustees concerning their availability at least ten calendar days in advance of meetings concerning the ecological risk assessment. The TNRCC shall provide the Trustees notification of the ecological risk assessment meetings via electronic mail or via another mutually agreed upon method. The TNRCC and the Trustees shall work together to ensure that all parties to this MOU which are participating in the ecological risk assessment process have input into that process and that reasonable timelines are established and met to ensure that Trustee involvement in the ecological risk assessment does not impede progression of the ecological risk assessment. In the event that any participating Trustee is unable to attend a meeting concerning the ecological risk assessment, any absent Trustee shall contact the other Trustees to obtain information regarding the meeting, and if necessary, shall contact the TNRCC ecological risk assessor within a reasonable time after the meeting to be briefed on the issues discussed.

(h) Ecological services analysis process. The TRRP rules require that the TNRCC consult with the Trustees prior to approval of a person=s request to conduct an ecological services analysis (30 TAC §350.33(a)(3)(B) and §350.77(f)(2)). Furthermore, TRRP rules also require the person to conduct any compensatory ecological restoration and other activities associated with the ecological services analysis with the approval of and in cooperation with the Trustees (30 TAC §350.33(a)(3)(B)). The parties agree that an ecological services analysis must be conducted whenever concentrations of COCs which exceed ecological PCLs are proposed to be left in place with the potential for continuing exposure in accordance with 30 TAC §350.33(a)(3)(B).

(1) Consultation on person=s request to perform an ecological services analysis. Although the following sets forth a separate process for consultation on a person=s request to perform an ecological services analysis, subsection (i) of this MOU explains how the processes under subsections (g) and (h)(1) of this MOU may be combined to achieve efficiencies.

(A) Notification. After the TNRCC receives a person=s written request to perform an ecological services analysis, the TNRCC Trustee shall provide timely notification to the other Trustees.

(i) Method of notification. Notification by the TNRCC Trustee shall be provided via electronic mail, or via another mutually agreed upon method, to the primary and secondary contacts for each Trustee.

(ii) Content of notification. The notification shall include the affected property name, location, the fact that the person is requesting to perform an ecological services analysis, and to the extent practical, the type of habitat, receptors at risk, COCs, and other relevant information necessary to evaluate the level of interest in the affected property. The TNRCC secondary contact, the TNRCC ecological risk assessor, and the deadline constraints of the TNRCC PM shall also be provided in the notification.

(iii) Trustee response to notification. A written response (electronic mail is acceptable) from each Trustee to the notification must be provided to both the TNRCC Trustee contacts within five working days of the notification. This response shall specifically state the Trustee=s intent as to whether or not the Trustee chooses to be consulted on the person=s request to perform an ecological services analysis. In the event that any Trustee fails to respond within the five working days, the TNRCC will proceed as if the Trustee chose not to participate in the consultation on the person=s request to perform an ecological services analysis. Subsection (j) of this MOU explains how a Trustee may enter the process at a later date.

(B) Documents and other information. After the timely receipt of a Trustee=s written intent to be consulted on the person=s request to perform an ecological services analysis, the TNRCC Trustee shall send copies of pertinent documents to the primary contacts by regular mail (unless an alternate contact or method is identified in advance). The TNRCC Trustee shall provide the primary and secondary contacts with electronic mail notification that the documents have been mailed.

(i) The TNRCC shall provide documents in a timely manner to ensure that the Trustees have the greatest time available for the review of documents. The TNRCC Trustee shall coordinate the review of such documents with the Trustees.

(ii) Any participating Trustee may make a request for additional information not less than three calendar days prior to the comment deadline, but such request must be very specific as to the type of information requested.

(C) Trustee comments. Unless otherwise mutually agreed, the participating Trustees shall submit a unified set of written comments, if any, on the person=s request to perform an ecological services analysis to the TNRCC ecological risk assessor. Trustee comments must be technically defensible and relevant to the ecological services analysis process. Such Trustee responses shall specifically include a statement of each participating Trustee=s recommendation for approval or disapproval of the person=s request to perform an ecological services analysis. If feasible, the Trustee responses shall also include any response action recommendations for the affected property. If the person=s request to perform an ecological services analysis is not recommended for approval by any Trustee, a reasoned explanation must be provided.

(i) Deadline for comments and extensions. The Trustees shall have 20 calendar days from the date of postmark on any documents received to respond to the TNRCC primary and secondary contacts with comments. The TNRCC may request that the Trustees respond within a shorter time. In the event that a greater period of time is available, as determined by the TNRCC PM, an extended deadline shall be provided to the Trustees. The Trustees may request an extension of the comment period of up to seven calendar days by writing (electronic mail is acceptable) to the TNRCC primary and secondary contacts not less than three calendar days prior to the comment deadline. The TNRCC may, in its sole discretion, grant or deny such requests for extensions. The TNRCC will respond to all participating Trustees regarding such requests within 24 hours after receipt. If the Trustees do not receive a response from the TNRCC, the request for an extension is presumed to be denied. In the event that any Trustee fails to provide comments within the prescribed deadline (including any extension), the TNRCC will proceed as if the Trustee concurs with the TNRCC=s decision on the person=s request to perform an ecological services analysis.

(ii) Reconciliation of comments. Prior to submitting comments to the TNRCC, the participating Trustees shall first coordinate all comments among themselves and provide a unified Trustee response through a mutually agreed upon Trustee representative. In the event that the TNRCC ecological risk assessor or TNRCC PM disagrees with any comments provided by the Trustees, the TNRCC shall make diligent efforts to reach resolution between the parties. The TNRCC ecological risk assessor shall be responsible for coordinating the informal resolution of conflicting comments and shall schedule and coordinate comment resolution meetings as appropriate. Each participating Trustee=s primary contact shall be copied on all ecological services analysis related correspondence to the person and shall be provided copies of all ecological services analysis related correspondence from the person to the TNRCC. In the event that differences cannot be resolved, the Trustees maintain the right to independently provide comments to the TNRCC PM and/or person requesting to conduct the ecological services analysis, either as a unified group of two or more Trustees or as a single Trustee.

(iii) Recognition of comments. The TNRCC ecological risk assessor shall evaluate the Trustee comments and the TNRCC PM shall incorporate them into the TNRCC=s response to the person, as appropriate. The TNRCC PM shall inform the person in writing of the results of the TNRCC/Trustee consultation and shall copy the Trustees on such correspondence. If any Trustee comments are not incorporated, the Trustees shall be informed.

(D) Coordination of meetings. After the timely receipt of a Trustee=s written intent to participate in the consultation on the person=s request to perform an ecological services analysis, the TNRCC shall, to the extent practical, coordinate with the Trustees concerning their availability at least ten calendar days in advance of meetings concerning the person=s request to perform an ecological services analysis. The TNRCC shall provide the Trustees notification of these meetings via electronic mail or via another mutually agreed upon method. The TNRCC and the Trustees shall work together to ensure that all parties to this MOU which are participating in the ecological services analysis process have input into that process and that reasonable time lines are established and met to ensure that Trustee involvement in the ecological services analysis does not impede progression of the ecological services analysis. In the event that any participating Trustee is unable to attend a meeting concerning the ecological services analysis, any absent Trustee shall contact the other Trustees to obtain information regarding the meeting and if necessary, shall contact the TNRCC ecological risk assessor within a reasonable time after the meeting to be briefed on the issues discussed.

(2) Ecological services analysis cooperation and approval process. To enhance the coordination between the Trustees and the person and provide efficiencies

in the development of the ecological services analysis, the Trustees will initiate a dialogue with the person in a timely manner to establish the nature and scope of a cooperative ecological services analysis. The Trustees will maintain open communications with the person and actively participate in the entire ecological services analysis.

(A) Trustee interaction. Unless otherwise specified herein, cooperation between the Trustees in the development, review, and approval of the ecological services analysis shall be consistent with the September 1995 Memorandum of Agreement between the Trustees. The Trustees shall strive for consensus on all decisions related to the development and implementation of the ecological services analysis. The Trustees shall coordinate their efforts to ensure a single unified Trustee position is provided on all written comments/statements to the person.

(B) Trustee technical team (TTT). For each affected property involving significant participation by two or more Trustees, the Trustees shall create a TTT to which a representative shall be designated by each Trustee. The Trustees agree to designate representatives to the TTT who, at a minimum, have: 1) the level of knowledge and expertise needed to effectively guide the ecological services analysis process; and 2) the level of authority necessary to make decisions on issues presented to the TTT. The TTT shall be responsible for, among other things, communications with the person, outlining the scope and objectives of the ecological services analysis with the person, identifying additional data needs, reviewing and approving ecological services analysis reports and work plans, overseeing implementation of such plans, and certifying the satisfactory completion of the compensatory ecological restoration, where appropriate. The TTT may take any other actions as necessary to carry out its duties under this MOU. The TNRCC Trustee shall act as Trustee team leader unless otherwise agreed to by all Trustees. The Trustee team leader shall be responsible for, among other things, the coordination and monitoring of the progress of the development of technical comments, and implementation of the ecological services analysis. The Trustee team leader shall also be responsible for the scheduling of meetings of the TTT and notifying TTT members of those meetings on a timely basis, preparing agendas for those meetings, acting as a central contact point for the TTT, and establishing and maintaining records and relevant documents related to the ecological services analysis. The Trustee team leader may delegate any of his or her duties to another Trustee with the concurrence of the TTT. The duties of the Trustee team leader do not provide the Trustee team leader with any decision-making rights beyond those normally held by each Trustee member of the TTT.

(i) Approval and performance of the ecological services analysis. The Trustees agree that the TTT shall act timely to either approve the ecological services analysis or disapprove with comments which may include a recommendation for additional work. This process shall be repeated each time the

revised ecological services analysis report is resubmitted until the ecological services analysis report is approved, rejected, or is withdrawn. If the TTT cannot reach agreement with the person or the person fails to perform the ecological services analysis as proposed, the Trustees shall refer the affected property back to the TNRCC for further decisions on remedial/corrective action. The TNRCC PM shall be kept informed of all TTT activities, shall be copied on all comments, and shall be invited to participate in all meetings with the person concerning performance of the ecological services analysis.

(ii) Approval and completion of the compensatory ecological restoration. Upon reaching a final decision on all reports which involve compensatory ecological restoration, the Trustees shall provide a written statement to the person and the TNRCC PM of the Trustees= final decision. When the compensatory ecological restoration is completed consistent with Trustee-approved criteria, the TTT shall also provide a written statement to both the person and the TNRCC PM certifying satisfactory completion of the compensatory ecological restoration. If the compensatory ecological restoration is not completed to the Trustees= satisfaction, the Trustees shall refer the affected property back to the TNRCC for further decisions on remedial/corrective action.

(C) Agreement. Where determined appropriate by the Trustees, the Trustees shall pursue a written agreement with a person conducting an ecological services analysis to govern Trustee coordination with that person. The agreement will include issues such as the payment of Trustees= costs associated with the ecological risk assessment and ecological services analysis processes, public participation requirements, and a mechanism for addressing natural resource damages liability, as applicable.

(D) Dispute resolution. In the event of a dispute between any of the parties concerning activities under subsection (h) (2) of this MOU, the Trustee contacts shall attempt to resolve the dispute informally. If the dispute is not resolved informally at the Trustee contact level, any Trustee may invoke the following dispute resolution procedures by sending notice to all primary Trustee contacts involved in the dispute. Such notice must include a brief description of the disputed issue(s) and acceptable alternatives for resolution. The Trustee contacts shall elevate the dispute to the appropriate first tier agency representatives with successive elevations to second tier agency representatives and third tier agency representatives as necessary.

(i) Within four calendar days after receiving the notice invoking dispute resolution, the Trustees involved in the dispute shall designate the names and titles of their first, second, and third tier agency representatives via electronic mail (or another mutually agreed upon method) to all primary Trustee contacts involved in the dispute.

(ii) Within 14 calendar days after receiving the notice invoking dispute resolution, the first tier agency representatives involved in the dispute shall discuss the disputed issue(s), assisted by other technical or legal staff as appropriate. If the disputed issue(s) cannot be resolved by the first tier agency representatives within the 14 calendar days after receiving the notice, the disputed issue(s) shall be elevated by the first tier agency representatives to the second tier agency representatives within five calendar days after the expiration of the discussion period. The second tier agency representatives shall have 14 calendar days within which to discuss and attempt to resolve the disputed issue(s), assisted by other technical or legal staff as appropriate. If the disputed issue(s) cannot be resolved by the second tier agency representatives within the 14 calendar days after it is elevated, the disputed issue(s) shall be elevated by the second tier agency representatives to the third tier agency representatives within five calendar days after the expiration of the discussion period. The third tier agency representatives shall have 14 calendar days within which to discuss and attempt to resolve the disputed issue(s), assisted by other technical or legal staff as appropriate. If the third tier agency representatives cannot resolve the dispute, then the dispute resolution process is terminated and each agency may proceed independently according to its rights under state and federal law.

(iii) Each Trustee may automatically obtain one 14-calendar-day extension in this process by sending notice of such to all primary Trustee contacts involved in a particular dispute. Additionally, the 14-calendar-day period may be extended by mutual agreement of all Trustees involved in a particular dispute.

(3) Waiver of a Trustee=s role in the ecological services analysis process. If a Trustee has waived its involvement in the ecological services analysis process outlined in this MOU (either specifically or through failure to respond to notification within the required time frame) and has not reentered the process pursuant to subsection (j) of this MOU, then the Trustee has waived its role in the ecological services analysis process as set forth by TRRP rules, specifically 30 TAC §350.33(a)(3)(B) and §350.77(f)(2).

(i) Efficiencies. The parties recognize that due to the nature of a person=s submittal, efficiencies may be gained by combining the notification and other processes under subsections (g) and (h)(1) of this MOU. Any such combined notification shall be clearly identified as such and shall serve to satisfy both of these subsections.

(j) Trustee re-entry and early exit from process.

(1) If a Trustee has waived its involvement in the ecological risk assessment or ecological services analysis process (either specifically or through failure to respond to notification within the required time frame), the Trustee may resume its

involvement in the process by advising the TNRCC Trustee in writing (electronic mail *not* acceptable) of its intent to participate in subsequent notification and coordination activities. However, upon a deferred entry or a re-entry to the ecological risk assessment or ecological services analysis processes, the Trustee involvement in the TRRP process shall be prospective only and may not challenge previous decisions regarding the ecological risk assessment and ecological services analysis. Additionally, a Trustee may not challenge joint decisions made within the TRRP process on the ecological risk assessment or ecological services analysis during that Trustee=s prior participation in the process.

(2) Likewise, a Trustee participating in the ecological risk assessment or ecological services analysis process may decline future involvement by advising the TNRCC Trustee in writing (electronic mail *not* acceptable) of its intent not to participate in future notification and coordination activities.

(3) In the event that all the Trustees have waived involvement in the ecological services analysis process (either specifically or through failure to respond to notification within the required time frame), the TNRCC Trustee shall provide oversight of and approval or disapproval with comments on the compensatory ecological restoration and other activities associated with the ecological services analysis.

(k) Affected property activities. The Trustees shall promptly notify the TNRCC PM prior to initiating any Trustee activities (e.g., site visits) on an affected property and shall coordinate with the TNRCC PM on any such activities which may affect the remedial/corrective action at an affected property.

(l) September 1995 Memorandum of Agreement. Any Trustee activities, issues, or responsibilities not specifically addressed herein, shall be governed by the September 1995 Memorandum of Agreement between the Trustees.

(m) Reservation of rights. Except as specifically stated herein, this MOU does not compromise or affect any legal rights of the parties, nor does it narrow the scope of any party=s authority or jurisdiction. This MOU does not compromise or affect any rights of the parties with regard to natural resource damage actions.

(n) Third party challenges or appeals. The rights and responsibilities contained in this MOU may not be the basis of any third party challenge or appeal. Nothing in this MOU creates any rights or causes of action in persons not parties to this MOU.

(o) Appropriated funds. Nothing in this MOU shall be construed as obligating the United States, the State of Texas, or any public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

(p) Termination and amendment. This MOU shall terminate by written agreement of all the parties. Any party may withdraw from this MOU for any reason. In the event that any party withdraws from the MOU, it must provide written notice to the other parties. In the event of such withdrawal, the MOU remains in full force and effect for the remaining parties. This MOU may also be amended by written agreement of all the parties. Any termination, withdrawal, or amendment must be preceded by appropriate rulemaking.

(q) Effective date and signatures. This MOU may be signed by each of the parties in two or more counterparts which together shall constitute one and the same document and shall become effective upon the date of last signature.

Date Adopted: April 4, 2001

Date Effective: April 26, 2001

§7.125. Adoption of Memorandum of Understanding among the Office of the Secretary of State, Railroad Commission of Texas (RRC), Texas Historical Commission (THC), Texas General Land Office (GLO), Texas Natural Resource Conservation Commission (TNRCC), and Texas Public Utility Commission (PUC).

(a) This rule contains the memorandum of understanding (Memorandum) made and entered into among the Office of the Secretary of State, the Railroad Commission of Texas (RRC), the Texas Historical Commission (THC), the Texas General Land Office (GLO), the Texas Natural Resource Conservation Commission (TNRCC), and the Texas Public Utility Commission (PUC) regarding the permitting of natural gas pipelines that cross the border between Texas and Mexico.

(1) Whereas, the Office of the Secretary of State recognizes, with respect to building natural gas pipelines that cross the border between Texas and Mexico, that the energy needs of the citizens of Texas and Mexico can be met more efficiently if the permitting process in the State of Texas were organized in a manner that reduces the number of agency contacts a potential permittee must make and assures that the potential permittee secures all appropriate permits.

(2) Whereas, the Office of the Secretary of State, on the advice and consent of the other parties to this Memorandum, further recognizes the RRC is particularly well-equipped to serve as the central state agency that reduces the number of agency contacts a potential permittee must make and assures that the potential permittee secures all appropriate permits for building natural gas pipelines that cross the border between Texas and Mexico.

(3) Whereas, the RRC is responsible for issuing hydrostatic test water discharge permits, issuing opinions to the United States Army Corps of Engineers

(USACE) concerning Clean Water Act, §401, water quality certification, and assuming responsibility for reviewing USACE, Section 10, navigability clearance, with respect to building natural gas pipelines that cross the border between Texas and Mexico.

(4) Whereas, the THC in its role as the state historic preservation office, is responsible for ensuring that adverse effects on historic properties are avoided or minimized with respect to building natural gas pipelines that cross the border between Texas and Mexico.

(5) Whereas, with respect to building natural gas pipelines that cross the border between Texas and Mexico, the GLO is responsible for issuing easements for portions of the Rio Grande River that have not been deeded to the United States government.

(6) Whereas, the TNRCC is responsible for issuing permits to withdraw United States-owned water from the Rio Grande River, its tributaries, and any other Texas stream for hydrostatic testing and permits for operations of certain pipeline facilities which emit air contaminants with respect to building natural gas pipelines that cross the border between Texas and Mexico.

(7) Whereas, the PUC does not issue permits with respect to building natural gas pipelines that cross the border between Texas and Mexico, but may in some instances play a role in such projects.

(8) Whereas, the RRC, THC, GLO, TNRCC, and PUC recognize that, with respect to building natural gas pipelines that cross the border between Texas and Mexico, the permit requirements from the various state agencies are necessary to protect public health and safety and cultural resources.

(9) Whereas, the RRC, THC, GLO, TNRCC, and PUC fully concur with the Office of the Secretary of State that, with respect to building natural gas pipelines that cross the border between Texas and Mexico, the energy needs of the citizens of Texas and Mexico can be met more efficiently if the permitting process in the State of Texas were organized in a manner that reduces the number of agency contacts a potential permittee must make and assures that the potential permittee secures all appropriate permits.

(10) Now, therefore, in consideration of the benefits to the State of Texas, the Office of the Secretary of State, the RRC, THC, GLO, TNRCC, and PUC enter into this Memorandum and hereby agree as follows.

(A) The RRC, THC, GLO, and TNRCC shall prepare an inventory of all known permits each agency may require with respect to building natural gas

pipelines that cross the border between Texas and Mexico. The inventory shall include a list of each agency's permits identified by name and/or number, and identify the appropriate staff contact person by name, phone number, and e-mail address for each permit.

(B) The RRC, THC, GLO, TNRCC, and PUC mutually agree the RRC is designated as the distributor for applicable state permit applications, initial screener of completed applications for completeness, and facilitator among the other parties to this Memorandum for applicants who wish to build natural gas pipelines that cross the border between Texas and Mexico. The RRC, THC, GLO, TNRCC, and PUC further agree to encourage other relevant state and federal agencies to engage in this process as the necessity for and convenience provided by their participation becomes apparent.

(C) Within 30 days of the effective date of this Memorandum, RRC shall implement a system and designate personnel to distribute all notices of permit requirements, permit applications, and instructions for permit submission to persons who wish to build natural gas pipelines that cross the border between Texas and Mexico.

(b) This Memorandum shall be effective as of the date of the last signature on the document. Any party may withdraw from this Memorandum at any time upon 30 days written notice to the other parties.

Adopted September 26, 2001

Effective October 17, 2001

§7.126. Memorandum of Understanding Between the Texas Department of Licensing and Regulation and the Texas Commission on Environmental Quality.

The Memorandum of Understanding between the Texas Department of Licensing and Regulation (TDLR) and the Texas Commission on Environmental Quality (commission) regarding the coordination of efforts of the TDLR, the field offices of the commission, and groundwater conservation districts, concerning investigative procedures for referrals of complaints regarding abandoned and/or deteriorated wells is adopted by reference as in complete text in 16 TAC §76.1011 (relating to Memorandum of Understanding between the Texas Department of Licensing and Regulation and the Texas Commission on Environmental Quality). If a copy of this document cannot be obtained from the Internet, a copy can be requested from the Texas Commission on Environmental Quality, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

Adopted February 23, 2005

Effective March 16, 2005

§7.127. Memorandum of Understanding between the Texas Commission on Environmental Quality and the Texas Department of Transportation.

(a) Background and Purpose.

(1) Texas Water Code (TWC), §26.053, relating to the creation of the Don't Mess with Texas Water Program (Program), was enacted by House Bill 451, 82nd Legislature, 2011 and became effective September 1, 2011. Under TWC, §26.053, the Texas Commission on Environmental Quality (TCEQ) is required to establish a program to prevent illegal dumping that affects the surface waters of the state by placing signs on major highway water crossings that notify drivers of a toll-free number, established by the TCEQ, to call to report illegal dumping. TWC, §26.053(d) requires the Texas Department of Transportation (TxDOT) to cooperate with TCEQ in the placement of the signs along state highways and TWC, §26.053(e) requires TxDOT to post such a Program sign when the previously posted sign identifying the crossing or prohibiting dumping at the crossing is scheduled to be replaced. Under state law, TxDOT is responsible for posting signs along state highways under its jurisdiction. Counties, cities, and other local governments are responsible for placing signs along highways, roads, and streets under their respective jurisdictions.

(2) The purpose of this Memorandum of Understanding is to develop a framework of cooperation between TCEQ and TxDOT for the implementation of TWC, §26.053.

(b) TCEQ shall:

(1) identify major highway water crossings on which signs are to be placed under subsection (c)(1) of this section, prioritize those locations for the placement of the signs, giving priority to the locations that will have the greatest impact on preventing illegal dumping that affects the surface waters of the state, and provide a prioritized list of those locations to TxDOT;

(2) coordinate with TxDOT on the design and quantity of Program signs and a timeline for the fabrication and installation of Program signs on the state highway rights of way; and

(3) coordinate with local governments concerning their participation in the Program and provide information about the requirements of the location of, and a local government's obligation to pay for, install, and maintain, a Program sign on a highway under the jurisdiction of the local government and the requirement of obtaining a license to use TxDOT's registered "Don't Mess with Texas®" slogan.

(c) TxDOT shall:

(1) provide and install on state highways under the jurisdiction of TxDOT a total of not more than 20 Program signs, in accordance with the priority list of locations provided under subsection (b)(1) of this section, as soon as practicable and before those signs are scheduled to be replaced, as required by TWC, §26.053(e);

(2) coordinate with TCEQ on the design and quantity of Program signs and a timeline for the fabrication and installation of Program signs on the state highway rights of way;

(3) coordinate with TCEQ and local governments on the placement of any additional signs paid for by local governments and placed along state highways, roads, and streets under the jurisdiction of the local governments;

(4) work with each local government that is approved by TCEQ and TxDOT to provide, install, and maintain a Program sign for the local government to obtain a license for the use of the Don't Mess with Texas® slogan on the Program sign; and

(5) maintain the Program signs that are placed along state highways under the jurisdiction of TxDOT.

(d) General conditions.

(1) A modification of this agreement must be made by mutual consent of the parties and only by the issuance of a written modification, signed and dated by authorized officials.

(2) This agreement is effective upon execution of both agencies.

Adopted December 5, 2012

Effective December 27, 2012