

The Texas Commission on Environmental Quality (commission) adopts amendments to §§305.2, 305.41 - 305.44, 305.47, 305.49, and 305.50. Sections 305.2 and 305.50 are adopted *with changes* to the proposed text as published in the September 27, 2002 issue of the *Texas Register* (27 TexReg 9108). Sections 305.41 - 305.44, 305.47, and 305.49 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the adopted rules is to implement House Bill (HB) 2912, Article 5, §5.06, and Article 9, §9.07, 77th Texas Legislature, 2001. HB 2912 amended Texas Health and Safety Code (THSC), §361.082 and Texas Water Code (TWC), §7.031. The commission now has the authority, consistent with federal law, to issue orders for “the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.” Until the change made by the 77th Legislature, owners and operators of hazardous waste management units and facilities could only apply for, and the commission could only issue, post-closure permits. HB 2912 became effective on September 1, 2001.

The commission proposes to amend Chapter 305 to provide streamlined applications specific to post-closure orders and post-closure permits. These adopted amendments will support the commission’s efforts to provide greater regulatory flexibility by identifying the specific information required for post-closure applications.

Corresponding amendments are also adopted for 30 TAC Chapter 37, Financial Assurance; 30 TAC Chapter 39, Public Notice; 30 TAC Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment; 30 TAC Chapter 80, Contested Case Hearings; and 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, in this issue of the *Texas Register*. The adopted amendment to Chapter 37 will simply add the definition of a post-closure order to that chapter. The adopted amendments to Chapter 39 will add public participation requirements applicable to post-closure orders, during three stages of the post-closure ordering process and when the orders are amended. Chapter 55 will detail how the agency processes public comments. An opportunity for a hearing will also be provided upon request by the executive director, the applicant, and the Public Interest Counsel, in accordance with the amendment adopted in Chapter 80. The adopted amendments to Chapter 335 will adopt certain requirements of the October 22, 1998 federal regulations and provide greater flexibility for the commission and the regulated community while at the same time ensuring that environmental risk at such facilities is adequately addressed.

Finally, the adopted rules will allow the commission to issue an order in lieu of a permit for post-closure care of interim status units and give the commission the discretion to approve corrective action requirements as an alternative to closure requirements when certain environmental conditions are met. The adopted rules will be consistent with federal regulations promulgated by the United States Environmental Protection Agency (EPA) in the October 22, 1998 issue of the *Federal Register* (63 FR 56509).

SECTION BY SECTION DISCUSSION

Administrative changes have been made throughout the sections for consistency with other commission rules and *Texas Register* requirements.

Subchapter A - General Provisions

Adopted §305.2, Definitions, includes post-closure orders in the definition of “Application” in paragraph (1). Paragraph (15) is adopted to be deleted because EPA is defined in 30 TAC Chapter 3. The definition of a “Post-closure order” is added as a new paragraph (29).

Subchapter C - Application for Permit

The title of this subchapter is adopted to be amended from Application for Permit to Application for Permit or Post-Closure Order to reference post-closure orders with permits.

Adopted §305.41, Applicability, applies the provisions of Subchapter C to post-closure orders issued under the authority of THSC, §361.082 and TWC, §7.031.

Adopted §305.42, Application Required, requires persons seeking a post-closure order to submit a signed and completed application.

Adopted §305.43, Who Applies, designates the owner/operator as the applicant for post-closure orders. This is the current requirement for permit applications.

Adopted §305.44, Signatories to Applications, designates the same signatories for post-closure orders as are required for permits.

Adopted §305.47, Retention of Application Data, requires that the recipient of a post-closure order keep records of the data and any supplemental information used for the application as is required by a permittee.

Adopted §305.49, Additional Contents of Application for an Injection Well Permit, corrects the cross-reference in subsection (c) from §305.50(4)(B) to §305.50(a)(4)(B). The amended reference will reflect the adopted reorganization of §305.50 into two subsections discussed in this portion of the preamble.

Adopted §305.50, Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit, is reorganized into subsections (a) and (b) and the title is renamed to add “and for a Post-Closure Order” after the word “Permit.” Subsection (a) contains the original unaltered requirements for permit applications. New subsection (b) provides the additional requirements specific to post-closure permits and orders. In order to streamline the post-closure application process, the applicant will only need to submit that information from the Resource Conservation Recovery Act (RCRA) Part B permit contained in 40 Code of Federal Regulations (CFR) Chapter 270 that is pertinent to post-closure care. Specifically, 40 CFR §270.28 requires the owner or operator to submit information specified in 40 CFR §270.14(b)(1), (4) - (6), (11), (13), (14), (18), and (19), (c), and (d). This information is required for post-closure permits and post-closure orders. The specific items required in post-closure permit applications are: a general description of the facility; a description of

security procedures and equipment; a copy of the general inspection schedule; justification for any request for waiver of preparedness and prevention requirements; facility location information; a copy of the post-closure plan; documentation that required post-closure notices have been filed; the post-closure cost estimate for the facility; proof of financial assurance; a topographic map; information regarding protection of groundwater; and information regarding solid waste management units at the facility.

Similar to the permitting process, once a completed RCRA facility assessment demonstrates that portions of a facility are not subject to corrective action, those portions may either be carved out of the existing permit or excluded from a post-closure order prior to issuance. The executive director will be allowed to require additional general Part B information from 40 CFR §270.14, as well as information about specific units, from 40 CFR §270.16, concerning tank systems; 40 CFR §270.17, concerning surface impoundments; 40 CFR §270.18, concerning waste piles; 40 CFR §270.20, concerning land treatment facilities; or 40 CFR §270.21, concerning landfills.

Adopted §305.50(b)(1) also requires that closure cost estimates for post-closure order and post-closure permit applications be prepared in a fashion similar to those for a regular permit application, with the exception that the requirements for estimating closure costs for interim status facilities in §335.127 will be added. Like permit applications, post-closure applications will be linked to the financial assurance requirements of 40 CFR §264.142(a)(1), (3), and (4) and Chapter 37, Subchapter P. References to those links are contained in §305.50(b)(2) and (3).

Adopted §305.50(b)(3) has been revised since proposal correcting the reference to the Texas Solid Waste Disposal Act from §4(e)(13) to §361.109.

Adopted §305.50(b)(4) requires an applicant for a post-closure order to submit information in order to establish conditions under §305.127(4)(A).

Adopted §305.50(b)(5) allows the executive director to require that a post-closure application also contain the information listed in §305.45(a)(1).

Adopted §305.50(b)(6) requires that engineering plans and specifications submitted as part of an application be prepared and sealed by a registered professional engineer who is currently registered by the Texas Engineering Practices Act.

Adopted §305.50(b)(7) requires that one original and three copies of a post-closure application be submitted on forms provided by, or approved by, the executive director and that they will be accompanied by a like number of originals and copies of all required exhibits.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted rules do not meet the definition of a “major environmental rule” as defined in that statute. Major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from

environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments to Chapter 305 are intended to protect the environment or reduce risks to human health from facilities that are required to obtain a post-closure permit, but have failed to do so, by bringing them into compliance through an alternative regulatory mechanism. However, they are not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments will protect public health and safety by bringing into compliance those facilities that have not obtained a post-closure permit by providing an equally protective alternative. These adopted amendments also allow the agency the discretion to use corrective action requirements, rather than closure requirements, to address regulated units that have released hazardous constituents.

Even if the adopted rules were considered to be a major environmental rule, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. These adopted rules do not meet any of these four applicability requirements. These adopted rules do not exceed any standard set by federal law for interim status units or facilities, or regulated units with releases of hazardous constituents, and

in fact implement a federal regulation authorized by federal law. These adopted rules do not exceed the requirements of state law under THSC, Chapter 361 or TWC, Chapter 7; those chapters specifically allow the type of orders adopted in this rulemaking. There is no delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program specifically on post-closure orders; Texas' authorization, by the EPA, of the RCRA program does relate to post-closure activities, but the activities that will be authorized in accordance with these rules are authorized by EPA RCRA regulations. These rules are not adopted solely under the general powers of the agency, but specifically under THSC, §361.082 and TWC, §7.031, as well as the other general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these adopted amendments in accordance with Texas Government Code, §2007.043. The specific purpose of the adopted amendments is to implement applicable requirements of HB 2912, which amended THSC, §361.082 and TWC, §7.031. The purpose of this rulemaking is to allow the commission to issue orders in lieu of permits for post-closure care at interim status facilities and to give the commission the discretion to approve corrective action requirements as an alternative to closure requirements when certain environmental conditions are met. The adopted amendments substantially advance the stated purpose by incorporating the applicable requirements of HB 2912 and by amending the applicable provisions relating to corrective action requirements.

Promulgation and enforcement of these adopted amendments will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted rules will not burden private real property, nor restrict or limit the owner's right to property, nor reduce its value by 25% or more beyond what will otherwise exist in the absence of these regulations. The adopted rules merely allow the commission to issue an order in place of a permit for post-closure care at interim status facilities. Under existing rules, the facilities affected by these adopted rules are already required to obtain a permit. Thus, the adopted rules provide an option for a new mechanism to provide post-closure care. The adopted rules also allow for corrective action requirements as an alternative to closure requirements. Therefore, this rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rules and found that the rules are identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or they will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission has prepared a consistency determination for the adopted rules in accordance with 31 TAC §505.22, and has found that the adopted rules are consistent with the applicable CMP goals and policies. The adopted rules are subject to the CMP and must be consistent with applicable goals and policies that are found in 31 TAC §501.12 and §501.14. The CMP goal applicable to the rules is the

goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values in Coastal Natural Resource Areas. The adopted rules do not govern any of the activities that are within the designated coastal zone management area or otherwise specifically identified under the Texas Coastal Management Act or related rules of the Coastal Coordination Council. The commission invited public comment on the CMP consistency determination, and no comments were received.

PUBLIC COMMENT

The public comment period closed October 28, 2002. The commenters were Thompson and Knight, L.L.P, on behalf of Lone Star Steel Company (Lone Star Steel); Lloyd, Gosselink, Blevins, Rochelle & Townsend, P.C. (Lloyd, Gosselink); and Chevron Environmental Management Company (CEMC).

RESPONSE TO COMMENTS

Lone Star Steel commented that the commission should clarify in Chapter 305 that for those tracts where a RCRA facility assessment has been completed, only the regulated units requiring post-closure care and the remaining solid waste management units requiring investigation or corrective action be included in a post-closure order. The preambles currently state that once a RCRA facility assessment has been completed, portions of a facility could be carved out of the permit or order. Lone Star Steel suggested this language could be interpreted to mean that even property unrelated to waste management activities must first be included in the post-closure order and later removed.

The commission agrees, in part, with this comment. It is true that the agency assumes, upon receipt for an application, that the entire facility is involved in active waste management and/or is

subject to corrective action. This assumption is consistent with the requirement for facility-wide corrective action outlined in §335.167, as well as both definitions for facility, which specify contiguous property in §335.1(52). The application, therefore, must provide an assessment of the entire facility. However, while processing the application and drafting the post-closure order, the agency considers the applicant’s RCRA facility assessment. The RCRA facility assessment is the applicant’s opportunity to demonstrate that portions of the facility should not be subject to regulatory oversight and are eligible for exclusion from the post-closure order. This may occur *prior* to the issuance of a post-closure order. In response to this comment, the preamble to the Chapter 305 rules has been changed to clarify that portions of a facility can be removed prior to a post-closure order being issued. The language in the Section by Section Discussion portion of this preamble for §305.50 has been amended to read: “Similar to the permitting process, once a completed RCRA facility assessment demonstrates that portions of a facility are not subject to corrective action, those portions may either be carved out of the existing permit or excluded from a post-closure order prior to issuance.”

Lone Star Steel also commented that the applicant’s obligation to prepare and submit a description of the facility in the post-closure order application should be limited. Specifically, the application should contain only descriptions of the individual regulated units and allow solid waste management units to be identified on a map. Lone Star Steel contended that an applicant for a post-closure order should not be required to survey property that is not associated with waste management activity and “include extraneous property in the application and Order solely for the purpose of ‘connecting’ the scattered dots into a contiguous tract.” Additionally, Lone Star Steel contended that an applicant should also not

be required to submit a survey describing a contiguous tract of land that encompasses all the discrete units addressed in a post-closure order. Lone Star Steel stated that the “one tract” approach is overly restrictive and costly and limits the property’s value and its availability for the Voluntary Cleanup Program in future land sales. Specific language proposed by Lone Star to address this issue included a new §305.50(b)(7) that reads: “In those instances in which the solid waste management units have been identified, the requirement in §305.50(b)(1) that the application contain a map showing the legal boundaries of the hazardous waste management facility site may be satisfied by the submission of the legal description and map of boundaries of the individual regulated units and a general description and map location of solid waste management units for which post-closure care, further investigation, or corrective action will be required.”

The commission disagrees with this comment. Portions of the facility may not be carved out of a post-closure order until they are addressed by a RCRA facility assessment that covers all contiguous property under the control of the owner or operator or, in other words, the facility as defined in §335.1(52)(B) and 40 CFR §260.10. To determine whether a RCRA facility assessment has addressed the entire facility, the applicant needs to sufficiently describe the property in accordance with the requirements for a post-closure order application provided in §305.50(b)(1). Section 305.50(b)(1) incorporates by reference the federal application requirements from 40 CFR §270.14(b)(19), which requires the applicant to submit a topographical map of the facility that contains the legal boundaries of the facility. It does not, however, require a new survey. The commission may accept existing certified maps that describe the entire facility and meet the requirements of 40 CFR §270.14(b)(19). In an issued post-closure order, the resulting facility

boundary does not have to be contiguously owned by the applicant and may include discontinuous tracts where legal access is available, for example, through the use of public roadways or recorded easements. With respect to the individual regulated units and solid waste management units, any waste left in place may require that the event be recorded in the real property records. Specific requirements for deed notices or deed covenants, including metes and bounds descriptions and certified plat maps, are provided in 30 TAC §350.111 (Texas Risk Reduction Program) and the risk reduction rules provided in Chapter 335, Subchapters A and S. The commission has made no changes in response to this comment.

Lloyd, Gosselink and CEMC commented that the definition of post-closure order in §305.2(29) could be confused “to mean that corrective action management units (CAMUs) must be associated with commingled contamination in order to be eligible for a post-closure order.” CEMC and Lloyd, Gosselink suggested that the definition of post-closure order be changed to read: “an interim status unit, a corrective action management unit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units.”

The commission agrees with the proposed sequence of eligible units; however, the commission is retaining the language in the definition of post-closure order stipulating that corrective action management units are eligible “unless authorized by a permit.” The definition of post-closure order in §305.2(29) has been changed to read: “an order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by

permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units.”

CEMC and Lloyd, Gosselink commented that most references in the preamble indicate that it is either interim status “units and facilities” or interim status “facilities” that are eligible for post-closure orders. CEMC and Lloyd, Gosselink believed that interim status is only relevant to post-closure order eligibility as it relates to units, not facilities. They suggested that the adopted rules and preamble not reference interim status facilities, but only reference interim status units to avoid confusion about the eligibility of other types of units (e.g., corrective action management units) that might not be located at interim status facilities.

The commission disagrees with the portion of the comment that regards not referencing interim status facilities in the rules or preamble. While interim status units are expected to receive the most attention, interim status facilities do exist. As such, the ability to require facility-wide corrective action remains a concern of the commission. In addition, the commission is aware there may be hazardous waste facilities that have not filed Part A and Part B hazardous waste permit applications. Although these facilities are not in interim status, they would, after discovery, be eligible for a post-closure order or permit and subject to the corresponding rules for facility-wide corrective action. The commission agrees that for additional clarity and consistency regarding “units” and “facilities,” the reference in the first paragraph in the Background and Summary of the Factual Basis for the Adopted Rules portion of this preamble has been amended to read: “Until the change made by the 77th legislature, owners and operators of hazardous waste

management units and facilities could only apply for, and the commission could only issue, post-closure permits.”

SUBCHAPTER A: GENERAL PROVISIONS

§305.2

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §7.031, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility; Solid Waste Disposal Act, THSC, §361.024, which authorizes the commission to adopt rules consistent with Chapter 361; and THSC, §361.082, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

§305.2. Definitions.

The definitions contained in Texas Water Code, §§26.001, 27.002, and 28.001, and Texas Health and Safety Code, §§361.003, 401.003, and 401.004, shall apply to this chapter. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Application** - A formal written request for commission action relative to a permit or a post-closure order, either on commission forms or other approved writing, together with all materials and documents submitted to complete the application.

(2) **Bypass** - The intentional diversion of a waste stream from any portion of a treatment facility.

(3) **Class I sludge management facility** - Any publicly-owned treatment works identified under 40 Code of Federal Regulations §403.10(a), as being required to have an approved pretreatment program and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the executive director because of the potential for its sludge use or disposal practices to adversely affect public health and the environment.

(4) **Component** - Any constituent part of a unit or any group of constituent parts of a unit which are assembled to perform a specific function (e.g., a pump seal, pump, kiln liner, kiln thermocouple).

(5) **Continuous discharge** - A discharge which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(6) **Corrective action management unit (CAMU)** - An area within a facility that is designated by the commission under 40 Code of Federal Regulations Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). A CAMU shall only be used for the management of remediation wastes while implementing such corrective action requirements at the facility.

(7) **CWA** - Clean Water Act (formerly referred to as the Federal Water Pollution and Control Act or Federal Water Pollution Control Act Amendments of 1972) Public Law 92 - 500, as amended by Public Law 95 - 217, Public Law 95 - 576, Public Law 96 - 483, and Public Law 97 - 117, 33 United States Code, 1251 *et seq.*

(8) **Daily average concentration** - The arithmetic average of all effluent samples, composite, or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

(A) For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

(B) For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

(9) **Daily average flow** - The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily discharge, the determination shall be the average of all instantaneous measurements taken during a 24-hour period or during the period of daily discharge if less than 24 hours. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

(10) **Direct discharge** - The discharge of a pollutant.

(11) **Discharge Monitoring Report (DMR)** - The EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees.

(12) **Disposal** - The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid, liquid, or hazardous waste into or on any land, or into or adjacent to any water in the state so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into or adjacent to any waters, including groundwaters.

(13) **Disposal facility** - A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

(14) **Effluent limitation** - Any restriction imposed on quantities, discharge rates, and concentrations of pollutants which are discharged from point sources into waters in the state.

(15) **Facility** - Includes:

(A) all contiguous land and fixtures, structures, or appurtenances used for storing, processing, treating, or disposing of waste, or for injection activities. A facility may consist of several storage, processing, treatment, disposal, or injection operational units;

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste);

(16) **Facility mailing list** - The mailing list for a facility maintained by the commission in accordance with 40 Code of Federal Regulations (CFR) §124.10(c)(1)(ix) and §39.7 of this title

(relating to Public Notice). For Class I injection well underground injection control permits, the mailing list also includes the agencies described in 40 CFR §124.10(c)(1)(viii).

(17) **Functionally equivalent component** - A component which performs the same function or measurement and which meets or exceeds the performance specifications of another component.

(18) **Indirect discharger** - A nondomestic discharger introducing pollutants to a publicly-owned treatment works.

(19) **Injection well permit** - A permit issued in accordance with Texas Water Code, Chapter 27.

(20) **Land disposal facility** - Includes landfills, waste piles, surface impoundments, land farms, and injection wells.

(21) **National Pollutant Discharge Elimination System (NPDES)** - The national program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405. The term includes an approved program.

(22) **New discharger** -

(A) Any building, structure, facility, or installation:

(i) from which there is or may be a discharge of pollutants;

(ii) that did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(iii) which is not a new source; and

(iv) which has never received a finally effective National Pollutant Discharge Elimination System permit for discharges at that site.

(B) This definition includes an indirect discharger which commences discharging into water of the United States after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a site for which it does not have a permit.

(23) **New source** - Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(A) after promulgation of standards of performance under CWA, §306; or

(B) after proposal of standards of performance in accordance with CWA, §306, which are applicable to such source, but only if the standards are promulgated in accordance with §306 within 120 days of their proposal.

(24) **Operator** - The person responsible for the overall operation of a facility.

(25) **Outfall** - The point or location where waterborne waste is discharged from a sewer system, treatment facility, or disposal system into or adjacent to water in this state.

(26) **Owner** - The person who owns a facility or part of a facility.

(27) **Permit** - A written document issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate, in accordance with stated limitations, a specified facility for waste discharge, for solid waste storage, processing, or disposal, for radioactive material disposal, or for underground injection, and includes a wastewater discharge permit, a solid waste permit, a radioactive material disposal license, and an injection well permit.

(28) **Person** - An individual, corporation, organization, government, governmental subdivision or agency, business trust, estate, partnership, or any other legal entity or association.

(29) **Post-closure order** - An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units.

(30) **Primary industry category** - Any industry category listed in 40 Code of Federal Regulations Part 122, Appendix A, adopted by reference by §305.532(d) of this title (relating to Adoption of Appendices by Reference).

(31) **Process wastewater** - Any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(32) **Processing** - The extraction of materials, transfer or volume reduction, conversion to energy, or other separation and preparation of waste for reuse or disposal, and includes the treatment or neutralization of hazardous waste so as to render such waste nonhazardous, safer for transport, or amenable to recovery, storage, or volume reduction. The meaning of transfer as used here, does not include the conveyance or transport off-site of solid waste by truck, ship, pipeline, or other means.

(33) **Publicly-owned treatment works (POTW)** - Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid

nature which is owned by the state or a municipality. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(34) **Radioactive material** - A naturally occurring or artificially produced solid, liquid, or gas that emits radiation spontaneously.

(35) **Recommencing discharger** - A source which recommences discharge after terminating operations.

(36) **Regional administrator** - Except when used in conjunction with the words "state director," or when referring to EPA approval of a state program, where there is a reference in the EPA regulations adopted by reference in this chapter to the "regional administrator" or to the "director," the reference is more properly made, for purposes of state law, to the executive director of the Texas Commission on Environmental Quality, or to the Texas Commission on Environmental Quality, consistent with the organization of the agency as set forth in Texas Water Code, Chapter 5, Subchapter B. When used in conjunction with the words "state director" in such regulations, regional administrator means the regional administrator for the Region VI office of the EPA or his or her authorized representative. A copy of 40 Code of Federal Regulations Part 122, is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(37) **Remediation waste** - All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (relating to Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under Texas Water Code, §7.031; §335.166(5) of this title (relating to Corrective Action Program); or §335.167(c) of this title.

(38) **Schedule of compliance** - A schedule of remedial measures included in a permit, including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with CWA and regulations.

(39) **Severe property damage** - Substantial physical damage to property, damage to treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a discharge. Severe property damage does not mean economic loss caused by delays in production.

(40) **Sewage sludge** - The solids, residues, and precipitate separated from or created in sewage or municipal waste by the unit processes of a treatment works.

(41) **Site** - The land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(42) **Solid waste permit** - A permit issued under Texas Civil Statutes, Article 4477-7, as amended.

(43) **Storage** - The holding of waste for a temporary period, at the end of which the waste is processed, recycled, disposed of, or stored elsewhere.

(44) **Texas pollutant discharge elimination system (TPDES)** - The state program for issuing, amending, terminating, monitoring, and enforcing permits, and imposing and enforcing pretreatment requirements, under CWA, §§307, 402, 318, and 405; Texas Water Code; and Texas Administrative Code regulations.

(45) **Toxic pollutant** - Any pollutant listed as toxic under CWA, §307(a) or, in the case of sludge use or disposal practices, any pollutant identified in regulations implementing CWA, §405(d).

(46) **Treatment works treating domestic sewage** - A publicly-owned treatment works or any other sewage sludge or wastewater treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of sewage or

municipal waste, including land dedicated for the disposal of sewage sludge. This definition does not include septic tanks or similar devices.

(47) **Variance** - Any mechanism or provision under CWA, §301 or §316, or under Chapter 308 of this title (relating to Criteria and Standards for the National Pollutant Discharge Elimination System) which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA or this title.

(48) **Wastewater discharge permit** - A permit issued under Texas Water Code, Chapter 26.

(49) **Wetlands** - Those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas and constitute water in the state.

SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

§§305.41 - 305.44, 305.47, 305.49, 305.50

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its power and duties under this code and other laws of this state; §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; §7.031, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility; THSC, §361.024, which authorizes the commission to adopt rules consistent with Chapter 361; and THSC, §361.082, which authorizes the commission to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

§305.41. Applicability.

The sections of this subchapter apply to permit applications required to be filed with the commission for authorization under Texas Water Code (TWC), Chapters 26 - 28, and Texas Health and Safety Code (THSC), Chapters 361 and 401. The sections of this subchapter also apply to post-closure orders issued under the authority of THSC, §361.082 and TWC, §7.031.

§305.42. Application Required.

(a) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit, or who requests a post-closure order, or who is required to obtain a post-closure order shall complete, sign, and submit an application to the executive director, according to the provisions of this chapter.

(b) For applications involving hazardous waste, persons currently authorized to continue hazardous waste management under interim status in compliance with §335.2(c) of this title (relating to Permit Required) and Texas Health and Safety Code (THSC), §361.082(e), shall apply for permits when required by the executive director. Owners or operators shall be allowed at least six months from the date of request to submit a Part B permit application. Owners or operators of existing hazardous waste management facilities may voluntarily submit Part B of the application at any time. However, owners or operators of existing hazardous waste management facilities must submit Part B permit applications in accordance with the dates specified in 40 Code of Federal Regulations (CFR) §270.73. Owners or operators of land disposal facilities in existence on the effective date of statutory or regulatory amendments under THSC, Chapter 361, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §§6901 *et seq.*, that render the facility subject to the requirement to have a hazardous waste permit must submit a Part B permit application in accordance with the dates specified in 40 CFR §270.73 and certify that such a facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(c) An application for a new, amended, or renewed radioactive material license under Chapter 336 of this title (relating to Radioactive Substance Rules) shall consist of one signed original and five copies. The executive director may request additional copies. Copies of an application for a low-level radioactive waste disposal license under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be retained by the applicant for distribution in accordance with written instructions from the executive director.

(d) For applications involving hazardous waste management facilities for which the owner or operator has submitted Part A of the permit application and has not yet filed Part B, the owner or operator is subject to the requirements for updating the Part A application under 40 CFR §270.10(g), as amended and adopted in the CFR through June 29, 1995, as published in the *Federal Register* (60 FR 33911).

(e) Applications for hazardous and nonhazardous disposal well permits shall be processed in accordance with this chapter for the benefit of the state and the preservation of its natural resources.

§305.43. Who Applies.

(a) It is the duty of the owner of a facility to submit an application for a permit or a post-closure order; however, if the facility is owned by one person and operated by another and the executive director determines that special circumstances exist where the operator or the operator and the owner should both apply for a permit or a post-closure order, and for all Texas Pollutant Discharge

Elimination System permits, it is the duty of the operator and the owner to submit an application for a permit.

(b) For solid waste and hazardous waste permit applications, it is the duty of the owner of a facility to submit an application for a permit or a post-closure order, unless a facility is owned by one person and operated by another, in which case it is the duty of the operator to submit an application for a permit or a post-closure order.

§305.44. Signatories to Applications.

(a) All applications shall be signed as follows.

(1) For a corporation, the application shall be signed by a responsible corporate officer. For purposes of this paragraph, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures. Corporate procedures governing authority to sign permit or post-closure order applications may provide for assignment or delegation to applicable corporate positions rather than to specific individuals.

(2) For a partnership or sole proprietorship, the application shall be signed by a general partner or the proprietor, respectively.

(3) For a municipality, state, federal, or other public agency, the application shall be signed by either a principal executive officer or a ranking elected official. For purposes of this paragraph, a principal executive officer of a federal agency includes the chief executive officer of the agency, or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., regional administrator of the EPA).

(b) A person signing an application shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(c) For a hazardous solid waste permit or a post-closure order, the application must be signed by the owner and operator of the facility.

(d) For radioactive material license applications under Chapter 336 of this title (relating to Radioactive Substance Rules), the applicant or person duly authorized to act for and on the applicant's behalf must sign the application.

§305.47. Retention of Application Data.

A permittee or a recipient of a post-closure order shall keep records, throughout the term of the permit or order, of data used to complete the final application and any supplemental information.

§305.49. Additional Contents of Application for an Injection Well Permit.

(a) The following shall be included in an application for an injection well permit:

(1) for Class I wells, as defined in Chapter 331 of this title (relating to Underground Injection Control), the information listed in §331.121 of this title (relating to Class I Wells);

(2) for Class III wells, as defined in Chapter 331 of this title, the information listed in §331.122 of this title (relating to Class III wells);

(3) the manner in which compliance with the financial assurance requirements of Chapter 37 of this title (relating to Financial Assurance) will be attained;

(4) the manner in which compliance with the plugging and abandonment requirements of §331.46 of this title (relating to Plugging and Abandonment Standards) will be attained;

(5) the manner in which compliance with the corrective action requirements of §331.44 of this title (relating to Corrective Action Standards) will be attained;

(6) the manner in which compliance with the post-closure requirements of §331.68 of this title (relating to Post-Closure Care) will be attained;

(7) a letter from the Railroad Commission of Texas stating that the drilling of a disposal well and the injection of the waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation;

(8) for Class III wells, a description of all liquid and solid nonradioactive wastes resulting from mining activities;

(9) a complete delineation of any aquifer or portion of an aquifer for which exempt status is sought; and

(10) any other information reasonably required by the executive director to evaluate the proposed injection well or project, including, but not limited to, the information set forth in Texas Water Code, §27.051(a).

(b) An application for production area authorization shall be submitted with and contain the following for each production area:

(1) mine plan;

(2) a restoration table;

(3) a baseline water quality table;

(4) control parameter upper limits;

(5) monitor well locations; and

(6) other information reasonably required by the executive director to evaluate the application.

(c) An application under this section shall comply with the requirements of §305.50(a)(4)(B) of this title (relating to Additional Requirements for an Application for a Solid Waste Permit and for a Post-Closure Order).

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order.

(a) Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste shall meet the following requirements.

(1) One original and three copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided shall be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the State of Texas. For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste shall be subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13 - 270.27, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including, but not limited to, how an applicant intends to obtain financing for construction of the facility, and to close the facility properly.

Financial information submitted to satisfy this subparagraph shall meet the requirements of subparagraph (C) or (D) of this paragraph.

(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities);

(ii) a certified copy of the resolution; and

(iii) certification by the governing body of passage of the resolution.

(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this

paragraph shall include the applicable items listed under clauses (i) - (vii) of this subparagraph.

Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:

(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement shall also address how the applicant intends to comply with the financial assurance requirements for closure, post closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title;

(ii) for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements:

(I) audited financial statements for the previous two years; and

(II) the most current quarterly financial statement prepared according to generally accepted accounting principles;

(iii) for applicants for which audited financial statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements:

(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service";

(II) financial statements for the previous two years; and

(III) additionally, an audited financial statement for the most recent fiscal year;

(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;

(v) for privately-held companies, written disclosure of the information that would normally be found in Securities and Exchange Commission Form 10-K including, but not limited to, the following:

(I) descriptions of the business and its operations;

(II) identification of any affiliated relationships;

(III) credit agreements and terms;

(IV) any legal proceedings involving the applicant;

(V) contingent liabilities; and

(VI) significant accounting policies;

(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction;

(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i) - (v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule

contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and

(II) written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.

(E) If any of the information required to be disclosed under subparagraph (D) of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(F) An application for a modification or amendment of a permit which includes a capacity expansion of an existing hazardous waste management facility shall also contain information delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the EPA, that:

(i) the fault has not experienced displacement within Holocene time, or if faults have experienced displacement within Holocene time, that no such faults pass within 200 feet

of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(G) At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14 - 270.27. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment which is filed after January 1, 1986, which is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a registered professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such releases.

(9) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a solid waste management facility permit to provide for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application shall also contain the following:

(A) copies of any relevant land use plans, adopted in accordance with the Texas Local Government Code, Chapter 211 (Vernon's Supplement 1991), which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

(B) identification of the names and locations of industrial and other waste-generating facilities within 1/2 mile of the facility in the case of an application for a permit for a new

on-site hazardous waste management facility, and within one mile of the facility in the case of an application for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(F) of this section.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles traveling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles traveling to and from the facility within a minimum radius of 2 1/2 miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 1/2 mile radius;

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant may submit a letter from the relevant agency of the state, county, or municipality which has the authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the

facility would not constitute a burden and thus would not require that improvements be made to such roadways. Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 CFR §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane;

(V) a training program for personnel for response to such emergencies;

(VI) identification of first-responders;

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Commission on Environmental Quality, Texas Parks and Wildlife, General Land Office, Texas Department of Health, and Texas Railroad Commission);

(X) a showing of coordination with the local emergency planning committee and any local comprehensive emergency management plan; and

(XI) any medical response capability which may be available on the facility property; or

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive director to manage a reasonable worst-case emergency condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

(I) long-term studies using an environmental model which provide the amount of damages for which the facility is responsible; and

(II) costs involved in supplying any of the information included in or satisfying any of the requirements of clause (i)(I) - (XI) of this subparagraph;

(D) if an applicant does not elect to provide its own facilities or secure bonding to ensure sufficient emergency response capabilities in accordance with §335.183 of this title (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities), the applicant must provide prior to the time the facility first receives waste:

(i) documentation showing agreements with the county and/or municipality in which the facility is located, or documentation showing agreements with an adjoining county, municipality, mutual aid association, or other appropriate entity such as professional organizations regularly doing business in the area of emergency and/or disaster response; or

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

(E) a written statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraph (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience in hazardous waste management and in particular the hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that lack of experience.

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in 40 CFR §266.111) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(4)(A) and (1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits).

(b) An application specifically for a post-closure permit or for a post-closure order for post-closure care shall meet the following requirements, as applicable.

(1) An application for a post-closure permit or a post-closure order shall contain information required by 40 CFR §270.14(b)(1), (4) - (6), (11), (13), (14), (18), and (19), (c), and (d), and any additional information that the executive director determines is necessary from 40 CFR §§270.14, 270.16 - 270.18, 270.20, or 270.21, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §§37.131, 37.141, 335.127, and 335.178 of this title.

(2) An application for a post-closure order shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the post-closure order and all applicable rules. Financial information submitted to satisfy this paragraph shall meet the requirements of Chapter 37, Subchapter P of this title.

(3) An application for a post-closure order or for a post-closure permit shall also contain any other information as the executive director may deem necessary to determine whether the

facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act and Chapter 335 of this title including, but not limited to, the information set forth in the Texas Solid Waste Disposal Act, §361.109.

(4) The executive director may require an applicant for a post-closure order to submit information in order to establish conditions under §305.127(4)(A) of this title.

(5) An application for a post-closure order or for a post-closure permit shall also contain the information listed in §305.45(a)(1) of this title (relating to Contents of Application for Permit).

(6) Engineering plans and specifications submitted as part of an application for a post-closure order or for a post-closure permit shall be prepared and sealed by a registered professional engineer who is currently registered, as required by the Texas Engineering Practices Act.

(7) One original and three copies of an application for a post-closure permit or for a post-closure order shall be submitted on forms provided by, or approved by, the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.