

The Texas Commission on Environmental Quality (commission) proposes amendments to §§305.2, 305.45, 305.49, and 305.50.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 405, 77th Legislature, established the Texas Board of Professional Geoscientists and the regulation of professional geoscientists. The Texas Geoscience Practice Act (the Act) requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The primary purpose of the proposed amendments is to establish regulations for the public practice of geoscience in conformance with the Act by requiring a person who prepares and submits geoscientific information to the commission to be a licensed professional geoscientist. The Act also allows certain specified engineers to publicly practice geoscience in conformance with the Act. According to the bill analysis prepared at the time of passage, the ultimate purpose of the Act was public safety through the public registration of the practice of geoscience.

SECTION BY SECTION DISCUSSION

Throughout these sections, the commission has revised the words "shall" and "must," when needed, to reflect guidance provided in the Legislative Council's Drafting Manual. Administrative changes are also proposed in accordance with *Texas Register* requirements and to be consistent with other commission rules.

Proposed §305.2, Definitions, amends the introductory paragraph by deleting the word “shall” and the phrase “unless the context clearly indicates otherwise.” The definition of licensed professional geoscientist is proposed to be added as new paragraph (20) as a geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice. The definitions of CWA and person are proposed to be deleted because they are defined in 30 TAC Chapter 3, Definitions. The existing paragraphs are proposed to be renumbered accordingly. A corrected legal citation to Texas Health and Safety Code, Chapter 361, is proposed in renumbered paragraph (41) in the definition of solid waste permit since Texas Civil Statutes, Article 4477-7, was repealed in 1989.

Proposed §305.45(a), Contents of Application for Permit, substitutes “must” for “shall.” Subsection (a)(8) is proposed to be amended to include licensed professional geoscientist or licensed professional engineer as one of the possible persons who may be required to make a supplementary technical report. The text has also been modified to indicate that any person who is submitting a report shall be competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made.

Proposed §305.49(a), Additional Contents of Application for an Injection Well Permit, substitutes “must” for “shall.” Subsection (a)(9) is proposed to be amended to require that a licensed professional geoscientist or licensed professional engineer prepare the delineation of any aquifer or portion of an aquifer for which exempt status is sought.

Proposed §305.50, Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order, amends subsection (b)(6) by adding the requirements that all engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geoscience Practice Act and the licensing and registration boards under these acts.

Paragraph (4) is proposed to be amended to make the verb present tense instead of future tense. In subparagraph (F), it is proposed to correct the pronoun introducing the restrictive clause modifying the noun “permit” from “which” to “that,” substitute “must” for “shall,” and require that the information delineating all faults within 3,000 feet of the facility be provided by a licensed professional geoscientist or licensed professional engineer. Paragraph (6) is proposed to be amended to correct the pronoun introducing two restrictive clauses modifying the noun “application” from “which” to “that” and include a conjunction between the two clauses, and require that the hydrogeologic report be prepared by a licensed professional geoscientist or licensed professional engineer.

FISCAL NOTE

Doretta Conrad, Analyst in the Budget and Planning Division, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency; however, there may be fiscal implications to the agency if the agency elects to reimburse staff for the annual renewal fees. The fees associated

with obtaining the professional geoscientist license is \$200 to cover the application and first-year license, and \$150 per year after the first year.

Ms. Conrad also determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rules will be potentially improved environmental performance by persons regulated by the commission. The proposed rules might impact other state agencies or local governments with staff geologists who need to become licensed under these rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the criteria for a “major environmental rule” as defined in that statute.

A “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 specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The Act requires that a person may not take responsible charge of a geoscientific report or a geoscientific portion of a report required by a state agency rule unless the person is licensed through the Texas Board of Professional Geoscientists. The proposed rules are not specifically intended to protect the environment or reduce risks to human health. The proposed rules are intended to establish procedures to require that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists. Therefore, it is not anticipated that the proposed rules will 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 commission concludes that these proposed rules do not meet the definition of major environmental rule.

Furthermore, even if the proposed rulemaking did meet the definition of a major environmental rule, the amendments are not subject to Texas Government Code, §2001.0225, because they do not accomplish any of the four results specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, 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.

In this case, the proposed amendments to Chapter 305 do not meet any of these requirements. First, there are no federal standards that these rules would exceed. Second, the proposed rules do not exceed an express requirement of state law. Third, there is no delegation agreement that would be exceeded by these proposed rules. Fourth, the commission proposes these rules to allow for the public practice of geoscience in agency procedures in conformance with the Act. Therefore, the commission does not propose the adoption of the rules solely under the commission's general powers.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed a preliminary assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific intent of the proposed rules is to establish regulations allowing for the public practice of geoscience in agency procedures in conformance with the Act. The proposed rules would substantially advance this stated purpose by requiring that specific reports and necessary data submitted to the commission be produced, signed, sealed, and dated by licensed professional geoscientists who have obtained their licenses through the Texas Board of Professional Geoscientists.

Promulgation and enforcement of these proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations do not affect a landowner's rights in private real property by burdening private real property, nor restricting or limiting a landowner's right to property, or reducing the value of property by 25% or more beyond that which would otherwise exist in the absence of the proposed rulemaking. These rules simply require that specific portions of applications or necessary data submitted to the commission be produced, signed, sealed, and dated by a qualified professional individual who has demonstrated his or her qualifications by obtaining a license to engage in the public practice of geoscience from the Texas Board of Professional Geoscientists. These rules do not affect any private real property.

There are no burdens imposed on private real property, and the benefits to society are better applications for environmental permits based upon reliable reports and data submitted by qualified licensed professional geoscientists.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking 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 will affect an action and/or 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 proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the

applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes are administrative in nature, do not modify or alter standards set forth in existing rules, and do not govern or authorize any actions subject to the CMP. The proposed rulemaking would require a person who prepares and submits geoscientific information to the agency to be a licensed professional geoscientist. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Comments must be received by 5:00 p.m., June 30, 2003, and should reference Rule Log Number 2001-051B-305-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A: GENERAL PROVISIONS

§305.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (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; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

The proposed amendment implements TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§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) - (6) (No change.)

[(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.*]

(7) [(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.

(8) [(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.

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

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

(11) [(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.

(12) [(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.

(13) [(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.

(14) [(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 and 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);

(15) [(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 Mailing Lists [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).

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

(17) [(18)] **Indirect discharger** - A non-domestic [nondomestic] discharger introducing pollutants to a publicly owned [publicly-owned] treatment works.

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

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

(20) **Licensed professional geoscientist** - A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(21) - (27) (No change.)

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

(28) [(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.

(29) [(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).

(30) [(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.

(31) [(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.

(32) [(33)] **Publicly owned [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.

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

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

(35) [(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.

(36) [(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 (TWC), §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 TWC [Texas Water Code], §7.031; §335.166(5) of this title (relating to Corrective Action Program); or §335.167(c) of this title.

(37) [(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.

(38) [(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.

(39) [(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.

(40) [(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.

(41) [(42)] **Solid waste permit** - A permit issued under Texas Health and Safety Code, Chapter 361 [Texas Civil Statutes, Article 4477-7], as amended.

(42) [(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.

(43) [(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, 402, and 405; Texas Water Code; and Texas Administrative Code regulations.

(44) [(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).

(45) [(46)] **Treatment works treating domestic sewage** - A publicly owned [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.

(46) [(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.

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

(48) [(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

§§305.45, 305.49, 305.50

STATUTORY AUTHORITY

The amendments are proposed 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; and Texas Civil Statutes, Article 3271b, the Act, which authorizes the public practice of geoscience in the State of Texas.

These proposed amendments implement TWC, §5.103 and §5.105, and Texas Civil Statutes, Article 3271b, the Act.

§305.45. Contents of Application for Permit.

(a) Forms for permit applications will be made available by the executive director. Each application for permit must [shall] include the following:

(1) - (6) (No change.)

(7) a listing of all permits or construction approvals received or applied for under any of the following programs:

(A) Hazardous Waste Management Program [program] under the Texas Solid Waste Disposal Act;

(B) (No change.)

(C) National Pollutant Discharge Elimination System (NPDES) Program under the CWA [Federal Clean Water Act (CWA)] and Waste Discharge Program under the Texas Water Code, Chapter 26;

(D) Prevention of Significant Deterioration (PSD) Program under the FCAA [Federal Clean Air Act];

(E) Nonattainment Program under the FCAA [Federal Clean Air Act];

(F) national emission standards for hazardous pollutants (NESHAPS) preconstruction approval under the FCAA [Clean Air Act];

(G) (No change.)

(H) dredge or fill permits under [of] the FCAA [Federal Clean Water Act];

(I) licenses under the TRCA [Texas Radiation Control Act]; and

(J) other environmental permits; and

(8) a [Supplementary technical report. A] supplementary technical report [shall be] submitted in connection with an application. The report shall be prepared either by a Texas licensed [registered] professional engineer, a licensed professional geoscientist, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report must [shall] include the following:

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

(C) such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order), §305.48 of this title (relating to Additional Contents for [of] Applications for Waste Discharge Permits), §305.54 of this title (relating to Additional Requirements for Radioactive Material License), §336.207 of this title (relating to General Requirements for [the] Issuance of a License), §336.513 of this title (relating to Technical Requirements for Active Disposal Sites), §336.617 of this title (relating to Technical Requirements for Inactive Disposal Sites), §336.705 of this title (relating to Content of Application [Applications]), and Chapter 330, Subchapter E of this title (relating to [Municipal Solid Waste] Permit Procedures).

(b) (No change.)

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

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

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

(3) the manner in which compliance with the financial assurance requirements in [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 Closure [Plugging and Abandonment] Standards) will be attained;

(5) - (8) (No change.)

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

(10) (No change.)

(b) (No change.)

(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 Hazardous or Industrial 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 must [shall] meet the following requirements.

(1) (No change.)

(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 must [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 TSWDA [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 TSWDA [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 is [shall be] subject to the following requirements, as applicable.

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

(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 must [shall] also address how the applicant intends to comply with the financial assurance requirements for closure, post-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) - (iii) (No change.)

(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 must [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 must [shall] also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure [post closure], corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title;

(ii) - (vii) (No change.)

(E) (No change.)

(F) An application for a modification or amendment of a permit that [which] includes a capacity expansion of an existing hazardous waste management facility must [shall] also contain information provided by a licensed professional geoscientist or licensed professional engineer 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) - (ii) (No change.)

(G) (No change.)

(5) (No change.)

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

(7) - (9) (No change.)

(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 must [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) - (D) (No change.)

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

(11) - (14) (No change.)

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

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

(3) An application for a post-closure order or for a post-closure permit must [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 TSWDA [Texas Solid Waste Disposal Act] and Chapter 335 of this title including, but not limited to, the information set forth in TSWDA [the Texas Solid Waste Disposal Act], §361.109.

(4) - (5) (No change.)

(6) All engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geoscience Practice Act and the licensing and registration boards under these acts. [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) (No change.)