The Texas Commission on Environmental Quality (TCEQ, agency or commission) adopts amended §§305.49, 305.62, and 305.127. Section 305.62 is adopted *with changes* to the proposed text and will be republished. Sections 305.49 and 305.127 are adopted *without changes* to the proposed text as published in the September 5, 2008, issue of the *Texas Register* (33 TexReg 7463) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The changes adopted to this chapter are part of a larger adoption to revise the commission's radiation control and underground injection control (UIC) rules. The purpose of this rulemaking is to implement the remaining portions of Senate Bill (SB) 1604, 80th Legislature, 2007, its amendments to Texas Health and Safety Code (THSC), Chapter 401 (also known as the Texas Radiation Control Act (TRCA)), and House Bill (HB) 3838, 80th Legislature, 2007. This rulemaking incorporates new provisions for notice and contested case hearing opportunities related to Production Area Authorizations and UIC Area Permits, financial assurance requirements, and new state fees on gross receipts associated with the radioactive waste disposal. HB 3838 specifically addresses the period between uranium exploration, which is regulated by the Railroad Commission of Texas (RRC), and permitting of injection wells for in situ uranium mining, which is regulated by TCEQ. HB 3838 requires TCEQ to establish a registration program for exploration wells permitted by the RRC that are used for development of the UIC area permit application. In response to a previous petition for rulemaking, the commission has also directed staff to review, seek stakeholder input on, and recommend revision of commission rules related to in situ uranium recovery. The adopted amendments to Chapter 305 address amendment application requirements for radioactive materials licenses, establish term limits for injection well area permits authorizing in situ recovery of uranium, and address production area authorization application requirements.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning 30 TAC Chapters 37, 39, 55, 331, and 336.

SECTION BY SECTION DISCUSSION

The commission adopts the amendment to §305.49(a)(7) to specify that for Class I injection wells only, a letter is required from the RRC stating that the drilling of a disposal well and the injection of waste into the subsurface stratum selected for disposal will not endanger or injure any oil or gas formation. This letter is required under Texas Water Code (TWC) §27.015(a) for disposal wells. Class III injection wells, however, are for the recovery of minerals, and are not disposal wells. The adopted rule change is necessary to avoid application of this requirement to Class III wells. Additionally, Class III wells typically are completed at depths of less than 1,000 feet, whereas most oil and gas production in Texas currently are at greater depths.

The commission adopts the amendment to §305.49(b) to include a new paragraph (6), under which an application for a production area authorization must include a cost estimate for aquifer restoration and well plugging and abandonment. Although financial assurance for aquifer restoration currently is addressed in the Radioactive Materials License for source material recovery, cost estimates for aquifer restoration are reviewed by staff of the TCEQ UIC program. By requiring submission of aquifer restoration cost estimates in an application for a production area, TCEQ UIC staff will be able to complete this review in a timely manner as part of the production area authorization application. Existing paragraph (6) has been renumbered to paragraph (7).

The commission adopts the amendment to §305.62(c) to remove the list of major amendments for licenses issued under Chapter 336, Subchapter H, Licensing Requirements for Near-Surface Land Disposal of

Low-Level Radioactive Waste. Major amendments for licenses issued under Chapter 336 will be in new §305.62(i). Additionally, the commission adopts the amendment to §305.62(c)(3)(G) to define the acronym CFR.

The commission adopts §305.62(i) to establish the types of changes to an existing license that constitute a major amendment, minor amendment, or administrative amendment. New §305.62(i)(1) lists the types of license changes that would be a major amendment. In response to comments, proposed §305.62(i)(1)(B) was revised to categorize as a major amendment a license change that would authorize the receipt of waste that the executive director determines is not authorized in the existing license. Rather than a major amendment designation based on the state of origin of the waste, a major amendment would be required to authorize the receipt of waste that the executive director determines is not authorized in the existing license. In response to comments, §305.62(i)(1)(I) was revised to include that a new technology or new process will only be a major amendment if it does not meet the criteria for a minor amendment in §305.62(i)(2). For evaluating other license changes that are not specified, §305.62(i)(1)(K) provides that a major amendment is one in which a change will have a potentially significant effect on the human environment and which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required. Major amendment applications are subject to public notice requirements of Chapter 39 and are subject to an opportunity to request a contested case hearing.

New §305.62(i)(2) lists the type of license changes that would be a minor amendment. In response to comments, §305.62(i)(2) was revised to specify that minor modifications made to the facility that are not currently authorized by an existing license condition which do not pose a potential significant impact on

public health and safety, worker safety, or environmental health must be a minor amendment. In addition, minor facility modifications that enhance public health and safety or protection of the environment and minor modifications to enhance environmental monitoring programs at facilities with demonstrated performance were removed from the minor amendment criteria and added as administrative amendments in §305.62(i)(3) in cases that the modification is consistent with individual license conditions for a specified facility. If a license change classification is not specified, the executive director may determine that the proposed change is a minor amendment under §305.62(i)(2)(C). A minor amendment is one in which a change will not have a potentially significant effect on the human environment, but does require a technical review by the executive director. A minor amendment is subject to public notice requirements of Chapter 39, but is not subject to an opportunity to request a contested case hearing. An administrative amendment is one in which is clerical in nature, or after completion of a review, the executive director determines is not a major or minor amendment.

New §305.62(i)(3) lists examples of types of license changes that would be an administrative amendment. An administrative amendment is not subject to public notice requirements or opportunity to request a contested case hearing. In response to comments, additional criteria for administrative amendments were added in §305.62(i)(3)(H) and (I). Existing subsections (i) and (j) will be re-designated as subsections (j) and (k), respectively.

The commission adopts the amendment to §305.127(1)(A)(ii) to place a 10-year term on permits for Class III wells. This change is necessary to implement TWC, §27.0513(b), which was added to the TWC through SB 1604.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission adopts the rulemaking action under the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of "a major environmental rule" as defined in the 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 rulemaking action implements legislative requirements in SB 1604, transferring responsibilities for the regulation of source material recovery, by-product disposal, and commercial radioactive substances storage and processing from the Department of State Health Services to the commission and amends the UIC program requirements for in situ recovery of uranium. The adopted rules to Chapter 305 address amendment application requirements for radioactive materials licenses, establish term limits for injection well area permits authorizing in situ recovery of uranium, and address production area authorization application requirements. The adopted amendments to Chapter 305 are not anticipated 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, because the amendments apply only to procedural requirements for submitting amendment applications for radioactive material licenses, application requirements for production area authorizations, and establish term limits to area permits required by statute. The rulemaking action also amends technical requirements for the radioactive material licensing programs and establishes fees for applications and waste disposal in Chapter 336, amends technical requirements for injection wells and other wells for in situ uranium recovery in Chapter 331, amends financial assurance requirements in

Chapter 37, amends public notice requirements in Chapter 39, and amends public participation requirements in Chapter 55.

Furthermore, the rulemaking action does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). 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. The rulemaking action does not exceed a standard set by federal law, an express requirement of state law, a requirement of a delegation agreement, nor does it adopt a rule solely under the general powers of the agency.

THSC, Chapter 401, authorizes the commission to regulate the disposal of most radioactive substances in Texas. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. In addition, the State of Texas is an "Agreement State" authorized by the United States Nuclear Regulatory Commission (NRC) to administer a radiation control program under the Atomic Energy Act of 1954, as amended (Atomic Energy Act). The commission's UIC program is authorized by the United States Environmental Protection Agency and the adopted changes to term limits for injection well permits and application requirements production area authorizations do not exceed a standard of federal law or requirement of a delegation agreement. The adopted rules are compatible with federal law.

The adopted rules do not exceed an express requirement of state law. THSC, Chapter 401, establishes general requirements for the licensing and disposal of radioactive substances, source material recovery, commercial radioactive substances storage and processing, and low-level radioactive waste disposal. TWC, Chapter 27, establishes requirements for the commission's UIC program. The purpose of the rulemaking is to implement application requirements consistent with THSC, Chapter 401 and TWC, Chapter 27, as amended by SB 1604.

The adopted rules are compatible with the requirements of a delegation agreement or contract between the state and an agency of the federal government. The State of Texas has been designated as an "Agreement State" by the NRC under the authority of the Atomic Energy Act. The Atomic Energy Act requires that the NRC find that the state radiation control program is compatible with the NRC requirements for the regulation of radioactive materials and is adequate to protect health and safety. Under the *Agreement Between the United States Nuclear Regulatory Commission and the State of Texas for Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended*, NRC requirements must be implemented to maintain a compatible state program for protection against hazards of radiation. The adopted rules are compatible with the NRC requirements and the requirements for retaining status as an "Agreement State." The commission's UIC program is authorized by the United States Environmental Protection Agency, and the permit term limits and production area authorization requirements are compatible with the state's delegation of the UIC program.

The adopted rules are adopted under specific laws. THSC, §§401.051, 401.103, 401.104, and 401.412 authorize the commission to adopt rules for the control of sources of radiation and the licensing of the disposal of radioactive substances. TWC, §27.019 requires the commission to adopt rules reasonably required to implement the Injection Well Act.

The commission invited public comments regarding the draft regulatory impact analysis during the public comment period. No comments were received on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed a preliminary assessment of whether the Private Real Property Rights Preservation Act, Texas Government Code, Chapter 2007 is applicable. The commission's preliminary assessment is that implementation of these adopted rules would not constitute a taking of real property.

The purpose of these rules is to provide clarifying changes to the amendment application requirements for radioactive material licenses, to provide term limits for injection well permits authorizing in situ recovery of uranium, and to amend application requirements for production area authorizations. The adopted rules to Chapter 305 would substantially advance this purpose by amending the application requirements and establish injection well permit term limits required by statute.

Promulgation and enforcement of these adopted rules would be neither a statutory nor a constitutional taking of private real property. The adopted rules do not affect a landowner's rights in private real property because this rulemaking action does not constitutionally burden, nor restrict or limit, the owner's

right to property and reduce its value by 25% or more beyond which would otherwise exist in the absence of the regulations. The adopted rules amend application requirements for radioactive materials licenses and production area authorizations, and establish term limits for injection well permits, and do not affect real property. The adopted rules apply only to those who submit a subject application or have an existing injection well permit subject to the term limits established in SB 1604. The technical requirements for the applications subject to Chapter 305 are found in other chapters. Therefore, the adopted rules do not affect real property in a manner that is different than would have been affected without these revisions.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the coastal management program.

PUBLIC COMMENT

The commission held a public hearing on September 16, 2008. The public comment period closed on October 6, 2008. The commission received comments from the Kleberg County Citizen Review Board (KCCRB), Mesteña Uranium, LLC (Mesteña), Lone Star Chapter of the Sierra Club (Sierra Club), Texas Mining and Reclamation Association (TMRA), Kelly Hart & Hallman LLP on behalf of Uranium Energy Corp and AREVA NC Inc. (KHH), URI, Inc. (URI), and Hance Scarborough, LLP on behalf of Waste Control Specialists LLC (WCS).

RESPONSE TO COMMENTS

Additional Contents of Application for an Injection Well Permit

URI commented that §305.49(b)(6), which specifies that an application for production area authorization be submitted with a cost estimate for aquifer restoration and well plugging and abandonment, creates a regulatory dilemma and a practical geologic engineering problem. If there is a reason for an applicant to seek a change in the amount of financial security in a production area authorization application, then the applicant should make that choice and choose exposure to a contested case haring. But requiring an estimate, and then making that estimate a driver for surety adjustment pursuant to §37.9045(b) makes the estimate the same as an adjustment. The reason why groundwater restoration cost estimates have not, and cannot, be tied to production area authorizations in the past, is that there is insufficient data available at the time of the production area authorization application to provide for an accurate calculation of groundwater restoration costs. URI recommended the deletion of §305.46(b)(6).

The commission does not agree with the comment. The commission's rules require aquifer restoration of an in situ uranium mine and require financial assurance for aquifer restoration. Prior to the adoption of these rules, determining the amount of financial assurance for aquifer restoration at an in situ uranium mine has been performed on a piecemeal basis, with no formal process to submit, review and approve the amount of financial assurance. The commission intends to formalize a process by requiring that a cost estimate for restoring the aquifer of a production area be submitted as part of the production area authorization application. Because a production area authorization authorizes mining within a production area, the cost estimate for restoring the mined aquifer in the proposed production area should be included with the application. In developing the application, the miner has completed detailed work on delineating the orebody to be mined (both in terms of depth and area), installed required monitor wells, and investigated and identified the aquifer characteristics of the production zone for determination of Class III well spacing. A miner's decision to pursue mining and obtain the necessary production area authorization

is based on economic considerations, and the cost of required aquifer restoration and financial assurance certainly must be included in any economic analysis. If a miner believes that it will be too difficult to establish a cost estimate for restoring an entire production area up front as part of the application of the production area authorization, the miner should consider reducing the size of the production area. As part of an application, the cost estimates should be subjected to formal review by the executive director who may request additional information under the notice of deficiency process of Chapter 281, and be available for review by the public. The commission does not agree that providing an initial cost estimate for aquifer restoration of a production area constitutes an amendment to the type of bond required for groundwater restoration that is contemplated under TWC, §27.0513(d)(1). The applicant is providing the *initial* cost estimate for aquifer restoration of the production area, not an *amendment* to the type or amount of a bond required for groundwater restoration of the production area. Furthermore, the applicant is providing a *cost estimate* for aquifer restoration as part of the application, not the *financial assurance*. Because financial assurance for aquifer restoration is required by the NRC's requirements for radioactive material licenses authorizing in situ recovery of uranium as part of the financial assurance required for overall decommissioning or closure of a mine, the TCEQ's financial assurance requirements for aquifer restoration are under the radioactive material license to maintain compatibility with the NRC. While the initial cost estimate for aquifer restoration of a production area is required as part of the application for a production area authorization, the financial assurance for aquifer restoration is held under the requirements of the radioactive material license. Because the financial assurance for aquifer restoration is held under the licensing requirements of Chapter 336, and the financial assurance for well plugging and abandonment is held under the area permit requirements of Chapter 331, an amendment application for the production area authorization is not required and the exception in TWC, §27.0513(d)(3) or §55.201(i)(11)(C) would not be triggered for subsequent updates to financial assurance for aquifer

restoration or well plugging and abandonment for inflation adjustments or cost increases. No changes were been made in response to this comment.

Amendments

KHH commented that to allow for and encourage improvements in technology, the following change is suggested for §305.62(i)(1)(I): ". . . authorizes a new technology or process that requires an engineering review, unless the new technology or process meets one of the minor amendment criteria, in which case it shall be a minor amendment . . .."

The commission agrees with this comment. Section 305.62(i)(1)(I) has been revised to indicate that a major amendment is only required for a new technology or new process that does not meet the minor amendment criteria in §305.62(i)(2).

The KCCRB commented that in addition to the cases listed in the proposed rule for major amendments in §305.62(i)(1), the following be added: changes to production area boundaries and changes to an aquifer restoration timetable.

The new subsection is specific to radioactive material licenses. Changes to production area boundaries and to an aquifer restoration timetable are not the subject of radioactive material licenses, rather these amendments are related to UIC permits and authorizations. Classification of major amendments of UIC permits and authorizations were not proposed as part of this rulemaking. Section 305.62(a) - (c) pertains to major amendments other than radioactive material licenses. It is not typical to amend the boundaries of a production area authorization because the required monitor well ring is established as part of the initial authorization. A request to expand a production area of an approved production area authorization would

be treated as a major amendment of the production area authorization. The commission's new rules in §331.85(a)(3)(B) require a permitted miner to provide an annual report with update of the mine plan including an estimated schedule for mining and restoration. No change was made in response to this comment.

Mesteña, TMRA, and URI recommended the removal of §305.62(i)(1)(I) from the major amendment type because they believe this classification is overly broad and will potentially lead to future questions that nearly every action qualifies as a major amendment.

The commission agrees that further clarification is warranted. Section 305.62(i)(1)(I) has been revised to indicate that a major amendment is only required for a new technology or new process that does not meet the minor amendment criteria in §305.62(i)(2). This change helps define major amendments more clearly and will allow the executive director to review the proposed new technology or new process in an expedited manner.

Mesteña, TMRA, and URI commented that the proposed language in §305.62(i)(2) to include revisions to procedures as a minor amendment flies in direct conflict with the intent of as low as reasonably achievable (ALARA). To be truly effective, Mesteña, TMRA, and URI believe licensees need the ability to review, revise and amend procedures as needed to ensure that the proper radiological controls are in place. The proposed change not only results in making these existing license conditions useless in light of classifying a procedural change as an amendment, but more importantly, the proposed changes will result in not giving licensees any incentive to strive for continuous improvement. WCS commented that the language in §305.62(i)(2)(A) and (B) requiring a minor amendment for changes in health and safety

procedures and facility modifications that do not have a potential significant impact on public health and safety is an added administrative burden and should be administrative amendments. Mesteña, TMRA, and URI suggested a minor amendment be one which does not meet the criteria for a major or administrative amendment.

The commission agrees with the comments in part. The commission recognizes the value of allowing more flexibility for mature operational programs with a demonstrated performance-driven approach and structure in place for objective evaluation based on ALARA principles focused on improving procedures. Minor changes in health and safety procedures that do not have a potential detrimental impact on public health and safety, worker safety, or environmental health, as well as minor modifications to enhance environmental monitoring programs should be expedited. However, for less mature programs and programs that lack the necessary infrastructure, due to the nature of the standard methods provided in procedures, it is necessary for initial operational procedures, and amendments to those procedures, to be reviewed for potential health, safety, and environmental impacts. This ensures that potential impacts are fully vetted in a regulatory review. Procedures are the higher-tiered methods for facility operations and are the basis of work instructions and work permits for more specific tasks. These operating procedures comprise the unit operations that, in combination or used singly, make-up the sequence of work steps necessary for the formulation of a radiation work permit or specific work instruction. The greater flexibility for improvement based on ALARA remains in the lower-tiered work instructions and work permits that are not part of the license amendment process. In recognition of strong operational programs with a demonstrated history of performance-driven operations and adequate internal review structure, §305.62(i)(3) has been revised to include minor modification of amendments as an

administrative change as long as modifications are also consistent with the individual license conditions for a specified facility. Modifications that would not alter the present type, location, frequency, or analytical requirements for environmental monitoring could be administrative. Generally, a sampling program is designed and initiated to sample for all sources of emissions and to gauge the true impacts. Over time, monitoring programs may be modified or refined to capture the changing nature of facility operations. Enhancements to a monitoring program could be implemented in response to a rapidly changing process. Changes such as changing the supplier of reagents or air filter papers may enhance the program and make no substantive impact. There may also be changes in the way data are formatted and reported. Section 305.62(i)(2) has been revised to include the following three criteria for minor amendments: authorizes a modification that is not specifically authorized in an existing condition in a license issued under Chapter 336 and which does not pose a potential detrimental impact on public health and safety, worker safety, or environmental health; authorizes the addition of previously reviewed production or processing equipment, and where an environmental assessment has been completed; or any amendment, after completion of a review, the executive director determines is a minor amendment.

Sierra Club recommended the addition of criteria for major amendments pertaining to changes that are resulted by an enforcement action by the commission or other state or federal agencies authorized to enforce the law.

The commission disagrees with the automatic classification due to enforcement, but agrees that further clarification can be made. Each enforcement action is different and could result in changes that would be considered a minor amendment based on revised §305.62(i)(2). All enforcement

actions do not result in a singular, necessary amendment that would be judged to equate to a major amendment. In addition, other TCEQ permitting areas do not require a major amendment or alteration to the permit when an enforcement action occurs. The proposed change as written would be inconsistent with other TCEQ regulatory programs. However, for clarification, the commission has included the term potentially significant impact for major amendments. This will help ensure that the classification of major amendment captures changes resulting from enforcement actions, or any other changes that warrant a higher review.

WCS requested the implementation of a modification program for radioactive materials license, in addition to the amendment process, similar to the program utilized by the commission for industrial solid waste and hazardous waste permits found in §305.69 so the regulated community is sufficiently informed of the expectations of the commission for modifying a license to conduct new activities.

The commission does not agree with this comment. Radioactive materials licenses are very unique and differ from industrial solid waste and hazardous waste permits. Although the modification program is sufficient for the industrial solid waste and hazardous waste permits, it does not translate to radioactive materials licenses nor does it add to the efficiency and effectiveness of the amendment process. The permit modification would be an overly cumbersome process, would not provide the flexibility for radioactive material licensing, and would be inconsistent with licensing concepts that are based on performance. In addition, the permit modification program is not consistent with the amendment types in the NRC process and would potentially impact the state's compatibility. No changes were made in response to this comment.

WCS commented the language in §305.62(i)(1)(B) authorizing receipt of wastes from other states not authorized in the existing license be a major amendment would be severely detrimental to the licenses and should be deleted. WCS contends the location of the waste generator has no bearing on the environmental or human health effect resulting from ultimate disposal of such waste at a licensed facility in Texas. WCS believes the focus should be on the type and quantity of the waste received for ultimate disposal, not where it is generated within the borders of the United States.

The commission agrees with the comment in part and has revised §305.62(i)(1)(B). THSC, §401.207 states that the compact waste disposal facility license holder may not accept low-level radioactive waste generated in another state for disposal under a license issued by the commission unless the waste is accepted under a compact to which the state is a contracting party. Additional radioactive material being accepted for disposal at a licensed low-level radioactive waste facility would require full characterization and assessment of impact in meeting the performance objectives, including potential environmental, worker and public health, and safety impacts that can only be accomplished by regulatory review, necessitating a license amendment. The characterization, evaluation, and analysis of potential waste streams form the basic cornerstone of the low-level radioactive waste disposal regulations. An amendment is necessary to allow for consideration of additional waste streams that would contribute and impact projected volume and radioactivity at the Texas Compact facility at a minimum, as well as possible variations in other waste characteristics that have not been evaluated in any regulatory review. The license limitations for volume and radioactivity, by specific radionuclide in some cases, are directly linked to the inventory projections provided in a license application that are limited to specific waste generators. An evaluation through an application process of potential health, safety, and environmental

impacts, as well as impacts to the overall facility design and operations, must be made before additional waste streams can be considered for acceptance. In order for these evaluations to be conducted, information on the specific waste streams and discussion of the related impacts to the facility must be contained in an amendment application. In response to comments, proposed §305.62(i)(1)(B) was revised to categorize as a major amendment a license change that would authorize the receipt of waste that the executive director determines is not authorized in the existing license. Rather than a major amendment designation based on the state of origin of the waste, a major amendment would be required to authorize the receipt of waste that the executive director determines is not authorized in the existing license.

WCS requests the requirement for the determination of an environmental analysis be tied into the statutory requirements of THSC, Chapter 401. WCS also requested that §305.62(i)(1)(K) be revised to cite THSC, §401.113 and §401.263 for determination of when an environmental analysis is required.

The commission does not agree with this comment. The requirements for an environmental analysis are currently tied into the statutory requirements of THSC, Chapter 401. An environmental analysis provides supporting documentation for the completion of the technical review in licensing matters that potentially have a significant effect on human health and the environment. The judgment of when an environmental analysis should be prepared is solely with the TCEQ. An environmental analysis focuses on license application materials submitted by the applicant and the related technical analysis of those materials. If an environmental analysis is prepared by the TCEQ, it is open for public comment, including comment by the applicant. No changes were made in response to this comment.

SUBCHAPTER C: APPLICATON FOR PERMIT OR POST-CLOSURE ORDER

§305.49

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is adopted under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendment is also adopted under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which

provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendment implements Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

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

(a) The following must 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 in 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 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) for Class I wells, 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 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) 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;

(6) cost estimate for aquifer restoration and well plugging and abandonment; and

(7) 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 Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order).

SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

§305.62

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is adopted under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendment is also adopted under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-

level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendment implements Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§305.62. Amendments.

(a) Amendments generally. A change in a term, condition, or provision of a permit requires an amendment, except under §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), under §305.66 of this title (relating to Corrections of Permits), and under §305.64 of this title (relating to Transfer of Permits). The permittee or an affected person may request an amendment. If the permittee requests an amendment, the application shall be processed under Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a solid waste permit, the application shall be processed under §305.69 of this title. If the permittee requests a modification of a municipal solid waste (MSW) permit, the application shall be processed in accordance with §305.70 of this title. If an affected person requests an amendment, the request shall be submitted to the executive director for review. If the executive director determines the request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting an amendment may petition the commission for a review of the request and the executive

director's recommendation. If the executive director determines that an amendment is justified, the amendment will be processed under subsections (d) and (f) of this section.

(b) Application for amendment. An application for amendment shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in Subchapter C of this chapter (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments, other than amendments for radioactive material licenses in subsection (i) of this section.

(1) A major amendment is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a permit.

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection. A minor amendment includes any other change to a permit issued under this chapter that will not cause or relax a standard or criterion which may result in a potential deterioration of quality of water in the state. A minor amendment may also include, but is not limited to:

(A) except for Texas Pollutant Discharge Elimination System (TPDES) permits, changing an interim compliance date in a schedule of compliance, provided the new date is not more than

120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date; and

(B) except for TPDES permits, requiring more frequent monitoring or reporting by the permittee.

(3) Minor modifications for TPDES permits. The executive director may modify a TPDES permit to make corrections or allowances for changes in the permitted activity listed in this subsection (see also §50.45 of this title (relating to Corrections to Permits)). Notice requirements for a minor modification are in §39.151 of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge). Minor modifications to TPDES permits may only:

(A) correct typographical errors;

(B) require more frequent monitoring or reporting by the permittee;

(C) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date;

(D) change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation before discharge under §305.534 of this title (relating to New Sources and New Dischargers);

(E) delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except within permit limits;

(F) when the permit becomes final and effective on or after March 9, 1982, add or change provisions to conform with §§305.125, 305.126, 305.531(1), 305.535(c)(1)(B), and 305.537 of this title (relating to Standard Permit Conditions; Additional Standard Permit Conditions for Waste Discharge Permits; Establishing and Calculating Additional Conditions and Limitations for TPDES Permits; Bypasses from TPDES Permitted Facilities; Minimum Requirements for TPDES Permitted Facilities; and Reporting Requirements for Planned Physical Changes to a Permitted Facility); or

(G) incorporate enforceable conditions of a publicly owned treatment works pretreatment program approved under the procedures in 40 Code of Federal Regulations §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution).

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order a major amendment, minor amendment, modification, or minor modification to a permit and the executive director may request an updated application if necessary. Good cause includes, but is not limited to:

(1) there are material and substantial changes to the permitted facility or activity which justify permit conditions that are different or absent in the existing permit;

(2) information, not available at the time of permit issuance, is received by the executive director, justifying amendment of existing permit conditions;

(3) the standards or regulations on which the permit or a permit condition was based have been changed by statute, through promulgation of new or amended standards or regulations, or by judicial decision after the permit was issued;

(4) an act of God, strike, flood, material shortage, or other event over which the permittee has no control and for which there is no reasonably available alternative may be determined to constitute good cause for amendment of a compliance schedule;

(5) for underground injection wells, a determination that the waste being injected is a hazardous waste as defined under §335.1 of this title (relating to Definitions) either because the definition has been revised, or because a previous determination has been changed; and

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e) Amendment of land disposal facility permit. When a permit for a land disposal facility used to manage hazardous waste is reviewed by the commission under §305.127(1)(B)(iii) of this title (relating to Conditions to be Determined for Individual Permits), the commission shall modify the permit as necessary to assure that the facility continues to comply with currently applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste).

(f) Amendment initiated by the executive director. If the executive director determines to file a petition to amend a permit, notice of the determination stating the grounds therefor and a copy of a proposed amendment draft shall be personally served on or mailed to the permittee at the last address of record with the commission. This notice should be given at least 15 days before a petition is filed with the commission. However, such notice period shall not be jurisdictional.

(g) Amendment initiated permit expiration. The existing permit will remain effective and will not expire until commission action on the application for amendment is final. The commission may extend the term of a permit when taking action on an application for amendment.

(h) Amendment application considered a request for renewal. For applications filed under the Texas Water Code, Chapter 26, an application for a major amendment to a permit may also be considered as an application for a renewal of the permit if so requested by the applicant.

(i) Types of amendments for radioactive material licenses authorized in Chapter 336 of this title (relating to Radioactive Substance Rules).

(1) Major amendments. A major amendment is one which:

(A) authorizes a change in the type or concentration limits of wastes to be received;

(B) authorizes receipt of wastes determined by the executive director not to be authorized in the existing license;

(C) authorizes a change in the licensee, owner or operator of the licensed facility;

(D) authorizes closure and the final closure plan for the disposal site;

(E) transfers the license to the custodial agency;

(F) authorizes enlargement of the licensed area beyond the boundaries of the existing license;

(G) authorizes a change of the method specified in the license for disposal of by-product material as defined in the Texas Radiation Control Act, Texas Health and Safety Code, §401.003(3)(B);

(H) grants an exemption from any provision of Chapter 336 of this title;

(I) authorizes a new technology or new process that requires an engineering review, unless the new technology or new process meets criteria in §305.62(i)(2)(A) of this title;

(J) authorizes a reduction in financial assurance amounts; or

(K) authorizes a change which has a potentially significant effect on the human environment and for which the executive director has prepared a written environmental analysis or has determined that an environmental analysis is required;

(2) Minor amendments. An application for a minor amendment is subject to public notice requirements of Chapter 39 of this title (relating to Public Notice), but is not subject to an opportunity to request a contested case hearing. A minor amendment is one which:

(A) authorizes a modification that is not specifically authorized in an existing condition in a license issued under Chapter 336 of this title and which does not pose a potential detrimental impact on public health and safety, worker safety, or environmental health;

(B) authorizes the addition of previously reviewed production or processing equipment, and where an environmental assessment has been completed; or

(C) any amendment, after completion of a review, the executive director determines is a minor amendment.

(3) Administrative amendments. An application for an administrative amendment is not subject to public notice requirements and is not subject to an opportunity to request a contested case hearing. An administrative amendment is one which:

(A) corrects a clerical or typographical error;

(B) changes the mailing address or other contact information of the licensee;

(C) changes the Radiation Safety Officer, if the person meets the criteria in Chapter 336 of this title;

(D) changes the name of an incorporated licensee that amends its articles of incorporation only to reflect a name change, if updated information is provided by the licensee, provided that the Secretary of State can verify that a change in name alone has occurred;

(E) is a federally-mandated change to a license;

(F) corrects citations in license from rules/statutes;

(G) is necessary to address emergencies;

(H) authorizes minor modifications to existing facilities, consistent with individual license conditions for a specified facility with demonstrated performance, that enhance public health and safety or protection of the environment;

(I) authorizes minor modifications to existing facilities, consistent with individual license conditions for a specified facility with demonstrated performance, to enhance environmental monitoring programs and protection of the environment; or

(J) any amendment, after completion of a review, the executive director determines is an administrative amendment.

(j) This subsection applies only to major amendments to MSW permits.

(1) A full permit application shall be submitted when applying for a major amendment to an MSW permit for the following changes:

(A) an increase in the maximum permitted elevation of a landfill;

(B) a lateral expansion of an MSW facility other than changes to expand the buffer zone as defined in §330.3 of this title (relating to Definitions). Changes to the facility legal description to increase the buffer zone may be processed as a permit modification requiring public notice under §305.70(k) of this title;

(C) any increase in the volumetric waste capacity at a landfill or the daily maximum limit of waste acceptance for a Type V processing facility; and

(D) upgrading of a permitted landfill facility to meet the requirements of 40 Code of Federal Regulations Part 258, including facilities which previously have submitted an application to upgrade.

(2) For all other major amendment applications for MSW facilities, only the portions of the permit and attachments to which changes are being proposed are required to be submitted. The executive director's review and any hearing or proceeding on a major amendment subject to this paragraph shall be limited to the proposed changes, including information requested under paragraph (3) of this subsection. Examples of changes for which less than a full application may be submitted for a major amendment include:

(A) addition of an authorization to accept a new waste stream (e.g., Class 1 industrial waste);

(B) changes in waste acceptance and operating hours outside the hours identified in §330.135 of this title (relating to Facility Operating Hours), or authorization to accept waste or operate on a day not previously authorized; and

(C) addition of an alternative liner design, in accordance with §330.335 of this title (relating to Alternative Liner Design).

(3) The executive director may request any additional information deemed necessary for the review and processing of the application.

(k) This subsection applies only to temporary authorizations made to existing MSW permits or registrations.

(1) Examples of temporary authorizations include:

(A) the use of an alternate daily cover material on a trial basis to properly evaluate cover effectiveness for odor and vector control;

(B) temporary changes in operating hours to accommodate special community events, or prevent disruption of waste services due to holidays;

(C) temporary changes necessary to address disaster situations; and

(D) temporary changes necessary to prevent the disruption of solid waste management activities.

(2) In order to obtain a temporary authorization, a permittee or registrant shall request a temporary authorization and include in the application a specific description of the activities to be conducted, an explanation of why the authorization is necessary, and how long the authorization is needed.

(3) The executive director may approve a temporary authorization for a term of not more than 180 days, and may reissue the temporary authorization once for an additional 180 days, if circumstances warrant the extension.

(4) The executive director may provide verbal authorization for activities related to disasters as described in paragraph (1)(C) of this subsection. When verbal authorization is provided, the permittee or registrant shall document both the details of the temporary changes and the verbal approval, and provide the documentation to the executive director within three days of the request.

(5) Temporary authorizations for municipal solid waste facilities may include actions that would be considered to be either a major or minor change to a permit or registration. Temporary authorizations apply to changes to an MSW facility or its operation that do not reduce the capability of the facility to protect human health and the environment.

SUBCHAPTER F: PERMIT CHARACTERISTICS AND CONDITIONS

§305.127

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is adopted under TWC, §27.019, which requires the commission to adopt rules reasonably required for the performance of duties and functions under the Injection Well Act; and §27.0513, which requires the commission to establish rules for procedural, application and technical requirements for production area authorizations. The amendment is also adopted under Texas Health and Safety Code (THSC), Chapter 401, concerning Radioactive Materials and Other Sources of Radiation (also known as the Texas Radiation Control Act); §401.011, concerning Radiation Control Agency, which authorizes the commission to regulate and license the disposal of radioactive substances, the processing or storage of low-level radioactive waste or naturally occurring radioactive material, the recovery or processing of source material, and the processing of by-product material; §401.051, concerning Adoption of Rules and Guidelines, which authorizes the commission to adopt rules and guidelines relating to control of sources of radiation; §401.103, concerning Rules and Guidelines for Licensing and Registration, which authorizes the commission to adopt rules and guidelines that provide for licensing and registration for the control of sources of radiation; §401.104, concerning Licensing and Registration rules, which requires the commission to provide rules for licensing for the disposal of radioactive substances; §401.202, concerning Regulation of Low-Level Radioactive Waste Disposal, which authorizes the commission to regulate commercial processing and disposal of low-level radioactive waste; §401.262, concerning Management of Certain By-Product Material, which

provides the commission authority to regulate by-product storage and processing facilities; and §401.412, concerning Commission Licensing Authority, which authorizes the commission to issue licenses for the disposal of radioactive substances.

The adopted amendment implements Senate Bill 1604, 80th Legislature, 2007; THSC, §§401.011, 401.051, 401.103, 401.104, 401.151, 401.202, 401.262, 401.412, and 401.2625; and TWC, §27.0513.

§305.127. Conditions to be Determined for Individual Permits.

Conditions to be determined on a case-by-case basis according to the criteria specified in this section, and when applicable, incorporated into the permit expressly or by reference, are listed in the following paragraphs.

(1) Duration.

(A) Injection well permits.

(i) Permits for Class I and Class V wells shall be for a fixed term not to exceed ten years.

(ii) Initial permits and reissuance of permits for Class III wells shall be for a fixed term of ten years.

(B) Solid waste permits.

(i) Hazardous waste permits shall be for a fixed term not to exceed ten years.

(ii) Other solid waste permits may be for the life of the project.

(iii) Each permit for a land disposal facility used to manage hazardous waste shall be reviewed by the executive director five years from the date of permit issuance or reissuance and shall be modified as necessary by the commission, as provided in §305.62(e) of this title (relating to Amendment).

(C) Waste discharge permits.

(i) Texas pollutant discharge elimination system (TPDES) permits, including sludge permits, shall be for a term not to exceed five years.

(ii) All other permits shall be as follows.

(I) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be for a term not to exceed five years.

(II) Confined animal feeding operation permits may be for the life of the project.

(III) Other wastewater permits, including permits which regulate land disposal systems shall be for a term not to exceed ten years.

(D) Drilled or mined shaft permits. Drilled or mined shaft permits which authorize operation of a drilled or mined shaft shall be for a term not to exceed ten years.

(E) Term of permit. The term of a permit shall not be extended by amendment beyond the maximum duration specified in this section.

(F) Duration of permit. The executive director may recommend that a permit be issued and the commission may issue any permit, for a duration less than the full allowable term under this section.

(G) Radioactive material licenses.

(i) A license issued under Chapter 336, Subchapter H of this title (relating to Licensing Requirements for Near-Surface Land Disposal of Low-Level Radioactive Waste) shall be issued for an initial term of 15 years from the date of issuance. After the initial 15 years, the commission may renew the license for one or more terms of ten years. The authority to dispose of waste expires on the date stated in the license except as provided in §336.718(a) of this title (relating to Application for Renewal or Closure).

(ii) Other radioactive material licenses shall be for a fixed term not to exceed ten years.

(2) Monitoring, recording, and reporting.

(A) Requirements concerning the proper use, maintenance, and installation of monitoring equipment or methods shall be specified by the commission as appropriate.

(B) The type, intervals, and frequency of monitoring shall be set to yield data representative of the monitored activity, at a minimum as specified in commission rules for monitoring and reporting.

(C) Other requirements for monitoring and reporting shall be set at a minimum as specified in commission rules for monitoring and reporting.

(3) Schedule of compliance.

(A) A schedule of compliance prescribing a timetable for achieving compliance with the permit conditions, the appropriate law, and regulations may be incorporated into a permit. The schedule shall require compliance as soon as possible and may set interim dates of compliance. For injection wells, compliance shall be required not later than three years after the effective date of the permit. For TPDES permits the schedule of compliance shall require compliance not later than authorized by Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(B) For schedules of compliance exceeding one year, interim dates of compliance not exceeding one year shall be set, except that in the case of a schedule for compliance with standards for sewage sludge use and disposal, the time between interim dates shall not exceed six months.

(C) Reporting requirements for each schedule of compliance shall be specified by the commission as appropriate. Reports of progress and completion shall be submitted to the executive director no later than 14 days after each schedule date.

(D) For TPDES permits the following additional conditions apply.

(i) The first TPDES permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction, but less than three years before commencement of the relevant discharge.

(ii) For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of discharge.

(iii) If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the permit schedule shall set forth interim requirements and the dates for their achievement.

(E) For underground injection control permits, the time for compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit. Except as provided in clause (iii)(I)(-b-) of this subparagraph, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed one year.

(ii) If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(iii) A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows.

(I) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(-a-) the permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(-b-) the permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(II) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the cessation date, the permit shall contain a schedule leading to cessation of activities which will ensure timely compliance with applicable requirements.

(III) If the permittee is undecided whether to cease conducting regulated activities, the executive director may issue or modify a permit to contain two schedules as follows:

(-a-) both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(-b-) one schedule shall lead to timely compliance with applicable requirements;

(-c-) the second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements; and

(-d-) each permit containing two schedules shall include a requirement that after the permittee has made a final decision under item (-a-) of this subclause, it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to cessation if the decision is to cease conducting regulated activities.

(IV) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the executive director, such as a resolution of the board of directors of a corporation.

(4) Requirements for individual programs.

(A) Requirements to provide for and assure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in permits on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment. Reference is made to Chapter 330 of this title (relating to Municipal Solid Waste) for municipal solid waste facility standards, to Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, to Chapter 336 of this title (relating to Radioactive Substance Rules) for radioactive material disposal standards, to Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting) for waste discharge standards, to Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards, and to

Chapter 222 of this title (relating to Subsurface Area Drip Dispersal Systems) for subsurface area drip dispersal systems standards.

(B) Any applicable statutory or regulatory requirements which take effect prior to final administrative disposition of an application for a permit or prior to the amendment, modification, or suspension and reissuance of a permit shall be included in the permit.

(C) New, amended, modified, or renewed permits shall incorporate any applicable requirements contained in Chapter 331 of this title for injection well standards, Chapter 335 of this title for solid waste facility standards, Chapter 336 of this title, Chapter 309 of this title for waste discharge standards, Chapter 329 of this title for drilled or mined shaft standards, and Chapter 222 of this title for subsurface area drip dispersal systems standards.

(5) Wastes authorized.

(A) Injection well permits. Each category of waste to be disposed of by injection well shall be authorized in the permit.

(B) Drilled or mined shaft permits. Each category of waste to be handled, stored, processed, or disposed of in a drilled or mined shaft, or in associated surface facilities shall be authorized in the permit.

(C) Unauthorized wastes. Wastes not authorized by permit are prohibited from being transported to, stored, and processed or disposed of in a permitted facility.

(6) Permit conditions. All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable rules or requirements must be given in the permit.