

HEALTH & SAFETY CODE
SUBTITLE B. SOLID WASTE, TOXIC CHEMICALS, SEWAGE, LITTER, AND WATER
CHAPTER 361. SOLID WASTE DISPOSAL ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 361.001. SHORT TITLE. This chapter may be cited as the Solid Waste Disposal Act.
Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.002. POLICY; FINDINGS. (a) It is this state's policy and the purpose of this chapter to safeguard the health, welfare, and physical property of the people and to protect the environment by controlling the management of solid waste, including accounting for hazardous waste that is generated.

(b) The storage, processing, and disposal of hazardous waste at municipal solid waste facilities pose a risk to public health and the environment, and in order to protect the environment and to provide measures for adequate protection of public health, it is in the public interest to require hazardous waste to be stored, processed, and disposed of only at permitted hazardous industrial solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 1, eff. Sept. 6, 1990.

Sec. 361.003. DEFINITIONS. Unless the context requires a different definition, in this chapter:

(1) "Apparent recharge zone" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the commission.

(2) "Class I industrial solid waste" means an industrial solid waste or mixture of industrial solid waste, including hazardous industrial waste, that because of its concentration or physical or chemical characteristics:

(A) is toxic, corrosive, flammable, a strong sensitizer or irritant, or a generator of sudden pressure by decomposition, heat, or other means; and

(B) poses or may pose a substantial present or potential danger to human health or the environment if improperly processed, stored, transported, or otherwise managed.

(3) "Class I nonhazardous industrial solid waste" means any Class I industrial solid waste that has not been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(4) "Commercial hazardous waste management facility" means any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(5) "Commission" means the Texas Natural Resource Conservation Commission.

(6) "Composting" means the controlled biological decomposition of organic solid waste under aerobic conditions.

(7) "Disposal" means the discharging, depositing, injecting, dumping, spilling, leaking, or placing of solid waste or hazardous waste, whether containerized or uncontainerized, into or on land or water so that the solid waste or hazardous waste or any constituent thereof may be emitted into the air, discharged into surface water or groundwater, or introduced into the environment in any other manner.

(8) "Environmental response law" means the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601 through 9675, as amended by the Superfund Amendments and Reauthorization Act of 1986.

(9) "Executive director" means the executive director of the commission.

(10) "Garbage" means solid waste that is putrescible animal and vegetable waste materials from the handling, preparation, cooking, or consumption of food, including waste materials from markets, storage facilities, and the handling and sale of produce and other food products.

(11) "Hazardous substance":

(A) means:

(i) a substance designated under Section 311(b)(2)(A) of the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 1321);

(ii) an element, compound, mixture, solution, or substance designated under Section 102 of the environmental response law;

(iii) a hazardous waste having the characteristics identified under or listed under Section 3001 of the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6921), excluding waste, the regulation of which under the federal Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.) has been suspended by Act of Congress;

(iv) a toxic pollutant listed under Section 307(a) of the Federal Water Pollution Control Act (33 U.S.C. Section 1317);

(v) a hazardous air pollutant listed under Section 112 of the federal Clean Air Act, as amended (42 U.S.C. Section 7412); and

(vi) any imminently hazardous chemical substance or mixture with respect to which the administrator of the Environmental Protection Agency has taken action under Section 7 of the Toxic Substances Control Act (15 U.S.C. Section 2606); but

(B) does not include:

(i) petroleum, which means crude oil or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Paragraphs (i) through (vi) of Subdivision (A);

(ii) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel mixtures of natural gas and synthetic gas; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources or any other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code.

(12) "Hazardous waste" means solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(13) "Hazardous waste management facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(14) "Hazardous waste management unit" means a landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(15) "Industrial furnace" includes cement kilns, lime kilns, aggregate kilns, phosphate kilns, coke ovens, blast furnaces, smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces, titanium dioxide chloride process oxidation reactors, methane reforming furnaces, pulping liquor recovery furnaces, combustion devices used in the recovery of sulfur values from spent sulfuric acid, and other devices the commission may list.

(16) "Industrial solid waste" means solid waste resulting from or incidental to a process of industry or manufacturing, or mining or agricultural operations.

(17) "Local government" means:

(A) a county;

(B) a municipality; or

(C) a political subdivision exercising the

authority granted under Section 361.165.

(18) "Management" means the systematic control of the activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(19) "Motor vehicle" has the meaning assigned by Section 541.201, Transportation Code.

(20) "Municipal solid waste" means solid waste resulting from or incidental to municipal, community, commercial, institutional, or recreational activities, and includes garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and other solid waste other than industrial solid waste.

(21) "Notice of intent to file an application" means the notice filed under Section 361.063.

(22) "PCBs" or "polychlorinated biphenyl compounds" means compounds subject to Title 40, Code of Federal Regulations, Part 761.

(23) "Person" means an individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(24) "Person affected" means a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government:

(A) is a resident of a county, or a county adjacent or contiguous to the county, in which a solid waste facility is to be located; or

(B) is doing business or owns land in the county or adjacent or contiguous county.

(25) "Processing" means the extraction of materials from or the transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal. The term includes the treatment or neutralization of hazardous waste designed to change the physical, chemical, or biological character or composition of a hazardous waste so as to neutralize the waste, recover energy or material from the waste, render the waste nonhazardous or less hazardous, make it safer to transport, store, or dispose of, or render it amenable for recovery or storage, or reduce its volume. The term does not include activities concerning those materials exempted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), unless the commission determines that regulation of the activity under this chapter is necessary to protect human health or the environment.

(26) "Radioactive waste" means waste that requires specific licensing under Chapter 401 and the rules adopted by the commission under that law.

(27) "Recycling" means the legitimate use, reuse, or reclamation of solid waste.

(28) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. Section 2011 et seq.), if the release is subject to requirements concerning financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act;

(D) for the purposes of Section 104 of the environmental response law, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under Section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Sections 7912 and 7942); and

(E) the normal application of fertilizer.

(29) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to a removal action in the event of a release or threatened release of a hazardous waste into the environment to prevent or minimize the release of hazardous waste so that the hazardous waste does not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes:

(A) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous waste or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive waste, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those actions protect the public health and safety or the environment; and

(B) the costs of permanent relocation of residents, businesses, and community facilities if the administrator of the United States Environmental Protection Agency or the executive director determines that, alone or in combination with other measures, the relocation:

(i) is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off-site of hazardous waste; or

(ii) may otherwise be necessary to protect the public health or safety.

(30) "Removal" includes:

(A) cleaning up or removing released hazardous waste from the environment;

(B) taking necessary action in the event of the threat of release of hazardous waste into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous waste;

(D) disposing of removed material;

(E) erecting a security fence or other measure to limit access;

(F) providing alternate water supplies, temporary evacuation, and housing for threatened individuals not otherwise provided for;

(G) acting under Section 104(b) of the environmental response law;

(H) providing emergency assistance under the federal Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); or

(I) taking any other necessary action to prevent, minimize, or mitigate damage to the public health and welfare or the environment that may otherwise result from a release or threat of release.

(31) "Rubbish" means nonputrescible solid waste, excluding ashes, that consists of:

(A) combustible waste materials, including paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; and

(B) noncombustible waste materials, including glass, crockery, tin cans, aluminum cans, metal furniture, and similar materials that do not burn at ordinary incinerator temperatures (1,600 to 1,800 degrees Fahrenheit).

(32) "Sanitary landfill" means a controlled area of land on which solid waste is disposed of in accordance with standards, rules, or orders established by the commission.

(33) "Sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant.

(34) This subdivision expires on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid,

semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901 et seq.); and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(35) This subdivision is effective on delegation of the Resource Conservation and Recovery Act authority to the Railroad Commission of Texas. Subject to the limitations of 42 U.S.C. Section 6903(27) and 40 C.F.R. Section 261.4(a), "solid waste" means garbage, rubbish, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term:

(A) does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Chapter 26, Water Code;

(ii) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(iii) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Section 91.101, Natural Resources Code; and

(B) does include hazardous substances, for the purposes of Sections 361.271 through 361.277, 361.280, and 361.343 through 361.345.

(36) "Solid waste facility" means all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste. The term includes a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units.

(37) "Solid waste technician" means an individual who is trained in the practical aspects of the design, operation, and maintenance of a solid waste facility in accordance with standards, rules, or orders established by the commission.

(38) "Storage" means the temporary holding of solid waste, after which the solid waste is processed, disposed of, or stored elsewhere.

(39) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any land or surface or subsurface water in the state that renders the land or water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health,

safety, or welfare or impairs the usefulness or the public enjoyment of the land or water for any lawful or reasonable purpose. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 2, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.01, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 703, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.025, eff. Aug. 12, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.01, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.18, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.204, eff. Sept. 1, 1997.

SUBCHAPTER B. POWERS AND DUTIES OF TEXAS NATURAL RESOURCE
CONSERVATION COMMISSION

Sec. 361.011. COMMISSION'S JURISDICTION: MUNICIPAL SOLID WASTE. (a) The commission is responsible under this section for the management of municipal solid waste, excluding hazardous municipal waste, and shall coordinate municipal solid waste activities, excluding activities concerning hazardous municipal waste.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of municipal solid waste, excluding management of hazardous municipal waste, by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter relating to municipal solid waste management, excluding management of hazardous municipal waste, and all other powers necessary or convenient to carry out those responsibilities under this chapter.

(d) In matters relating to municipal solid waste management, excluding management of hazardous municipal waste, the commission shall consider water pollution control and water quality aspects and air pollution control and ambient air quality aspects.

(e) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(1), eff. Sept. 1, 1997.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.02, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.20, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 28, 60(b)(1), eff. Sept. 1, 1997.

Sec. 361.013. SOLID WASTE DISPOSAL AND TRANSPORTATION FEES. (a) Except as provided by Subsections (e) through (i), the commission shall charge a fee on all solid waste that is disposed of within this state. The fee is \$1.25 per ton received for disposal at a municipal solid waste landfill if the solid waste is measured by weight. If the solid waste is measured by volume, the fee for compacted solid waste is 40 cents per cubic yard or, for uncompacted solid waste, 25 cents per cubic yard received for disposal at a municipal solid waste landfill. The commission shall set the fee for sludge or similar waste applied to the land for beneficial use on a dry weight basis and for solid waste received at an incinerator or a shredding and composting facility at half the fee set for solid waste received for disposal at a landfill. The commission may charge comparable fees for other means of solid waste disposal that are used.

(b) The commission may raise or lower the fees established under Subsection (a) in accordance with commission spending levels established by the legislature.

(c) The commission shall charge an annual registration fee to a transporter of municipal solid waste who is required to register with the commission under rules adopted by the commission. The commission by rule shall adopt a fee schedule. The fee shall be reasonably related to the volume, the type, or both the volume and type of waste transported. The registration fee charged under this subsection may not be less than \$25 or more than \$500.

(d) The operator of each municipal solid waste facility shall maintain records and report to the commission annually on the amount of solid waste that the facility transfers, processes, stores, treats, or disposes of. Each transporter required to register with the commission shall maintain records and report to the commission annually on the amount of solid waste that the transporter transports. The commission by rule shall establish procedures for recordkeeping and reporting required under this subsection.

(e) The commission may not charge a fee under Subsection (a)

for scrap tires that are deposited in a designated recycling collection area at a landfill permitted by the commission or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165 and that are temporarily stored for eventual recycling, reuse, or energy recovery.

(f) The commission may not charge a fee under Subsection (a) for source separated yard waste materials that are composted at a composting facility, including a composting facility located at a permitted landfill site. The commission shall credit any fee payment due under Subsection (a) for any material received and converted to compost or product for composting through a composting process. Any compost or product for composting that is not used as compost and is deposited in a landfill is not exempt from the fee.

(g) The commission shall allow a home-rule municipality that has enacted an ordinance imposing a local environmental protection fee for disposal services as of January 1, 1993, to offer disposal or environmental programs or services to persons within its jurisdiction, from the revenues generated by said fee, as such services are required by state or federal mandates. If such services or programs are offered, the home-rule municipality may require their use by those persons within its jurisdiction.

(h) The commission may not charge a fee under Subsection (a) on solid waste resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

(i) The commission may not charge a fee under Subsection (a) for the disposal of:

(1) Class I industrial solid waste or hazardous waste subject to the assessment of fees under Section 361.136;

(2) an industrial solid waste for which no permit may be required under Section 361.090; or

(3) sewage sludge that:
(A) has been treated to reduce the density of pathogens to the lowest level provided by commission rules; and
(B) complies with commission rules regarding:
(i) metal concentration limits;
(ii) pathogen reduction; and
(iii) vector attraction reduction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 9.13, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.08, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.20, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 956, Sec. 1, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 376, Sec. 1, eff. Sept. 1, 1999.

Sec. 361.0135. COMPOSTING REFUND. (a) The operator of a public or privately owned municipal solid waste facility is entitled to a refund of 15 percent of the solid waste fees collected by the facility under Section 361.013(a) if:

(1) the refunds are used to lease or purchase and operate equipment necessary to compost yard waste;

(2) composting operations are actually performed; and

(3) the finished compost material produced by the facility is returned to beneficial reuse.

(b) The amount of the refund authorized by this section increases to 20 percent of the solid waste fees collected by the facility if, in addition to composting the yard waste, the operator of the facility voluntarily bans the disposal of yard waste at the facility.

(c) In order to receive a refund authorized by this section, the operator of the facility must submit a composting plan to the commission. The commission by rule may set a fee for reviewing a composting plan in an amount not to exceed the costs of review.

(d) The operator is entitled to a refund of fees collected by the facility under Section 361.013(a) on or after the date on which the commission approves the composting plan. The refund is collectable beginning on the date that the first composting operations occur in accordance with the approved plan. The commission may allow the refund to be applied as a credit against

fees required to be collected by the facility under Section 361.013(a).

(e) In this section, the terms "compost," "composting," and "yard waste" have the meanings assigned by Section 361.421.

(f) This section expires September 1, 1999, if the commission on or before that date determines that a market in composting materials has developed sufficiently to ensure that composting activities will continue without the incentives provided by this section.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 1.09, eff. Aug. 30, 1993.

Sec. 361.014. USE OF SOLID WASTE FEE REVENUE. (a) Revenue received by the commission under Section 361.013 shall be deposited in the state treasury to the credit of the commission. Half of the revenue is dedicated to the commission's municipal solid waste permitting and enforcement programs and related support activities and to pay for activities that will enhance the state's solid waste management program, including:

(1) provision of funds for the municipal solid waste management planning fund and the municipal solid waste resource recovery applied research and technical assistance fund established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363);

(2) conduct of demonstration projects and studies to help local governments of various populations and the private sector to convert to accounting systems and set rates that reflect the full costs of providing waste management services and are proportionate to the amount of waste generated;

(3) provision of technical assistance to local governments concerning solid waste management;

(4) establishment of a solid waste resource center in the commission and an office of waste minimization and recycling;

(5) provision of supplemental funding to local governments for the enforcement of this chapter, the Texas Litter Abatement Act (Chapter 365), and Chapters 391 and 683, Transportation Code;

(6) conduct of a statewide public awareness program concerning solid waste management;

(7) provision of supplemental funds for other state agencies with responsibilities concerning solid waste management, recycling, and other initiatives with the purpose of diverting recyclable waste from landfills;

(8) conduct of research to promote the development and stimulation of markets for recycled waste products;

(9) creation of a state municipal solid waste superfund, from funds appropriated, for:

(A) the cleanup of unauthorized tire dumps and solid waste dumps for which a responsible party cannot be located or is not immediately financially able to provide the cleanup;

(B) the cleanup or proper closure of abandoned or contaminated municipal solid waste sites for which a responsible party is not immediately financially able to provide the cleanup; and

(C) remediation, cleanup, and proper closure of unauthorized recycling sites for which a responsible party is not immediately financially able to perform the remediation, cleanup, and closure;

(10) provision of funds to mitigate the economic and environmental impacts of lead-acid battery recycling activities on local governments; and

(11) provision of funds for the conduct of research by a public or private entity to assist the state in developing new technologies and methods to reduce the amount of municipal waste disposed of in landfills.

(b) Half of the revenue is dedicated to local and regional solid waste projects consistent with regional plans approved by the commission in accordance with this chapter and to update and maintain those plans. Those revenues shall be allocated to municipal solid waste geographic planning regions for use by local governments and regional planning commissions according to a formula established by the commission that takes into account population, area, solid waste fee generation, and public health needs. Each planning region shall issue a biennial report to the legislature detailing how the revenue is spent. A project or service funded under this subsection must promote cooperation

between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

(c) Revenue derived from fees charged under Section 361.013(c) to a transporter of whole used or scrap tires or shredded tire pieces shall be deposited to the credit of the waste tire recycling account.

(d) Revenues allocated to the commission for the purposes authorized by Subsection (a) shall be deposited to the credit of the waste management account. Revenues allocated to local and regional solid waste projects shall be deposited to the credit of an account in the general revenue fund known as the municipal solid waste disposal account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 3, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 303, Sec. 4, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.10, 3.10, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.21, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 838, Sec. 1, eff. June 16, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.205, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 333, Sec. 35, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 340, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.015. JURISDICTION: RADIOACTIVE WASTE. (a) The commission is the state agency under Chapter 401 that licenses and regulates radioactive waste disposal activities not preemptively regulated by the federal government.

(b) The Texas Department of Health is the state agency under Chapter 401 that regulates radioactive waste activities, excluding disposal, not preemptively regulated by the federal government.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.

Sec. 361.0151. RECYCLING. (a) The commission shall establish and administer a waste minimization and recycling office within the commission that provides technical assistance to local governments concerning waste minimization and recycling.

(b) The commission shall work in conjunction with the Texas Department of Commerce to pursue the development of markets for recycled materials, including composting products.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 4, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.

Sec. 361.016. MEMORANDUM OF UNDERSTANDING BY COMMISSION. The commission by rule shall adopt:

(1) any memorandum of understanding between the commission and any other state agency; and

(2) any revision of a memorandum of understanding.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.22, eff. Sept. 1, 1995.

Sec. 361.017. COMMISSION'S JURISDICTION: INDUSTRIAL SOLID WASTE AND HAZARDOUS MUNICIPAL WASTE. (a) The commission is responsible for the management of industrial solid waste and hazardous municipal waste and shall coordinate industrial solid waste activities and hazardous municipal waste activities.

(b) The commission shall accomplish the purposes of this chapter by controlling all aspects of the management of industrial solid waste and hazardous municipal waste by all practical and economically feasible methods consistent with its powers and duties under this chapter and other law.

(c) The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities under this chapter.

(d) In matters relating to industrial solid waste and hazardous municipal waste, the commission shall:

(1) consider the public health aspects and the air pollution control and ambient air quality aspects; and

(2) consult with the attorney general's office for assistance in determining whether referral to the attorney general for enforcement is mandatory under Section 361.224 or whether referral is appropriate, in the commission's discretion, for the disposition of enforcement matters under this chapter.

(e) If referral is determined to be mandatory or appropriate, the commission shall consult with the attorney general's office for assistance in determining whether criminal or civil enforcement action should be taken. The commission shall use

all available enforcement options.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 8.03, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.23, eff. Sept. 1, 1995.

Sec. 361.018. COMMISSION'S JURISDICTION OVER HAZARDOUS WASTE COMPONENTS OF RADIOACTIVE WASTE. (a) The commission has the powers under this chapter necessary or convenient to carry out its responsibilities concerning the regulation of the management of hazardous waste components of radioactive waste under the jurisdiction of the Texas Department of Health.

(b) The commission shall consult with the Texas Department of Health concerning regulation and management under this section, except for activities solely under the commission's jurisdiction.

(c) The commission may not adopt rules or engage in management activities under this section that conflict with state or federal laws and rules concerning the regulation of radioactive waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.24, eff. Sept. 1, 1995.

Sec. 361.019. APPROVAL OF INDUSTRIAL SOLID WASTE MANAGEMENT IN MUNICIPAL SOLID WASTE FACILITY. (a) Except as provided by Subsection (b), Class I nonhazardous industrial solid waste and small quantities of hazardous waste generated by conditionally exempt small quantity generators, as defined by the commission, may be accepted in a municipal solid waste facility if:

(1) authorized in writing by, or by rule of, the commission; and

(2) the generator of the Class I nonhazardous waste certifies on an appropriate commission form that the waste is not a hazardous waste.

(b) Except as otherwise prohibited by this chapter, nonhazardous industrial solid waste generated by the mechanical shredding of motor vehicles, appliances, or other items of scrap, used, or obsolete metals shall be accepted, without authorization by the commission under Subsection (a), in a municipal solid waste facility that has previously been authorized to accept and has accepted Class I nonhazardous industrial solid wastes or Class II industrial solid wastes if the waste contains no free liquids, is not a hazardous waste as defined in Section 361.003, and satisfies other criteria that may be established by commission rule. Until the commission adopts rules establishing additional criteria, generators of this type of waste shall satisfy the two criteria described in this subsection when these wastes are disposed of in municipal solid waste facilities.

(c) Municipal solid waste may be accepted in an industrial solid waste facility if authorized in writing by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 5, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 703, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.24, eff. Sept. 1, 1995.

Sec. 361.0202. DEVELOPMENT OF EDUCATION PROGRAMS. (a) The commission shall develop a public awareness program to increase awareness of individual responsibility for properly reducing and disposing of municipal solid waste and to encourage participation in waste source reduction, composting, reuse, and recycling. The program shall include:

(1) a media campaign to develop and disseminate educational materials designed to establish broad public understanding and compliance with the state's waste reduction and recycling goals; and

(2) a curriculum, developed in cooperation with the commissioner of education and suitable for use in programs from kindergarten through high school, that promotes waste reduction and recycling.

(b) As part of the program, the commission may:

(1) advise and consult with individuals, businesses, and manufacturers on source reduction techniques and recycling; and

(2) sponsor or cosponsor with public and private organizations technical workshops and seminars on source reduction and recycling.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.04, eff. Aug. 30, 1993 and Acts 1993, 73rd Leg., ch. 1045, Sec. 5, eff. Sept. 1, 1993.

Sec. 361.0215. POLLUTION PREVENTION ADVISORY COMMITTEE. (a) The pollution prevention advisory committee is

composed of nine members with a balanced representation of environmental and public interest groups and the regulated community.

(b) The committee shall advise the commission and interagency coordination council on:

(1) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;

(2) the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households;

(3) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and

(4) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).

(c) The committee shall advise the commission on the creation and implementation of the strategically directed regulatory structure developed under Section 5.755, Water Code.

(d) The committee shall report quarterly to the commission on its activities, including suggestions or proposals for future activities and other matters the committee considers important.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 2.04, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, Sec. 4, eff. June 16, 1991; Acts 1997, 75th Leg., ch. 965, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 4.04, eff. Sept. 1, 2001.

Sec. 361.0216. OFFICE OF POLLUTION PREVENTION. The office of pollution prevention is created in the executive office of the commission to direct and coordinate all source reduction and waste minimization activities of the commission.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 7, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 2.05, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, Sec. 5, eff. June 16, 1991.

Sec. 361.0219. OFFICE OF WASTE EXCHANGE. (a) The office of waste exchange is an office of the commission.

(b) The office shall facilitate the exchange of solid waste, recyclable or compostable materials, and other secondary materials among persons that generate, recycle, compost, or reuse those materials, in order to foster greater recycling, composting, and reuse in the state. At least one party to such an exchange must be in the state. The office shall provide information to interested persons on arranging exchanges of these materials in order to allow greater recycling, composting, and reuse of the materials, and may act as broker for exchanges of the materials if private brokers are not available.

(c) The office of waste exchange shall adopt a plan for providing to interested persons information on waste exchange. Biennially the office of waste exchange shall report to the commission on progress in implementing this section, including the plan to provide information on waste exchange, the state's participation in any national or regional waste exchange program, and information on the movement and exchange of materials and the effect on recycling, composting, and reuse rates in the state. The commission shall submit the report by December 1 of each even-numbered year as required by Section 5.178(b), Water Code.

Added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.05, eff. Aug. 30, 1993 and Acts 1993, 73rd Leg., ch. 1045, Sec. 6, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 1082, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.022. PUBLIC POLICY CONCERNING MUNICIPAL SOLID WASTE AND SLUDGE. (a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of municipal solid waste and municipal sludge to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of municipal solid waste or municipal sludge, the methods listed under Subsections (b) and (c) are preferred to the extent economically and technologically feasible and considering the appropriateness of the method to the type of solid waste material or sludge generated, treated, disposed

of, or stored.

(b) For municipal solid waste, not including sludge, the following methods are preferred, in the order listed:

- (1) source reduction and waste minimization;
- (2) reuse or recycling of waste;
- (3) treatment to destroy or reprocess waste to recover energy or other beneficial resources if the treatment does not threaten public health, safety, or the environment; or
- (4) land disposal.

(c) For municipal sludge, the following methods are preferred, in the order listed:

- (1) source reduction and minimization of sludge production and concentrations of heavy metals and other toxins in sludge;
- (2) treatment of sludge to reduce pathogens and recover energy, produce beneficial by-products, or reduce the quantity of sludge;
- (3) marketing and distribution of sludge and sludge products if the marketing and distribution do not threaten public health, safety, or the environment;
- (4) applying sludge to land for beneficial use;
- (5) land treatment; or
- (6) landfilling.

(d) In adopting rules to implement public policy concerning municipal solid waste management, the commission shall consider the preference of municipal solid waste management methods under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.27, eff. Sept. 1, 1995.

Sec. 361.023. PUBLIC POLICY CONCERNING HAZARDOUS WASTE. (a) To protect the public health and environment, it is the state's goal, through source reduction, to eliminate the generation of hazardous waste to the maximum extent that is technologically and economically feasible. Therefore, it is the state's public policy that, in generating, treating, storing, and disposing of hazardous waste, the following methods are preferred to the extent economically and technologically feasible, in the order listed:

- (1) source reduction;
- (2) reuse or recycling of waste, or both;
- (3) treatment to destroy hazardous characteristics;
- (4) treatment to reduce hazardous characteristics;
- (5) underground injection; and
- (6) land disposal.

(b) Under Subsection (a)(3), on-site destruction is preferred, but it shall be evaluated in the context of other relevant factors such as transportation hazard, distribution of risk, quality of destruction, operator capability, and site suitability.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 231, Sec. 2, eff. Sept. 1, 1991.

Sec. 361.0231. PUBLIC POLICY CONCERNING ADEQUATE CAPACITY FOR INDUSTRIAL AND HAZARDOUS WASTE. (a) To protect the public health and environment taking into consideration the economic development of the state, and assure the continuation of the federal funding for abandoned facility response actions, it is the state public policy that adequate capacity should exist for the proper management of industrial and hazardous waste generated in this state.

(b) "Adequate capacity" is the capacity necessary to manage the industrial and hazardous waste that remains after application, to the maximum extent economically and technologically feasible, of waste reduction techniques.

(c) It is further the state's policy that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 8, eff. Sept. 6, 1990. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 1.25, eff. Sept. 1, 2001.

Sec. 361.0235. HAZARDOUS WASTE GENERATED IN FOREIGN COUNTRY. (a) Except as otherwise provided by this section, a person may not receive, transport, or cause to be transported into this state, for the purpose of treatment, storage, or disposal in this state, hazardous waste generated in a country other than the United States.

(b) This section may not be construed or applied in a manner that interferes with the authority of the federal government to regulate commerce with foreign nations and among the several states provided by Article I, Section 8, Clause 3, of the United States Constitution.

(c) This section does not apply to a person who transports or receives material from a country other than the United States for:

- (1) recycling or reuse of the material; or
- (2) use of the material as a feedstock or ingredient in the production of a new product.

(d) This section does not apply to waste transported or received for treatment, storage, or disposal at a hazardous waste management facility that is owned by the generator of the waste or by a parent, subsidiary, or affiliated corporation of the generator.

(e) This section does not apply to waste received by:

- (1) a producer of the product or material from which the waste is generated; or
- (2) a parent, subsidiary, or affiliated corporation of such producer.

(f) This section does not apply to waste generated in Mexico at an approved maquiladora facility to the extent that such waste:

- (1) was generated as a result of the processing or fabrication of materials imported into Mexico from Texas on a temporary basis; and
- (2) is required to be re-exported to the United States under Mexican law.

Added by Acts 1991, 72nd Leg., ch. 336, Sec. 1, eff. Sept. 1, 1991. Renumbered from V.T.C.A., Health & Safety Code Sec. 361.0232 by Acts 1995, 74th Leg., ch. 76, Sec. 17.01(27), eff. Sept. 1, 1995.

Sec. 361.024. RULES AND STANDARDS. (a) The commission may adopt rules consistent with this chapter and establish minimum standards of operation for the management and control of solid waste under this chapter.

(b) In developing rules concerning hazardous waste, the commission shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources.

(c) The minimum standards set by the commission for on-site storage of hazardous waste must be at least the minimum standards set by the manufacturer of the chemical.

(d) Rules adopted by the commission under Section 361.036 and Sections 361.097-361.108 for solid waste facilities may differ according to the type or hazard of hazardous waste managed and the type of waste management method used.

(e) Rules shall be adopted as provided by Chapter 2001, Government Code. As provided by that Act, the commission must adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency. The commission shall follow its own rules as adopted until it changes them in accordance with that Act.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 2.06, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 8, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.30, eff. Sept. 1, 1995.

Sec. 361.025. EXEMPT ACTIVITIES. (a) The commission and the Railroad Commission of Texas shall jointly prepare an exclusive list of activities that are associated with oil and gas exploration, development, and production and are therefore exempt from regulation under this chapter.

(b) The list shall be adopted by rule and amended as necessary.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.026. ASSISTANCE PROVIDED BY COMMISSION. The commission may:

- (1) provide educational, advisory, and technical services concerning solid waste management to other state agencies, regional planning agencies, local governments, special districts, institutions, and individuals; and

- (2) assist other state agencies, regional planning agencies, local governments, special districts, and institutions in acquiring federal grants for:

- (A) the development of solid waste facilities and

management programs; and

(B) research to improve solid waste management. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.31, eff. Sept. 1, 1995.

Sec. 361.027. LICENSURE OF SOLID WASTE FACILITY SUPERVISORS. The commission may implement a program under Chapter 37, Water Code, to license persons who supervise the operation or maintenance of solid waste facilities.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.32, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 36, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 880, Sec. 20, eff. Sept. 1, 2001.

Sec. 361.028. INDUSTRIAL SOLID AND HAZARDOUS WASTE MATERIALS EXCHANGE. (a) The commission shall establish an industrial solid and hazardous waste materials exchange that provides for the exchange, between interested persons, of information concerning:

(1) particular quantities of industrial solid or hazardous waste available in this state for recovery;

(2) persons interested in acquiring certain types of industrial solid or hazardous waste for purposes of recovery; and

(3) methods for the treatment and recovery of industrial solid or hazardous waste.

(b) The industrial solid and hazardous waste materials exchange may be operated under one or more reciprocity agreements providing for the exchange of information described by Subsection (a) for similar information from a program operated in another state.

(c) The commission may contract for a private person or public entity to establish or operate the industrial solid and hazardous waste materials exchange.

(d) The commission may prescribe rules concerning the establishment and operation of the industrial solid and hazardous waste exchange, including the setting of a necessary subscription fee to offset the cost of participation in the program.

(e) The commission may seek grants and contract support from federal and other sources to the extent possible and may accept gifts to support its purposes and programs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.029. COLLECTION AND DISPOSAL OF HOUSEHOLD MATERIALS THAT COULD BE CLASSIFIED AS HAZARDOUS WASTE. (a) The commission shall provide by rule for interested persons to engage in activities that involve the collection and disposal of household materials that could be classified as hazardous waste.

(b) The rules must specify the necessary requirements concerning the training of persons involved in the collection and disposal of those household materials.

(c) A person is not liable for damages as a result of any act or omission in the course of advertising, promoting, or distributing educational materials concerning the collection or disposal of those household materials in accordance with the rules. This subsection does not preclude liability for damages as a result of gross negligence of or intentional misconduct by the person.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.33, eff. Sept. 1, 1995.

Sec. 361.030. FEDERAL FUNDS. The commission may accept funds from the federal government for purposes concerning solid waste management and spend money received from the federal government for those purposes in the manner prescribed by law and in accordance with agreements as are necessary and appropriate between the federal government and the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.34, eff. Sept. 1, 1995.

Sec. 361.031. FINANCIAL ASSISTANCE TO LOCAL GOVERNMENTS. (a) The commission may administer and spend state funds provided to the commission by legislative appropriations, or otherwise, to make grants to local governments for:

(1) solid waste planning;

(2) installation of solid waste facilities; and

(3) administration of solid waste programs.

(b) The grants made under this chapter shall be distributed in a manner determined by the commission.

(c) The amount of financial assistance granted by the state through the commission to a local government under this chapter must be matched by local government funds at least in equal amounts. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1995, 74th Leg., ch. 76, Sec. 11.34, eff. Sept. 1, 1995.

Sec. 361.032. INSPECTIONS; RIGHT OF ENTRY. (a) The commission may inspect and approve solid waste facilities used or proposed to be used to store, process, or dispose of solid waste.

(b) Agents or employees of the commission or local governments have the right to enter at any reasonable time public or private property in the governmental entity's jurisdiction, including a municipality's extraterritorial jurisdiction, to inspect and investigate conditions concerning solid waste management and control.

(c) Agents or employees of the commission or commission contractors have the right to enter at any reasonable time public or private property to investigate or monitor the release or threatened release of a hazardous substance.

(d) Agents or employees of the commission or commission contractors may not enter private property with management in residence without notifying the management, or the person in charge at the time, of their presence and presenting proper credentials.

(e) Agents or employees of the commission or commission contractors acting under this section shall observe the establishment's rules on safety, internal security, and fire protection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.35, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 883, Sec. 3, eff. Aug. 28, 1995.

Sec. 361.033. INSPECTIONS REQUIRED BY ENVIRONMENTAL PROTECTION AGENCY. (a) The commission shall inspect regulated hazardous waste management and disposal facilities periodically as required by the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(b) In supplementing the inspections under Subsection (a), the commission shall give priority to inspecting and reinspecting those facilities, including generators, considered most likely to be in noncompliance or most likely to pose an environmental or public health threat, regardless of whether the facilities are characterized as major or non-major facilities.

(c) The commission may randomly perform less comprehensive checks of facilities to supplement the more comprehensive inspections required by the United States Environmental Protection Agency.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.035. RECORDS AND REPORTS; DISPOSAL OF HAZARDOUS WASTE. (a) The commission by rule shall require operators of solid waste facilities for disposal of hazardous waste to maintain records and to submit to the commission reports necessary for the commission to determine the amount of hazardous waste disposal.

(b) The commission by rule shall establish the date on which a report required by this section is to be submitted.

(c) A penalty collected under Subchapter C or D, Chapter 7, Water Code, for the late filing of a report required by this section shall be deposited to the credit of the hazardous and solid waste remediation fee fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1072, Sec. 29, eff. Sept. 1, 1997.

Sec. 361.036. RECORDS AND MANIFESTS REQUIRED; CLASS I INDUSTRIAL SOLID WASTE OR HAZARDOUS WASTE. The commission by rule shall require a person who generates, transports, processes, stores, or disposes of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that the waste is transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.037. ACCESS TO HAZARDOUS WASTE RECORDS. (a) Authorized agents or employees of the commission have access to and may examine and copy during regular business hours any records pertaining to hazardous waste management and control.

(b) Except as provided by this subsection, records copied under Subsection (a) are public records. If the owner of the records shows to the satisfaction of the executive director that the records would divulge trade secrets if made public, the commission shall consider the copied records confidential.

(c) Subsection (b) does not require the commission to

consider the composition or characteristics of solid waste being processed, stored, disposed of, or otherwise handled to be held confidential.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.039. CONSTRUCTION OF OTHER LAWS. Except as specifically provided by this chapter, this chapter does not diminish or limit the authority of the commission, the Texas Department of Health, or a local government in performing the powers, functions, and duties vested in those governmental entities by other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.36, eff. Sept. 1, 1995.

Sec. 361.040. DEVELOPMENT AND USE OF LANDFILL GAS.

Text of section effective until September 1, 2007

(a) The legislature finds that:

(1) there are many municipal solid waste landfills in this state that produce economically recoverable amounts of methane gas;

(2) those landfills currently generate approximately 100 million cubic feet of methane gas per day;

(3) cost-effective recovery of landfill gas will have both environmental and economic benefits; and

(4) it is in the state's interest to encourage and assist the development and use of landfill gas in a timely fashion.

(b) The commission and the Public Utility Commission of Texas shall jointly promote the economic development and use of landfill gas by, at a minimum:

(1) publicizing agency information on identified landfills with the potential for economic landfill gas development, including an estimate of that potential;

(2) assisting gas developers, landfill owners and operators, electric utilities, and gas utilities in exploring partnership opportunities with regard to landfill gas; and

(3) establishing a clearinghouse of information on landfill gas development and use.

(c) If the commission requires a person to register with the commission before undertaking landfill gas recovery activities, the commission shall give priority to processing applications for registration.

(d) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(a).

(e) This section expires September 1, 2007.

Added by Acts 2001, 77th Leg., ch. 314, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(a), eff. Jan. 11, 2004.

SUBCHAPTER C. PERMITS

Sec. 361.061. PERMITS; SOLID WASTE FACILITY. Except as provided by Section 361.090 with respect to certain industrial solid waste, the commission may require and issue permits authorizing and governing the construction, operation, and maintenance of the solid waste facilities used to store, process, or dispose of solid waste under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.37, eff. Sept. 1, 1995.

Sec. 361.062. COMPATIBILITY WITH COUNTY'S PLAN. (a) Before the commission issues a permit to construct, operate, or maintain a solid waste facility to process, store, or dispose of solid waste in a county that has a local solid waste management plan approved by the commission under Chapter 363 (Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act), the commission must consider whether the solid waste facility and the proposed site for the facility are compatible with the county's approved local solid waste management plan.

(b) Until a local solid waste management plan is approved by the commission and adopted by rule, the commission may not consider the plan and its contents in the review of an application for a solid waste facility permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.37, eff. Sept. 1, 1995.

Sec. 361.063. PREAPPLICATION LOCAL REVIEW COMMITTEE PROCESS. (a) The commission shall encourage applicants for solid waste facilities or for hazardous waste management facilities to enter into agreements with affected persons to resolve issues of concern. During this process, persons are encouraged to identify issues of concern and work with the applicant to resolve those

issues.

(b) The agreement shall be made through participation in a local review committee process that includes a good faith effort to identify issues of concern, describe them to the applicant, and attempt to resolve those issues before the hearing on the permit application begins. A person is not required to be a local review committee member to participate in a local review committee process.

(c) If an applicant decides to participate in a local review committee process, the applicant must file with the commission a notice of intent to file an application, setting forth the proposed location and type of hazardous waste management facility. A copy of the notice shall be delivered to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be delivered to the mayor of the municipality. The filing of the notice with the commission initiates the preapplication review process.

(d) Not later than the 15th day after the date the notice of intent is filed under Subsection (c), the local review committee shall be appointed. The commission shall adopt rules concerning the composition and appointment of a local review committee.

(e) The local review committee shall meet not later than the 21st day after the date the notice of intent is filed under Subsection (c). The preapplication review process must continue for 90 days unless the process is shortened or lengthened by agreement between the applicant and the local review committee.

(f) The commission, as appropriate, may award to a person, other than the applicant, who has participated in the local review committee process under this section concerning an application for a hazardous waste management facility all or a part of the person's reasonable costs for technical studies and reports and expert witnesses associated with the presentation of evidence at the public hearing concerning issues that are raised by the person in the local review committee process and that are unresolved at the beginning of the hearing on the permit application. The total amount of awards granted to all persons under this subsection concerning an application may not exceed \$25,000. In determining the appropriateness of the award, the commission shall consider whether:

(1) the evidence or analysis provided by the studies, reports, and witnesses is significant to the evaluation of the application;

(2) the evidence or analysis would otherwise not have been provided in the proceeding; and

(3) the local review committee was established in accordance with commission rules.

(g) Except as provided by Subsection (k), if an applicant has not entered into a local review committee process, the commission, in determining the appropriateness of an award of costs under Subsection (f), shall waive any requirement that the person affected has participated in a local review committee process.

(h) Except as provided by Subsection (k), costs awarded by the commission under Subsection (f) are assessed against the applicant. Rules shall be adopted for the award of those costs. Judicial review of an award of costs is under the substantial evidence rule as provided by Chapter 2001, Government Code.

(i) A local review committee shall:

(1) interact with the applicant in a structured manner during the preapplication review stage of the permitting process and, if necessary, during the technical review stage of the permitting process to raise and attempt to resolve both technical and nontechnical issues of concern; and

(2) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions.

(j) The applicant must submit the report required under Subsection (i)(2) to the commission with its permit application.

(k) If an applicant, after reasonable efforts to determine if local opposition exists to its proposed facility, including discussing the proposed facility with the county judge and other elected officials, does not enter into a local review committee process because of no apparent opposition or because a local review committee is not established despite the applicant's good faith efforts, costs may not be assessed against the applicant under

Subsection (f).

(1) This section does not apply to:

(1) a solid waste or hazardous waste management facility for which an application was filed, or that was authorized to operate, as of September 1, 1985;

(2) amendments to applications that were pending on September 1, 1987; or

(3) changes in waste storage or processing operations at existing sites at which waste management activities were being conducted on September 1, 1987.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.38, eff. Sept. 1, 1995.

Sec. 361.0635. PREAPPLICATION MEETING. (a) If requested by a person who intends to file a permit application, the commission shall provide the person an opportunity to meet with one or more staff members of the commission to discuss the permit application that the person intends to file.

(b) The person must make the request in writing to the commission.

(c) A meeting under this section must be held before the person files the permit application with the commission.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 10, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.064. PERMIT APPLICATION FORM AND PROCEDURES. (a) If the commission exercises the power to issue permits for solid waste facilities under this subchapter, the commission, to the extent not otherwise provided by this subchapter, shall prescribe:

(1) the form of and reasonable requirements for the permit application; and

(2) the procedures for processing the application.

(b) The commission shall provide a thorough and timely review of and a timely issuance or denial of any permit application for a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 11, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.0641. NOTICE TO STATE SENATOR AND REPRESENTATIVE. On receiving an application for, or notice of intent to file an application for, a permit to construct, operate, or maintain a facility to store, process, or dispose of solid waste or hazardous waste, the commission shall send notice of the application or the notice of intent to the state senator and representative who represent the area in which the facility is or will be located.

Added by Acts 1991, 72nd Leg., ch. 236, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.39, eff. Sept. 1, 1995.

Sec. 361.066. SUBMISSION OF ADMINISTRATIVELY COMPLETE PERMIT APPLICATION. (a) An applicant must submit any portion of an application that the commission determines is necessary to make the application administratively complete not later than the deadline set by the commission under Subsection (c).

(b) If an applicant does not submit an administratively complete application as required by this section, the application is considered withdrawn, unless there are extenuating circumstances.

(c) The commission by rule shall establish a deadline for the submission of additional information or material after the applicant receives notice from the commission that the information or material is needed to make the application administratively complete.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.40, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 570, Sec. 1, eff. Sept. 1, 1999.

Sec. 361.0665. NOTICE OF INTENT TO OBTAIN MUNICIPAL SOLID WASTE PERMIT. (a) A person who applies for a municipal solid waste permit shall publish notice of intent to obtain a permit under this chapter at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located.

(b) Notice must include:

(1) a description of the location or proposed location

of the facility;

(2) a statement that a person who may be affected by the facility or proposed facility is entitled to request a hearing from the commission;

(3) the manner in which the commission may be contacted for further information; and

(4) any other information that the commission by rule requires.

(c) If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located as defined by commission rule.

(d) In addition, the commission shall publish notice in the Texas Register.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(a), eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.41, eff. Sept. 1, 1995.

Sec. 361.066. PUBLIC MEETING AND NOTICE FOR SOLID WASTE FACILITIES. (a) An applicant for a permit under this chapter for a new facility that accepts municipal solid wastes may hold a public meeting in the county in which the proposed facility is to be located.

(b) The applicant shall publish notice of the public meeting at least once each week during the three weeks preceding the meeting. The notice must be published in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county.

(c) The applicant shall present to the commission an affidavit certifying that the notice was published as required by Subsection (b). The commission's acceptance of the affidavit raises a presumption that the applicant has complied with Subsection (b).

(d) The published notice may not be smaller than 96.8 square centimeters or 15 square inches, with the shortest dimension not less than 7.5 centimeters or 3 inches. The notice must contain at least the following information:

(1) the permit application number;

(2) the applicant's name;

(3) the proposed location of the facility; and

(4) the location and availability of copies of the application.

(e) The applicant shall pay the cost of the notice required under this section. The commission by rule may establish a procedure for payment of those costs.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 2.01, eff. Sept. 1, 2001. Amended by Acts 2005, 79th Leg., ch. 582, Sec. 1, eff. Sept. 1, 2005.

Sec. 361.067. REVIEW OF PERMIT APPLICATION BY OTHER GOVERNMENTAL ENTITIES. (a) If the commission determines that a permit application submitted to it is administratively complete, it shall mail a copy of the application or a summary of its contents to:

(1) the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located; and

(2) the county judge and the health authority of the county in which the facility is located.

(b) A governmental entity to whom the information is mailed shall have a reasonable time, as prescribed by the commission, to present comments and recommendations on the permit application before the commission acts on the application.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.42, eff. Sept. 1, 1995.

Sec. 361.068. ADMINISTRATIVELY COMPLETE APPLICATION. (a) A permit application is administratively complete when:

(1) a complete permit application form and the report and fees required to be submitted with a permit application have been submitted to the commission; and

(2) the permit application is ready for technical review in accordance with the rules of the commission.

(b) Once a determination that an application is

administratively and technically complete has been made and the permit application has become the subject of a contested case under Section 2001.003, Government Code:

(1) the commission may not revoke the determination that an application is administratively or technically complete;

(2) the commission may request additional information from the applicant only if the information is necessary to clarify, modify, or supplement previously submitted material provided that all parties may engage in discovery against all other parties, as provided by applicable law; and

(3) a request for additional information does not render the application incomplete.

(c) Subsection (b) does not:

(1) preclude an informal disposition of a contested case by stipulation, agreed settlement, consent order, or default; or

(2) restrict the right of any party to conduct discovery against any applicable party under other law.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 1044, Sec. 1, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(62), 11.43, eff. Sept. 1, 1995.

Sec. 361.069. DETERMINATION OF LAND USE COMPATIBILITY. The commission in its discretion may, in processing a permit application, make a separate determination on the question of land use compatibility, and, if the site location is acceptable, may at another time consider other technical matters concerning the application. A public hearing may be held for each determination in accordance with Section 361.088. In making a determination on the question of land use compatibility, the commission shall not consider the position of a state or federal agency unless the position is fully supported by credible evidence from that agency during the public hearing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 6, eff. June 18, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.44, eff. Sept. 1, 1995.

Sec. 361.078. MAINTENANCE OF STATE PROGRAM AUTHORIZATION UNDER FEDERAL LAW. This subchapter does not abridge, modify, or restrict the authority of the commission to adopt rules under Subchapters B and C, to issue permits and to enforce the terms and conditions of the permits, concerning hazardous waste management to the extent necessary for the commission to receive and maintain state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.). Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.079. NOTICE CONCERNING RECEIPT OF PERMIT APPLICATION; HEARING PROCEDURES. (a) Except as provided by Sections 361.080(b) and 361.081(c), the commission by rule shall establish procedures for public notice and a public hearing under Section 361.080 or 361.081.

(b) The hearings shall be conducted in accordance with the hearing rules and the applicable provisions of Chapter 2001, Government Code.

(c) To improve the timeliness of notice to the public of a public hearing under Section 361.080 or 361.081, public notice of receipt of the permit application shall be provided at the time a permit application is submitted to the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(b), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.03, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.45, eff. Sept. 1, 1995.

Sec. 361.0791. PUBLIC MEETING AND NOTICE REQUIREMENT. (a) Notwithstanding other law, the commission may hold a public meeting on an application for a new hazardous waste management facility in the county in which the proposed hazardous waste management facility is to be located. The commission may hold a public meeting on an application for a Class 3 modification or a major amendment to an existing facility's hazardous waste permit.

(b) Notwithstanding other law, the commission may hold a public meeting on an application for a new municipal solid waste management facility in the county in which the proposed municipal solid waste management facility is to be located.

(c) A public meeting held as part of a local review process under Section 361.063 meets the requirement of Subsection (a) or

(b) if notice is provided as required by this section.

(d) A public meeting under this section is not a contested case hearing under Chapter 2001, Government Code.

(e) If a meeting is required under Subsection (a), not less than once each week during the three weeks preceding a public meeting, the applicant shall publish notice of the meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The applicant shall provide the commission an affidavit certifying that the notice was given as required by this section. Acceptance of the affidavit creates a rebuttable presumption that the applicant has complied with this section.

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

- (1) the permit application number;
- (2) the applicant's name;
- (3) the proposed location of the facility; and
- (4) the location and availability of copies of the permit application.

(g) The applicant shall pay the cost of notice required to be provided under this section. The commission by rule may establish procedures for payment of those costs.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.04, eff. June 7, 1991. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 3, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 1044, Sec. 3, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.46, eff. Sept. 1, 1995; Acts 2005, 79th Leg., ch. 582, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.080. HEARING CONCERNING PERMIT APPLICATION FOR HAZARDOUS INDUSTRIAL SOLID WASTE FACILITY. (a) A hearing on an application for a permit concerning a hazardous industrial solid waste facility must include one session held in the county in which the facility is located.

(b) Notice for a hearing session held under this section shall be provided in accordance with Section 361.0791. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.05, eff. June 7, 1991.

Sec. 361.081. NOTICE OF HEARING CONCERNING APPLICATION FOR A SOLID WASTE FACILITY. (a) The commission shall require the applicant to mail notice to each residential or business address located within one-half mile of a new solid waste management facility and to each owner of real property located within one-half mile of a new solid waste management facility listed in the real property appraisal records of the appraisal district in which the solid waste management facility is sought to be permitted as of the date the commission determines the permit application is administratively complete. The notice must be sent by mail and must be deposited with the United States postal service not more than 45 days or less than 30 days before the date of the hearing.

(b) The applicant must certify to the commission that the mailings were deposited as required by Subsection (a). Acceptance of the certification creates a rebuttable presumption that the applicant has complied with this section. Substantial compliance with the notice requirements of Subsection (a) is sufficient for the commission to exercise jurisdiction over an application for a solid waste facility.

(c) In addition to the requirements of Subsection (a), the commission shall hold a public meeting and the applicant shall give notice concerning the application for a permit for a new hazardous waste management facility as provided by Section 361.0791.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 13(c), eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 296, Sec. 1.06, eff. June 7, 1991; Acts 1993, 73rd Leg., ch. 802, Sec. 4, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 1044, Sec. 4, eff. June 20, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.47, eff. Sept. 1, 1995.

Sec. 361.082. APPLICATION FOR HAZARDOUS WASTE PERMIT; NOTICE AND HEARING. (a) A person may not process, store, or dispose of hazardous waste without having first obtained a hazardous waste permit issued by the commission.

(b) On its own motion or the request of a person affected,

the commission may hold a public hearing on an application for a hazardous waste permit in accordance with this subchapter.

(c) The commission by rule shall establish procedures for public notice and public hearing. At a minimum, the rules shall include the public notice requirements set forth in Section 361.081.

(d) In addition to the hearing held under this section, the commission may hold a public meeting and the applicant shall give notice as provided by Section 361.0791.

(e) The commission may include any requirement in the permit for remedial action by the applicant that the commission determines is necessary to protect the public health and safety and the environment.

(f) An owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application in accordance with commission rules may continue to process, store, or dispose of hazardous waste until the commission approves or denies the application, except as provided by Section 361.110 or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by United States Environmental Protection Agency or commission rules relative to termination of interim status.

(g) On request under Section 361.082 by a person affected for a hearing on the permit application, the applicant for a permit for a new hazardous waste management facility shall furnish a bond or other financial assurance authorized by the commission to guarantee payment of the costs of a person affected who provides information to the commission on the question of the issuance of the permit and who is entitled to those costs under an order made as provided by Section 361.0833. For applications involving commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of \$100,000. For applications that do not involve commercial hazardous waste management facilities, the bond or other financial assurance must be in the amount of \$20,000.

(h) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.07, eff. June 7, 1991; Acts 2001, 77th Leg., ch. 965, Sec. 5.06, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 582, Sec. 3, eff. Sept. 1, 2005.

Sec. 361.083. EVIDENCE OF NOTICE OF HEARING. (a) Before the commission may hear testimony in a contested case, evidence must be placed in the record to show that proper notice of the hearing was given to affected persons.

(b) If mailed notice to an affected person is required, the commission or other party to the hearing shall place evidence in the record that notice was mailed to the affected person's address as shown by the appropriate appraisal district real property appraisal records at the time of the mailing.

(c) The affidavit of the commission employee responsible for the mailing of the notice, attesting that the notice was mailed to the address shown by the appraisal district real property appraisal records at the time of mailing, is prima facie evidence of proper mailing.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 14, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.47, eff. Sept. 1, 1995.

Sec. 361.0831. EX PARTE CONTACTS PROHIBITED. (a) Unless required for the disposition of ex parte matters authorized by law, or unless permitted by Section 2001.061, Government Code, a hearings examiner may not communicate, directly or indirectly, with any employee of the commission, any commissioner, or any party to a hearing conducted by the commission in connection with any issue of fact or law pertaining to a contested case in which the commission or party is involved.

(b) Except for communications allowed under Subsection (a), an employee of the commission, a commissioner, or a party to a

hearing conducted by the commission may not attempt to influence the finding of facts or the application of law or rules by a hearings examiner except by proper evidence, pleadings, and legal argument with notice and opportunity for all parties to participate.

(c) If a prohibited contact is made, the hearings examiner shall notify all parties with a summary of that contact and notice of their opportunity to respond and shall give all parties an opportunity to respond.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.08, eff. June 7, 1991. Amended by Acts 1993, 73rd Leg., ch. 177, Sec. 1, eff. May 17, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(56), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 106, Sec. 6, eff. Sept. 1, 1995.

Sec. 361.0832. PROPOSAL FOR DECISION; CERTIFIED ISSUES; REVERSAL BY COMMISSION. (a) After hearing evidence and receiving legal arguments, a hearings examiner shall make findings of fact, conclusions of law, and any ultimate findings required by statute, all of which shall be separately stated. The hearings examiner shall make a proposal for decision to the commission and shall serve the proposal for decision on all parties. The commission shall consider and act on the proposal for decision.

(b) If a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, a hearings examiner, on joint motion of all parties or sua sponte, may certify those policy issues to the commission. A certification request must contain a statement of the policy issue to be determined and a statement of all relevant facts sufficient to show fully the nature of the controversy. The commission may receive written or oral statements from parties to the hearing or the hearings examiner on the policy issue certified. The commission must answer policy issues not later than the 60th day after the date of certification or, in its discretion, may decline to answer. If the commission fails to answer a policy issue within that period, the commission shall be deemed to have declined to answer. The hearings examiner shall proceed with the contested case and make a proposal for decision as required by Subsection (a).

(c) The commission may overturn an underlying finding of fact that serves as the basis for a decision in a contested case only if the commission finds that the finding was not supported by the great weight of the evidence.

(d) The commission may overturn a conclusion of law in a contested case only on the grounds that the conclusion was clearly erroneous in light of precedent and applicable rules.

(e) If a decision in a contested case involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law, the commission may reject a proposal for decision as to the ultimate finding for reasons of policy only.

(f) The commission shall issue written rulings, orders, or decisions in all contested cases and shall fully explain in a ruling, order, or decision the reasoning and grounds for overturning each finding of fact or conclusion of law or for rejecting any proposal for decision on an ultimate finding.

(g) To the extent of a conflict between this section and Section 2001.058(e), Government Code, this section controls.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.08, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 106, Sec. 7, eff. Sept. 1, 1995.

Sec. 361.0833. COSTS FOR INFORMATION PROVIDED BY A PERSON AFFECTED REGARDING HAZARDOUS WASTE PERMIT. (a) After considering the factors in Subsection (e), the commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected in presenting information set out in Subsection (b) to the commission on the question of the issuance of the permit.

(b) Information for which an award of costs under Subsection (a) may be made includes:

(1) technical studies of the area in which the new hazardous waste facility is proposed to be located;

(2) expert testimony given at a hearing on the permit application; and

(3) surveys of land use and potential use in the hazardous waste facility area.

(c) The commission may order the applicant for a permit for a new hazardous waste management facility to pay reasonable costs incurred by a person affected who presented information to the commission at a hearing showing that the applicant:

(1) knowingly made false or misleading statements in the application;

(2) knowingly made false or misleading statements during the hearing; or

(3) failed to present information that the applicant had in its possession that would have materially affected the issues of fact and law on which the decision of the commission was based.

(d) The total costs awarded to all persons affected under Subsection (a) may not exceed \$100,000 for a new commercial hazardous waste management facility or \$20,000 for a new noncommercial hazardous waste management facility. The total costs awarded to all persons affected under Subsection (c) may not exceed \$150,000 for a new commercial hazardous waste management facility or \$30,000 for a new noncommercial hazardous waste management facility.

(e) In determining the appropriateness of an award under Subsection (a) or (c), the commission shall consider:

(1) whether the information provided is material to the commission's determination to deny the permit or to require the applicant to make significant changes in the facility's design or operation; and

(2) whether the information would otherwise not have been presented to the commission while the commission is considering its decision.

(f) If the applicant fails or refuses to pay the amount of costs ordered not later than the 30th day after the date of entry of the final order granting payment of costs, the commission shall order the applicant's bond or other financial assurance forfeited in the amount of the costs ordered reimbursed under Subsection (a) or (c) up to and including the full amount of the bond or other financial assurance. The commission shall forward the forfeited amount to the person affected.

(g) If no request is made for an award of costs under this section or if a person affected is determined by the commission not to be entitled to an award of costs, the commission shall release the bond or other financial assurance of the applicant subject to an appeal of the denial of costs under this section. The commission shall also release the bond or other financial assurance on presentation of proof that the costs awarded have been paid.

(h) An order issued under this section is enforceable as a debt.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.09, eff. June 7, 1991.

Sec. 361.084. COMPLIANCE SUMMARIES. (a) The commission by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code. A compliance summary shall include as evidence of compliance information regarding the applicant's implementation of an environmental management system at the facility for which the authorization is sought. In this subsection, "environmental management system" has the meaning assigned by Section 5.127, Water Code.

(b) The compliance summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and before the issuance of the public notice concerning an opportunity for a hearing on the permit application.

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state concerning solid waste management may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules of evidence.

(d) The commission shall consider all evidence admitted, including compliance history, in determining whether to issue,

amend, extend, or renew a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.10, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.48, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 965, Sec. 16.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1161, Sec. 5, eff. Sept. 1, 2001.

Sec. 361.085. FINANCIAL ASSURANCE AND DISCLOSURE BY PERMIT APPLICANT. (a) Before a permit may be issued, amended, transferred, extended, or renewed for a hazardous waste management facility, the commission shall require as a part of each application information it deems necessary to demonstrate that an applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the permit and all applicable rules, including how an applicant intends to obtain financing for construction of the facility, and to close the facility in accordance with applicable rules. That information may include balance sheets, financial statements, and disclosure of relevant information regarding investors and stockholders, or information required by Title 40, Code of Federal Regulations, Part 264, Subpart H. If the information would be considered confidential under applicable law, the commission shall protect the information accordingly. During hearings on contested applications, the commission may allow disclosure of confidential information only under an appropriate protective order.

(b) The commission may order a party in a contested case permit hearing to provide:

(1) the identity of any known competitor of the applicant that has provided funding to the party for its participation in the hearing; and

(2) the amount of that funding.

(c) Before a permit may be issued, amended, extended, or renewed for a solid waste facility to store, process, or dispose of hazardous waste, the commission shall determine the type or types of financial assurance that may be given by the applicant to comply with rules adopted by the commission requiring financial assurance.

(d) Before hazardous waste may be received for storage, processing, or disposal at a solid waste facility for which a permit is issued, amended, extended, or renewed, the commission shall require the permit holder to execute the required financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(e) The commission may condition issuance, amendment, extension, or renewal of a permit for a solid waste facility, other than a solid waste facility for disposal of hazardous waste, on the permit holder's executing a bond or giving other financial assurance conditioned on the permit holder's satisfactorily operating and closing the solid waste facility.

(f) The commission shall require an assurance of financial responsibility as may be necessary or desirable consistent with the degree and duration of risks associated with the processing, storage, or disposal of specified solid waste.

(g) Financial requirements established by the commission must at a minimum be consistent with the federal requirements established under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.).

(h) The commission may:

(1) receive funds as the beneficiary of a financial assurance arrangement established under this section for the proper closure of a solid waste management facility; and

(2) spend the funds from the financial assurance arrangement to close the facility.

(i) If liability insurance is required of an applicant, the applicant may not use a claims made policy as security unless the applicant places in escrow, as provided by the commission, an amount sufficient to pay an additional year of premiums for renewal of the policy by the state on notice of termination of coverage.

(j) In addition to other forms of financial assurance authorized by rules of the commission, the commission may authorize the applicant to use a letter of credit if the issuing institution or another institution that guarantees payment under the letter is:

(1) a bank chartered by the state or the federal government; and

(2) federally insured and its financial practices are regulated by the state or the federal government.

(k) The commission may require financial assurance as a condition of issuing a permit or registration for the collection, transportation, or processing of grit trap waste or grease trap waste. The amount of financial assurance required must be consistent with the degree and duration of risk associated with the type of waste authorized to be collected, transported, or processed.

(1) If the commission requires financial assurance as a condition of a permit or registration under Subsection (k), provision of that financial assurance also satisfies any requirement for financial assurance under Chapter 368.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.12, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.49, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 591, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.0855. DEMONSTRATION OF FINANCIAL ASSURANCE. (a) In this section:

(1) "Bonds" means financial obligations issued by a local government, including general obligation bonds, revenue bonds, and certificates of obligation.

(2) "Local government" includes:

(A) a local government corporation created under Chapter 431, Transportation Code, to act on behalf of a local government; and

(B) a conservation and reclamation district created under Section 59, Article XVI, Texas Constitution.

(b) Notwithstanding any requirement of the commission for the demonstration of financial assurance, a local government that owns or operates a municipal solid waste landfill facility regulated by this chapter is considered to have satisfied all requirements of the commission for the demonstration of financial assurance in relation to closure, post closure, or corrective action, if the local government:

(1) establishes and passes a financial test in accordance with commission rules; and

(2) demonstrates that the outstanding bonds of the local government that are not secured by insurance, a letter of credit, or any other collateral or guarantee have a current rating of AAA, AA, A, or BBB as determined by Standard and Poor's or Aaa, Aa, A, or Baa as determined by Moody's.

(c) A local government must demonstrate financial assurance under this section:

(1) before the date of the initial receipt of waste at the facility; or

(2) as soon as practicable if, on the effective date of this section, the facility was in operation and had received waste.

Added by Acts 2005, 79th Leg., ch. 154, Sec. 1, eff. May 24, 2005.

Sec. 361.086. SEPARATE PERMIT FOR EACH FACILITY. (a) A separate permit is required for each solid waste facility.

(b) A permit under this subchapter may be issued only to the person in whose name the application is made and only for the facility described by the permit.

(c) A permit may not be transferred without first giving written notice to and receiving written approval of the agency that issued the permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0861. SEPARATE RECYCLING OR RECOVERY PERMIT NOT REQUIRED. (a) A permit holder or a municipal solid waste management facility that has or plans to have a recycling, waste separation, energy and material recovery, or gas recovery or transfer facility established in conjunction with the permitted municipal solid waste management facility is not required to obtain for that recycling, waste separation, energy and material recovery, or gas recovery or transfer facility a separate permit from the commission or to apply for an amendment to an existing permit issued by the commission.

(b) A facility to which this section applies must register with the commission in accordance with commission rules and comply with commission rules adopted under this chapter.

(c) If a permit is otherwise required, the commission shall expedite the permit proceeding if the applicant is seeking a permit for a solid waste management facility that employs an innovative, high technology method of waste disposition and recycling.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 15, eff. Sept. 6, 1990. Amended by Acts 1995, 74th Leg., ch. 76, Sec.

11.50, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 987, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.087. CONTENTS OF PERMIT. A permit issued under this subchapter must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the facility is located; and

(3) the terms and conditions on which the permit is issued, including the duration of the permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0871. EVALUATION OF WASTE STREAM; LAND USE AND NEED. (a) Before a permit may be issued for a new hazardous waste management facility or amended to provide for capacity expansion, the applicant shall identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the commission may require.

(b) In evaluating a permit for a new hazardous waste management facility, the commission shall assess the impact of the proposed facility on local land use in the area, including any relevant land use plans 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. In determining whether a new hazardous waste management facility is compatible with local land use, the commission shall consider, at a minimum, the location of industrial and other waste-generating facilities in the area, the amounts of hazardous waste generated by those facilities, and the risks associated with the transportation of hazardous waste to the facility. If the commission determines that a proposed application is not compatible with local land use, it may deny the permit. The commission shall adopt rules to implement this subsection.

(c) Repealed by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(a).

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.13, eff. June 7, 1991. Amended by Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 7.04(a), eff. Jan. 11, 2004.

Sec. 361.088. PERMIT ISSUANCE, AMENDMENT, EXTENSION AND RENEWAL; NOTICE AND HEARING. (a) The commission may amend, extend, or renew a permit it issues in accordance with reasonable procedures prescribed by the commission.

(b) The procedures prescribed by Section 361.067 for a permit application apply to an application to amend, extend, or renew a permit.

(c) Except as provided by Subsection (e), before a permit is issued, amended, extended, or renewed, the commission shall provide an opportunity for a hearing to the applicant and persons affected. The commission may also hold a hearing on its own motion.

(d) In addition to providing an opportunity for a hearing held under this section, the commission shall hold a public meeting and give notice as provided by Section 361.0791.

(e) After complying with Sections 5.552-5.555, Water Code, the commission, without providing an opportunity for a contested case hearing, may act on an application to renew a permit for:

(1) storage of hazardous waste in containers, tanks, or other closed vessels if the waste:

(A) was generated on-site; and

(B) does not include waste generated from other waste transported to the site; and

(2) processing of hazardous waste if:

(A) the waste was generated on-site;

(B) the waste does not include waste generated from other waste transported to the site; and

(C) the processing does not include thermal processing.

(f) Notwithstanding Subsection (e), if the commission determines that an applicant's compliance history under the method for evaluating compliance history developed by the commission under Section 5.754, Water Code, raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

(g) The commission shall review a permit issued under this

chapter every five years to assess the permit holder's compliance history.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.14, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.51, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1350, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 965, Sec. 4.05, 16.11, eff. Sept. 1, 2001.

Sec. 361.0885. DENIAL OF APPLICATION; INVOLVEMENT OF FORMER EMPLOYEE. (a) After providing an opportunity for a hearing to an applicant, the state agency shall deny an application for the issuance, amendment, renewal, or transfer of a permit within its jurisdiction and may not issue, amend, renew, or transfer the permit if the state agency determines that a former employee:

(1) participated personally and substantially as a former employee in the state agency's review, evaluation, or processing of that application before leaving employment with the state agency; and

(2) after leaving employment with the state agency, provided assistance on the same application for the issuance, amendment, renewal, or transfer of a permit, including assistance with preparation or presentation of the application or legal representation of the applicant.

(b) Action taken under this section does not prejudice any application in which the former employee did not provide assistance.

(c) In this section, "former employee" means a person:

(1) who was previously employed by the state agency as a supervisory or exempt employee; and

(2) whose duties during employment with that state agency included involvement in or supervision of that state agency's review, evaluation, or processing of applications.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 16, eff. Sept. 6, 1990.

Sec. 361.089. PERMIT DENIAL OR AMENDMENT; NOTICE AND HEARING. (a) The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for having a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections.

(b) Except as provided by Section 361.110, the commission shall notify each governmental entity listed under Section 361.067 and provide an opportunity for a hearing to the permit holder or applicant and persons affected. The commission may also hold a hearing on its own motion.

(c) The commission by rule shall establish procedures for public notice and any public hearing under this section.

(d) Hearings under this section shall be conducted in accordance with the hearing rules adopted by the commission and the applicable provisions of Chapter 2001, Government Code.

(e) The commission may deny an original or renewal permit if it is found, after notice and hearing, that:

(1) the applicant or permit holder has a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections;

(2) the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(3) the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission; or

(4) the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(f) Before denying a permit under this section, the commission must find:

(1) that the applicant or permit holder has a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections; or

(2) that the permit holder or applicant is indebted to

the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission.

(g) 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 percent of the permit holder or applicant and at least 20 percent of another business which operates a solid waste management facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.11, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.52, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 30, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 965, Sec. 16.12, eff. Sept. 1, 2001.

Sec. 361.0895. FACILITIES REQUIRED TO OBTAIN FEDERAL APPROVAL. For a commercial hazardous waste disposal well facility originally permitted by the commission after June 7, 1991, and which is required to obtain from the United States Environmental Protection Agency a variance from the federal land disposal restrictions before injecting permitted hazardous wastes:

(1) a permit or other authorization issued to the facility under this chapter is not subject to cancellation, amendment, modification, revocation, or denial of renewal because the permit holder has not commenced construction or operation of the facility; and

(2) the fixed term of each permit or other authorization issued to the facility under this chapter shall commence on the date physical construction of the authorized waste management facility begins.

Added by Acts 1997, 75th Leg., ch. 1211, Sec. 2, eff. Sept. 1, 1997.

Sec. 361.090. REGULATION AND PERMITTING OF CERTAIN INDUSTRIAL SOLID WASTE DISPOSAL. (a) The commission may not require a permit under this chapter for the collection, handling, storage, processing, and disposal of industrial solid waste that is disposed of within the boundaries of a tract of land that is:

(1) owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; and

(2) located within 50 miles from the plant or operation that is the source of the industrial solid waste.

(b) This section does not apply to:

(1) waste collected, handled, stored, processed, or disposed of with solid waste from any other source or sources; or

(2) hazardous waste.

(c) This section does not change or limit any authority the commission may have concerning:

(1) the requirement of permits and the control of water quality, or otherwise, under Chapter 26, Water Code; or

(2) the authority under Section 361.303.

(d) The commission may adopt rules under Section 361.024 to control the collection, handling, storage, processing, and disposal of the industrial solid waste to which this section applies to protect the property of others, public property and rights-of-way, groundwater, and other rights requiring protection.

(e) The commission may require a person who disposes or plans to dispose of industrial solid waste and claims to be exempt under this section to submit to the commission information that is reasonably required to enable the commission to determine if this section applies to the waste disposal activity.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0901. REGULATION AND PERMITTING OF CERTAIN COMMERCIAL INDUSTRIAL SOLID WASTE FACILITIES. (a) In this section:

(1) "Captured facility" has the meaning assigned by Section 361.131.

(2) "Commercial industrial solid waste facility" means any industrial solid waste facility that accepts industrial solid waste for a charge, but does not include a municipal solid waste facility, a captured facility, or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(3) "Publicly owned treatment works" means any device or system used in the treatment, recycling, or reclamation of municipal sewage or industrial waste of a liquid nature that is

owned by a state or by a municipality as defined by Section 502(4), Federal Water Pollution Control Act (33 U.S.C. Section 1362). The term includes a sewer, pipe, or other conveyance only if the sewer, pipe, or conveyance conveys wastewater to a publicly owned treatment works providing treatment.

(b) A commercial industrial solid waste facility may not receive industrial solid waste for discharge into a publicly owned treatment works facility without first obtaining from the commission a permit under this chapter or a permit under Chapter 26, Water Code.

(c) This section does not require a commercial industrial solid waste facility to obtain a permit for discharge into a publicly owned treatment works facility liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at a municipal solid waste facility or commercial industrial solid waste landfill facility.

Added by Acts 2005, 79th Leg., ch. 362, Sec. 1, eff. Sept. 1, 2005.

Sec. 361.091. ENCLOSED CONTAINERS OR VEHICLES; PERMITS; INSPECTIONS. (a) A municipal solid waste site or operation permitted as a Type IV landfill may not accept solid waste that is in a completely enclosed container or enclosed vehicle unless:

(1) the solid waste is transported on a route approved by the commission and designed to eliminate putrescible, hazardous, or infectious waste;

(2) the solid waste is delivered to the site or operation on a date and time designated and approved by the commission to eliminate putrescible, hazardous, or infectious waste;

(3) the transporter possesses a special permit issued by the commission that includes the approved route, date, and time; and

(4) a commission inspector is present to verify that the solid waste is free of putrescible, hazardous, or infectious waste.

(b) The commission may issue the special permit under this section and charge a reasonable fee to cover the costs of the permit. The commission may adopt rules of procedure necessary to carry out the permit program.

(c) The commission may employ one or more inspectors and other employees necessary to inspect and determine if Type IV landfills are free of putrescible, hazardous, or infectious waste. The commission shall pay the compensation and expenses of inspectors and other necessary employees employed under this subsection, but the holders of Type IV landfill permits shall reimburse the commission for the compensation and expenses as provided by this section.

(d) The commission shall notify each holder of a Type IV landfill permit of the compensation and expenses that are required annually for the inspection of the landfills.

(e) The commission shall hold a public hearing to determine the apportionment of the administration costs of the inspection program among the holders of Type IV landfill permits. After the hearing, the commission shall equitably apportion the costs of the inspection program and issue an order assessing the annual costs against each permit holder. The commission may provide for payments in installments and shall specify the date by which each payment must be made to the commission.

(f) A holder of a permit issued under this section may not accept solid waste if the permit holder is delinquent in the payment of costs assessed under Subsection (e).

(g) The commission's order assessing costs is effective until the commission:

(1) modifies, revokes, or supersedes an order assessing costs with a subsequent order; or

(2) issues supplementary orders applicable to new Type IV landfill permits.

(h) The commission may adopt rules necessary to carry out this section.

(i) This section does not apply to:

(1) a stationary compactor that is at a specific location and that has an annual permit under this section issued by the commission, on certification to the commission by the generator that the contents of the compactor are free of putrescible, hazardous, or infectious waste; or

(2) an enclosed vehicle of a municipality if the

vehicle has a permit issued by the commission to transport brush or construction-demolition waste and rubbish on designated dates, on certification by the municipality to the commission that the contents of the vehicle are free of putrescible, hazardous, or infectious waste.

(j) In this section, "putrescible waste" means organic waste, such as garbage, wastewater treatment plant sludge, and grease trap waste, that may:

(1) be decomposed by microorganisms with sufficient rapidity as to cause odors or gases; or

(2) provide food for or attract birds, animals, or disease vectors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.53, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 31, eff. Sept. 1, 1997.

Sec. 361.092. REGISTRATION FOR EXTRACTING MATERIALS FROM CERTAIN SOLID WASTE FACILITIES. (a) The commission may require a registration to extract materials for energy and material recovery and for gas recovery from closed or inactive portions of a solid waste facility that has been used for disposal of municipal or industrial solid waste.

(b) The commission shall adopt standards necessary to ensure that the integrity of a solid waste facility is maintained.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.54, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 987, Sec. 2, eff. Sept. 1, 1995.

Sec. 361.093. REGULATION AND PERMITTING OF RENDERING PLANTS. (a) A manufacturing or processing establishment, commonly known as a rendering plant, that processes waste materials originating from animals and from materials of vegetable origin, including animal parts and scraps, offal, paunch manure, and waste cooking grease of animal and vegetable origin, is subject to regulation under the industrial solid waste provisions of this chapter and may be regulated under Chapter 26, Water Code.

(b) If a rendering plant is owned by a person who operates the plant as an integral part of an establishment that manufactures or processes for animal or human consumption food derived wholly or partly from dead, slaughtered, or processed animals, the combined business may operate under a single permit issued under Chapter 26, Water Code.

(c) This section does not apply to a rendering plant in operation and production on or before August 27, 1973.

(d) In this section, "animals" includes only animals, poultry, and fish.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.094. PERMIT HOLDER EXEMPT FROM LOCAL LICENSE REQUIREMENTS. If a permit is issued, amended, renewed, or extended by the commission in accordance with this subchapter, the solid waste facility owner or operator does not need to obtain a license for the same facility from a political subdivision under Section 361.165 or from a county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.54, eff. Sept. 1, 1995.

Sec. 361.095. APPLICANT FOR HAZARDOUS WASTE MANAGEMENT FACILITY PERMIT EXEMPT FROM LOCAL PERMIT. (a) An applicant for a permit under this subchapter is not required to obtain a permit for the siting, construction, or operation of a hazardous waste management facility from a local government or other political subdivision of the state.

(b) A local government or other political subdivision of the state may not adopt a rule or ordinance that conflicts with or is inconsistent with the requirements for hazardous waste management facilities as specified by the rules of the commission or by a permit issued by the commission.

(c) In an action to enforce a rule or ordinance of a local government or other political subdivision, the burden is on the facility owner or operator or on the applicant to demonstrate conflict or inconsistency with state requirements.

(d) The validity or applicability of a rule or ordinance of a local government or other political subdivision may be determined in an action for declaratory judgment under Chapter 37, Civil Practice and Remedies Code, if it is alleged that the rule or ordinance, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff concerning an application for or the

issuance of a permit for the siting, construction, or operation of a hazardous waste management facility.

(e) The local government or other political subdivision whose rule or ordinance is being questioned shall be made a party to the action. The commission shall be given written notice by certified mail of the pendency of the action, and the commission may become a party to the action.

(f) A declaratory judgment may be rendered even if the plaintiff has requested the commission, the local government or political subdivision, or another court to determine the validity or applicability of the rule or ordinance in question.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.096. EFFECT ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) Except as specifically provided by this chapter, this subchapter does not limit the powers and duties of a local government or other political subdivision of the state as conferred by this or other law.

(b) Sections 361.094 and 361.095 do not affect the power of a local government or other political subdivision to adopt or enforce building codes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.0961. RESTRICTIONS ON AUTHORITY OF LOCAL GOVERNMENT OR OTHER POLITICAL SUBDIVISION. (a) A local government or other political subdivision may not adopt an ordinance, rule, or regulation to:

(1) prohibit or restrict, for solid waste management purposes, the sale or use of a container or package in a manner not authorized by state law;

(2) prohibit or restrict the processing of solid waste by a solid waste facility, except for a solid waste facility owned by the local government, permitted by the commission for that purpose in a manner not authorized by state law; or

(3) assess a fee or deposit on the sale or use of a container or package.

(b) This section does not prevent a local government or other political subdivision from complying with federal or state law or regulation. A local government or other political subdivision may take any action otherwise prohibited by this section in order to comply with federal requirements or to avoid federal or state penalties or fines.

(c) This section does not limit the authority of a local government to enact zoning ordinances.

Added by Acts 1993, 73rd Leg., ch. 1045, Sec. 12, eff. Sept. 1, 1993.

Sec. 361.097. CONDITION ON ISSUANCE OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall condition the issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on the selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.098. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE LANDFILL IN 100-YEAR FLOODPLAIN. (a) Except as provided by Subsections (b) and (c), the commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a landfill if the landfill is to be located in the 100-year floodplain existing before site development, unless the landfill is to be located in an area with a flood depth of less than three feet.

(b) The commission by rule may allow an areal expansion of a landfill in a 100-year floodplain if it can be demonstrated to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(c) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste land disposal unit if the unit is to be located in a 100-year floodplain, unless the applicant can demonstrate to the satisfaction of the commission that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(d) The commission by rule shall require an applicant to provide sufficient information to assure that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation of a

100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.15, eff. June 7, 1991.

Sec. 361.099. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT UNIT IN WETLANDS. (a) The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit or an areal expansion of an existing hazardous waste management unit if the unit is to be located in wetlands, as defined by the commission.

(b) In this section and Section 361.100, "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility used to manage hazardous waste.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.100. PROHIBITION ON PERMIT FOR CERTAIN HAZARDOUS WASTE MANAGEMENT UNITS. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management unit if the landfill:

(1) is in a floodplain of a perennial stream subject to not less than one percent chance of flooding in any year, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, V0, or V1-30; and

(2) receives hazardous waste for a fee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.101. PROHIBITION ON PERMIT FOR FACILITY ON RECHARGE ZONE OF SOLE SOURCE AQUIFER. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill, land treatment facility, surface impoundment, or waste pile, or areal expansion of such a facility, if the facility is to be located on the recharge zone of a sole source aquifer.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.1011. PROHIBITION ON PERMIT FOR FACILITY AFFECTED BY FAULT. If a fault exists within two and one-half miles from the proposed or existing wellbore of a Class I injection well or the area within the cone of influence, whichever is greater, or if a fault exists within 3,000 feet of a proposed hazardous waste management facility other than a Class I injection well or of a capacity expansion of an existing hazardous waste management facility, the burden is on the applicant, unless previously demonstrated to the commission or to the United States Environmental Protection Agency, to show:

(1) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(2) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(A) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

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

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.16, eff. June 7, 1991.

Sec. 361.102. PROHIBITION ON PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITIES WITHIN A CERTAIN DISTANCE OF RESIDENCE, CHURCH, SCHOOL, DAY CARE CENTER, PARK, OR PUBLIC DRINKING WATER SUPPLY. (a) Except as provided by Subsections (b) and (c), the commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a facility if the boundary of the landfill or land treatment facility is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated

public park.

(b) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(c) For a subsequent areal expansion of a new commercial hazardous waste management facility that was required to comply with Subsection (b), distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(d) The commission by rule shall prohibit the issuance of a permit for a new commercial hazardous waste management facility that is proposed to be located at a distance greater than one-half mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries, consistent with the purposes of this chapter.

(e) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by Subsections (a), (b), (c), and (d) do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(f) The measurement of distances required by Subsections (a), (b), (c), and (d) shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste management unit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.17, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.55, eff. Sept. 1, 1995.

Sec. 361.103. OTHER AREAS UNSUITABLE FOR HAZARDOUS WASTE MANAGEMENT FACILITY. The commission by rule shall define the characteristics that make other areas unsuitable for a hazardous waste management facility, including consideration of:

- (1) flood hazards;
- (2) discharge from or recharge to a groundwater aquifer;
- (3) soil conditions;
- (4) areas of direct drainage within one mile of a lake used to supply public drinking water;
- (5) active geological processes;
- (6) coastal high hazard areas, such as areas subject to hurricane storm surge and shoreline erosion; or
- (7) critical habitat of endangered species.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.104. PROHIBITION ON PERMIT FOR FACILITY IN UNSUITABLE AREA. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the commission under Section 361.103 unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.105. PETITION BY LOCAL GOVERNMENT FOR RULE ON HAZARDOUS WASTE FACILITY IN UNSUITABLE AREA. (a) The commission by rule shall allow a local government to petition the commission for a rule that restricts or prohibits the siting of a new hazardous waste

disposal facility or other new hazardous waste management facility in an area including an area meeting one or more of the characteristics described by Section 361.103.

(b) A rule adopted under this section may not affect the siting of a new hazardous waste disposal facility or other new hazardous waste management facility if an application or a notice of intent to file an application concerning the facility is filed with the commission before the filing of a petition under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.106. PROHIBITION ON PERMIT FOR LANDFILL IF ALTERNATIVE EXISTS. The commission by rule shall prohibit the issuance of a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to the landfill that is reasonably available to manage the types and classes of hazardous waste that might be disposed of at the landfill.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.107. HYDROGEOLOGIC REPORT FOR CERTAIN HAZARDOUS WASTE FACILITIES. The commission by rule shall require an applicant for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer to prepare and file a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.108. ENGINEERING REPORT FOR HAZARDOUS WASTE LANDFILL. The commission by rule shall require an applicant for a new hazardous waste landfill filed after January 1, 1986, to provide an engineering report evaluating:

(1) the benefits, if any, associated with constructing the landfill above existing grade at the proposed site;

(2) the costs associated with the above grade construction; and

(3) the potential adverse effects, if any, that would be associated with the above grade construction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.109. GRANT OF PERMIT FOR HAZARDOUS WASTE MANAGEMENT FACILITY. (a) The commission may grant an application for a permit in whole or in part for a hazardous waste management facility if it finds that:

(1) the applicant has provided for the proper operation of the proposed hazardous waste management facility;

(2) the applicant for a proposed hazardous waste management facility has made a reasonable effort to ensure that the burden, if any, imposed by the proposed hazardous waste management facility on local law enforcement, emergency medical or fire-fighting personnel, or public roadways, will be minimized or mitigated; and

(3) the applicant, other than an applicant who is not an owner of the facility, owns or has made a good faith claim to, or has an option to acquire, or the authority to acquire by eminent domain, the property or portion of the property on which the hazardous waste management facility will be constructed.

(b) If the commission determines that a burden on public roadways will be imposed by a new commercial hazardous waste management facility, the commission shall require the applicant to pay the cost of the improvements necessary to minimize or mitigate the burden. The applicant shall bear the costs associated with any required roadway improvements. The failure of a county or municipality to accept the funds and make the improvements shall not be the basis for denial or suspension of a permit.

(c) The commission shall not process an application for a permit for a new commercial hazardous waste management facility unless the applicant:

(1) has provided sufficient evidence that emergency response capabilities are available or will be available before the facility first receives waste in the area in which the facility is located or proposed to be located to manage a reasonable worst-case emergency condition associated with the operation of the facility; or

(2) has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the commission to manage a reasonable

worst-case emergency condition associated with the facility.

(d) If the applicant intends to use emergency response facilities that are not provided by the county or municipality in which the facility is located to satisfy the requirements of Subsection (c), the applicant must provide its own facilities or contract for emergency response facilities with an adjoining county, municipality, mutual aid association, or other appropriate entity. If financial assurance is required, the financial assurance must be for the benefit of the county government or municipal government in the county in which the facility is located or proposed to be located, or both, and must provide payment of the amount of the bond or other instrument to the governmental body or governmental bodies before the facility first receives waste, with a limitation that the money can only be spent for emergency response personnel and equipment. The commission shall adopt rules to ensure that the county or municipal government or other entity has sufficient emergency response capabilities before the facility first receives waste.

(e) A permit for a new commercial hazardous waste management facility shall not be granted unless the applicant provides a summary of its experience in hazardous waste management and in the particular hazardous waste management technology proposed for the application location. Any applicant without experience in the particular hazardous waste management technology shall conspicuously state that lack of experience in the application or a permit shall not be granted pursuant to the application. A permit may not be denied solely on the basis of lack of experience of the applicant.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.18, eff. June 7, 1991.

Sec. 361.110. TERMINATION OF AUTHORIZATION OR PERMIT. Authorization to store, process, or dispose of hazardous waste under Section 361.082 or under a solid waste permit issued under this subchapter that has not been reissued in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), terminates as follows:

(1) in the case of each land disposal facility, on November 8, 1985, unless the facility owner or operator applied for a final determination concerning the issuance of a permit before that date and certified that the facility was in compliance with all applicable groundwater monitoring and financial responsibility requirements;

(2) in the case of each incinerator facility, on November 8, 1989, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1986; or

(3) in the case of any other solid waste facility, on November 8, 1992, unless the facility owner or operator applied for a final determination concerning the issuance of a permit by November 8, 1988.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.111. COMMISSION SHALL EXEMPT CERTAIN MUNICIPAL SOLID WASTE MANAGEMENT FACILITIES. (a) The commission shall exempt from permit requirements a municipal solid waste management facility that is used in the transfer of municipal solid waste to a solid waste processing or disposal facility from:

(1) a municipality with a population of less than 50,000;

(2) a county with a population of less than 85,000;

Text of subd. (3) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5

(3) a facility used in the transfer of municipal solid waste that will transfer 125 tons per day or less; and

Text of subd. (3) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(3) a facility used in the transfer of municipal solid waste that transfers or will transfer 125 tons a day or less; or
Text of subd. (4) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted landfill not more than 50 miles from the materials recovery facility.

Text of subd. (4) as added by Acts 1993, 73rd Leg., ch. 899, Sec.

2.08

(4) a materials recovery facility that recycles for reuse more than 10 percent of its incoming nonsegregated waste stream if the remaining nonrecyclable waste is transferred to a permitted Type I landfill not farther than 50 miles from the materials recovery facility.

(b) The facility must comply with design and operational requirements established by commission rule that are necessary to protect the public's health and the environment.

Text of subsec. (c) as added by Acts 1993, 73rd Leg., ch. 802, Sec. 5

(c) To qualify for this exemption, the applicant must hold a public meeting on the siting of the facility in the municipality or county where the facility is to be located.

Text of subsec. (c) as added by Acts 1993, 73rd Leg., ch. 899, Sec. 2.08 and Acts 1993, 73rd Leg., ch. 1045, Sec. 10

(c) To qualify for an exemption under this section, an applicant must hold a public meeting about the siting of the facility in the municipality or county in which the facility is or will be located.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 17, eff. Sept. 6, 1990. Amended by Acts 1993, 73rd Leg., ch. 802, Sec. 5, eff. June 18, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 2.08, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 1045, Sec. 10, eff. Sept. 1, 1993.

Sec. 361.112. STORAGE, TRANSPORTATION, AND DISPOSAL OF USED OR SCRAP TIRES. (a) A person may not store more than 500 used or scrap tires for any period on any publicly or privately owned property unless the person registers the storage site with the commission. This subsection does not apply to the storage, protection, or production of agricultural commodities.

(b) The commission may register a site to store more than 500 used or scrap tires.

(c) A person may not dispose of used or scrap tires in a facility that is not permitted by the commission for that purpose.

(d) The commission may issue a permit for a facility for the disposal of used or scrap tires.

(e) The commission by rule shall adopt application forms and procedures for the registration and permitting processes authorized under this section.

(f) A person may not store more than 500 used or scrap tires or dispose of any quantity of used or scrap tires unless the tires are shredded, split, or quartered as provided by commission rule. The commission may grant an exception to this requirement if the commission finds that circumstances warrant the exception. The prohibition provided by this subsection regarding storage does not apply to a registered waste tire energy recovery facility or a waste tire energy recovery facility storage site. The prohibition provided by this subsection does not apply to a person who, for eventual recycling, reuse, or energy recovery, temporarily stores scrap tires in a designated recycling collection area at a landfill permitted by the commission or licensed by a county or by a political subdivision exercising the authority granted by Section 361.165.

(g) The commission shall require a person who transports used or scrap tires for storage or disposal to maintain records and use a manifest or other appropriate system to assure that those tires are transported to a storage site that is registered or to a disposal facility that is permitted under this section for that purpose.

(h) The commission may amend, extend, transfer, or renew a permit issued under this section as provided by this chapter and commission rule.

(i) The notice and hearing procedures provided by this subchapter apply to a permit issued, amended, extended, or renewed under this section.

(j) The commission may, for good cause, revoke or amend a permit it issues under this section for reasons concerning public health, air or water pollution, land use, or violation of this section as provided by Section 361.089.

(k) The commission may not register or issue a permit to a facility required by Section 361.479 to provide evidence of financial responsibility unless the facility has complied with that section.

(l) In this section, "scrap tire" means a tire that can no

longer be used for its original intended purpose.

(m) The commission may adopt rules to regulate the storage of scrap or shredded tires that are stored at a marine dock, rail yard, or trucking facility for more than 30 days.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 18, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 303, Sec. 3, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 370, Sec. 3, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 3.11, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.56, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 317, Sec. 26, eff. Sept. 1, 1995.

Sec. 361.1125. IMMEDIATE REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCE AT SCRAP TIRE SITE. (a) In this section:

(1) "Scrap tire" has the meaning assigned by Section 361.112.

(2) "Scrap tire site" includes any site at which more than 500 scrap tires are located.

(b) If the executive director after investigation finds that there exists a release or threat of release of a hazardous substance at a scrap tire site and immediate action is appropriate to protect human health and the environment, the commission may, with money available from money appropriated to the commission, undertake immediate remedial or removal action at the scrap tire site to achieve the necessary protection.

(c) The reasonable expenses of immediate remedial or removal action by the commission under this section are recoverable from the persons described in Section 361.271, and the state may bring an action to recover the commission's reasonable expenses. Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.01, eff. Sept. 1, 2001.

Sec. 361.113. PERMIT CONDITIONS FOR THE OPERATION OF HAZARDOUS WASTE MANAGEMENT FACILITIES. (a) The commission by rule shall establish requirements for commercial hazardous waste management facilities that will provide the opportunity for periodic monitoring of the operation of those facilities in order to assure that the facilities are in compliance with the terms of their respective permits.

(b) In proposing and adopting rules to implement this section, the commission shall consider, at a minimum, a requirement that the facility owner or operator fund an independent inspector for the facility, a requirement for an independent annual environmental audit of the facility, a procedure for considering comments from affected parties on the selection of the independent inspector, a requirement that operational personnel at the permitted facility be certified by the state as competent to operate the size and type of hazardous waste management facility for which the permit has been issued, and a requirement that the facility provide for fence line and ambient air quality monitoring.

(c) A requirement that is established by commission rule to implement this section shall be incorporated as appropriate into the conditions of a permit for a new hazardous waste management facility when the permit is issued and shall be incorporated into the conditions of a permit for an existing hazardous waste management facility when the permit is renewed.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.19, eff. June 7, 1991.

Sec. 361.114. PROHIBITION OF DISPOSAL OF HAZARDOUS WASTE INTO CERTAIN GEOLOGICAL FORMATIONS. The commission by rule shall prohibit the storage, processing, or disposal of hazardous waste in a solution-mined salt dome cavern or a sulphur mine.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 1.20, eff. June 7, 1991. Amended by Acts 2001, 77th Leg., ch. 965, Sec. 9.02, eff. Sept. 1, 2001.

Sec. 361.115. CERTIFICATION OF LANDFILL CAPACITY TO MUNICIPALITY; RESTRICTIONS ON CONTRACT. (a) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county, before entering into a contract with a municipality for the disposal of the municipality's solid waste, must certify to the municipality that the facility has the capacity to dispose of the volume of waste proposed in the contract for the duration of the contract, if requested in writing by the municipality.

(b) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county who has a contract with a municipality to dispose of the municipality's solid waste may not enter into a contract to accept solid waste generated

from outside the municipality's extraterritorial jurisdiction for disposal at the facility in an amount that would reduce the projected life of the facility to less than the remaining duration of the contract for the disposal of the municipality's waste unless alternative disposal is provided.

(c) The owner or operator of a solid waste landfill facility permitted by the commission or licensed by a county who has a contract with a municipality for the disposal of the municipality's solid waste shall, if requested in writing by the municipality, certify and report to the municipality annually that the owner or operator has the capacity to fulfill its contractual obligations to the municipality for solid waste disposal. The certification if requested must include a statement:

(1) of the remaining permitted solid waste disposal capacity of the facility;

(2) of the contractually committed volumes or tonnages of waste accepted at the facility; and

(3) from the owner or operator that the facility possesses the capacity to fulfill the disposal commitments in the contract with the municipality.

Added by Acts 1993, 73rd Leg., ch. 400, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.116. DISPOSAL OF INCIDENTAL INJECTION WELL WASTE. Notwithstanding Chapter 2001, Government Code, and any other provision of this chapter, the commission shall grant to the owner or operator of a commercial hazardous waste disposal well facility originally permitted after June 7, 1991, a permit modification that authorizes the construction and operation of an on-site or adjoining landfill for the disposal of hazardous and nonhazardous solid waste generated by the operation of the facility if the proposed landfill meets all applicable state and federal design requirements and the commission follows a public notice and comment procedure that is consistent with 40 C.F.R. Section 270.42. Added by Acts 1997, 75th Leg., ch. 1211, Sec. 1, eff. Sept. 1, 1997.

Sec. 361.117. DISPOSAL OF CARCASSES OF ANIMALS KILLED ON ROADWAYS. (a) Notwithstanding any other provision of this chapter, counties and municipalities may dispose of the carcasses of animals killed on county or municipal roadways by burying the carcasses on property owned by the entity that is responsible for road maintenance. No permit shall be required to dispose of animal carcasses on county or municipal property. Disposal shall be conducted in a manner consistent with public health.

(b) Notwithstanding any other provision of this chapter, the Texas Department of Transportation may dispose of the carcasses of animals killed on the state highway system by burying the carcasses on state highway right-of-way. No permit shall be required to dispose of animal carcasses on state highway right-of-way. Disposal shall be conducted in a manner consistent with public health.

Added by Acts 1997, 75th Leg., ch. 276, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 361.116 by Acts 1999, 76th Leg., ch. 62, Sec. 19.01(67), eff. Sept. 1, 1999.

Sec. 361.118. REMEDIAL ACTION REGARDING INDUSTRIAL SOLID WASTE DISPOSED OF IN MUNICIPAL SOLID WASTE LANDFILL FACILITY. (a) This section applies only to a municipal solid waste landfill facility:

(1) for which the commission has issued a permit; and

(2) a portion of which:

(A) has been used for the disposal of more than 15,000 barrels of industrial solid waste;

(B) is closed; and

(C) is the subject of a notice regarding the former use of the property recorded in the real property records of the county in which the facility is located.

(b) If the commission determines that there is a release or that a release is imminent into the environment of industrial solid waste disposed of in the portion of the facility that has been closed, the commission shall require the owner of the facility to remediate as necessary and to the extent practicable to prevent or minimize the release of the waste so that the waste does not migrate or have the potential to migrate.

(c) If the commission requires the owner of the facility to remediate under Subsection (b), the owner shall develop a remedial action plan and must obtain a major amendment to the permit for the facility approving the plan.

(d) This section does not limit the applicability of Section

26.121, Water Code.

Added by Acts 1999, 76th Leg., ch. 570, Sec. 2, eff. Sept. 1, 1999.

Sec. 361.119. REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES. (a) The commission by rule shall ensure that a solid waste processing facility is regulated as a solid waste facility under this chapter and is not allowed to operate unregulated as a recycling facility.

(b) The commission shall adopt rules, including recordkeeping and reporting requirements and limitations on the storage of recyclable material, to ensure that:

(1) recyclable material is reused and not abandoned or disposed of; and

(2) recyclable material does not create a nuisance or threaten or impair the environment or public health and safety.

(c) A facility that reuses or smelts recyclable materials or metals and the operations conducted and materials handled at the facility are not subject to regulation under rules adopted under this section if the owner or operator of the facility demonstrates that:

(1) the primary function of the facility is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use; and

(2) all the solid waste generated from processing the materials is disposed of in a solid waste facility authorized under this chapter, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

(d) A facility that is owned, operated, or affiliated with a person that has a permit to dispose of municipal solid waste is not subject to regulation or requirements for financial assurance under rules adopted under this section.

(e) A solid waste processing facility that is owned or operated by a local government is not subject to rules adopted under this section.

(f) The commission shall adopt rules to ensure that the owner or operator of a recycling facility, including a composting or mulching facility, has in place sufficient financial assurance conditioned on satisfactorily operating and closing the facility and consistent with the requirements of Section 361.085 for a solid waste facility other than a facility for the disposal of hazardous waste. This subsection applies only to an owner or operator of a recycling facility:

(1) at which combustible material is stored outdoors;
or

(2) that poses a significant risk to public health and safety as determined by the commission.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.03, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 600, Sec. 1, eff. June 20, 2003.

Sec. 361.120. NOTICE OF HEARING AND REQUIREMENTS FOR REOPENING OF CLOSED OR INACTIVE LANDFILLS. (a) This section applies to any municipal solid waste landfill facility permitted by the commission or any of its predecessor or successor agencies that have either stopped accepting waste, or only accepted waste pursuant to an emergency authorization, for a period of five years or longer. This section shall not apply to any solid waste landfill facility that has received a permit but never received waste.

(b) The commission or its successor agencies shall allow any municipal solid waste landfill facility covered by this section to be reopened and to accept waste again only if the permittee demonstrates compliance with all current state, federal, and local requirements, including but not limited to the requirements of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and the implementing Texas State regulations.

(c) Except as provided in Subsections (d) and (e), the reopening of any such facility shall be considered a major amendment as such is defined by commission rules and shall subject the permittee to all of the procedural and substantive obligations imposed by the rules applicable to major amendments.

(d) This section shall not apply to any municipal solid waste landfill facility that has received an approved modification to its permit as of the effective date of this section.

(e) For any facility which is subject to a contract of sale as of January 1, 2001, the scope of the public hearing is to be

limited to land use, as provided by Section 361.069. Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.04, eff. Sept. 1, 2001.

Sec. 361.121. LAND APPLICATION OF CERTAIN SLUDGE; PERMIT REQUIRED. (a) In this section:

(1) "Class B sludge" is sewage sludge that meets one of the pathogen reduction requirements of 30 T.A.C. 312.82(b).

(2) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal. The term does not include manure spreading operations.

(3) "Responsible person" means the person with ultimate responsibility for the land application of the Class B sludge at a land application unit. The responsible person is:

(A) the owner of the land application unit if the sludge being land applied was generated outside this state; or

(B) the person who is land applying the sludge if the sludge being land applied was generated in this state.

(b) Except as provided by Subsection (m), a responsible person may not apply Class B sludge on a land application unit unless the responsible person has obtained a permit for that land application unit issued by the commission under this section on or after September 1, 2003.

(c) The notice and hearing provisions of Subchapter M, Chapter 5, Water Code, as added by Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999, apply to an application under this section for a permit, a permit amendment, or a permit renewal. In addition, at the time published notice of intent to obtain a permit is required under Section 5.552, Water Code, an applicant for a permit, permit amendment, or permit renewal under this section must notify by registered or certified mail each owner of land located within one-quarter mile of the proposed land application unit who lives on that land of the intent to obtain the permit, amendment, or renewal. Notice to landowners must include the information required by Section 5.552(c), Water Code, and information regarding the anticipated date of the first application of the sludge to the proposed land application unit. An owner of land located within one-quarter mile of the proposed land application unit who lives on that land is an affected person for purposes of Section 5.115, Water Code.

(d) In each permit, the commission shall prescribe the conditions under which it is issued, including:

(1) the duration of the permit;

(2) the location of the land application unit;

(3) the maximum quantity of Class B sludge that may be applied or disposed of under the permit;

(4) a requirement that the permit holder submit quarterly to the commission a computer-generated report that includes, at a minimum, information regarding:

(A) the source, quality, and quantity of sludge applied to the land application unit;

(B) the location of the land application unit, either in terms of longitude and latitude or by physical address, including the county;

(C) the date of delivery of Class B sludge;

(D) the date of application of Class B sludge;

(E) the cumulative amount of metals applied to the land application unit through the application of Class B sludge;

(F) crops grown at the land application unit site; and

(G) the suggested agronomic application rate for the Class B sludge;

(5) a requirement that the permit holder submit annually to the commission evidence that the permit holder is complying with the nutrient management plan and the practice standards described by Subsection (h)(4);

(6) a requirement that the permit holder post a sign that is visible from a road or sidewalk that is adjacent to the premises on which the land application unit is located stating that a beneficial application site is located on the premises;

(7) any other monitoring and reporting requirements prescribed by the commission for the permit holder; and

(8) a requirement that the permit holder must report to the commission any noncompliance by the permit holder with the

permit conditions or applicable commission rules.

(e) A permit does not become a vested right in the permit holder.

(f) A permit may be issued under this section for a term set by the board not to exceed six years from the date of issuance.

(g) The commission shall charge a fee for the issuance of a permit under this section in an amount not less than \$1,000 and not more than \$5,000. In determining the fee under this subsection, the commission shall consider the amount of sludge to be applied under the permit.

(h) The commission by rule shall require an applicant for a permit under this section to submit with the application, at a minimum:

(1) information regarding:
(A) the applicant;
(B) the source, quality, and quantity of sludge to be applied; and
(C) the hydrologic characteristics of the surface water and groundwater at and within one-quarter of a mile of the land application unit;

(2) proof evidencing that the applicant has a commercial liability insurance policy that:

(A) is issued by an insurance company authorized to do business in this state that has a rating by the A. M. Best Company of A- or better;

(B) designates the commission as an additional insured; and

(C) is in an amount of not less than \$3 million;

(3) proof evidencing that the applicant has an environmental impairment insurance policy or similar insurance policy that:

(A) is issued by an insurance company authorized to do business in this state that has a rating by the A. M. Best Company of A- or better;

(B) designates the commission as an additional insured; and

(C) is in an amount of not less than \$3 million; and

(4) proof that the applicant has minimized the risk of water quality impairment caused by nitrogen applied to the land application unit through the application of Class B sludge by having had a nutrient management plan prepared by a certified nutrient management specialist in accordance with the practice standards of the Natural Resources Conservation Service of the United States Department of Agriculture.

(i) The commission may expand the definition of Class B sludge only by expanding the definition to include sludge that meets more stringent pathogen reduction requirements.

(j) A permit holder must maintain an insurance policy required by Subsection (h) in effect for the duration of the permit.

(k) The commission shall create and operate a tracking system for the land application of Class B sludge. The commission shall require a permit holder to report deliveries and applications of Class B sludge using the tracking system and shall post the reported information on its website. The tracking system must allow a permit holder to report electronically:

(1) the date of delivery of Class B sludge to a land application unit; and

(2) for each application of Class B sludge to a land application unit:

(A) the date of the application; and

(B) the source, quality, and quantity of the sludge applied.

(l) A permit holder may not accept Class B sludge unless the sludge has been transported to the land application unit in a covered container with the covering firmly secured at the front and back.

(m) A person who holds a registration for the application of Class B sludge for a beneficial use approved by the commission and who, on or before September 1, 2002, has submitted to the commission an administratively complete application for a permit under this section may apply Class B sludge in accordance with the terms of the registration until the commission issues a final decision to issue or deny the permit for which the person has applied.

(n) The insurance requirements under Subsections (h)(2) and

(3) do not apply to an applicant that is a political subdivision.

(o) The commission may not issue a permit under this section for a land application unit that is located both:

- (1) in a county that borders the Gulf of Mexico; and
- (2) 500 feet or less from any water well or surface

water.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.05(a), eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 681, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.122. DENIAL OF CERTAIN LANDFILL PERMITS. The commission may not issue a permit for a Type IV landfill if:

(1) the proposed site is located within 100 feet of a canal that is used as a public drinking water source or for irrigation of crops used for human or animal consumption;

(2) the proposed site is located in a county with a population of more than 225,000 that is located adjacent to the Gulf of Mexico; and

(3) prior to final consideration of the application by the commission, the commissioners of the county in which the facility is located have adopted a resolution recommending denial of the application.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.08, eff. Sept. 1, 2001.

Sec. 361.123. ALLOWED WASTES AND EXEMPTIONS FOR CERTAIN SMALL MUNICIPAL SOLID WASTE LANDFILLS IN ARID AREAS.

Text of section as added by Acts 2005, 79th Leg., ch. 582, Sec. 4

(a) In this section:

(1) "Construction or demolition waste" means any material waste that is the byproduct of a construction or demolition project, including paper, cartons, gypsum board, wood, excelsior, rubber, and plastics.

(2) "Small municipal solid waste landfill unit" means a discrete area of land or an excavation that:

(A) receives municipal solid waste or other solid wastes allowed by law; and

(B) disposes of less than 20 tons of municipal solid waste daily based on an annual average.

(b) This section applies only to a small municipal solid waste landfill unit that is permitted as an arid exempt landfill under commission rules.

(c) A small municipal solid waste landfill unit daily may dispose of less than 20 tons of construction or demolition waste in addition to the municipal solid waste the unit normally receives.

(d) The commission, in accordance with state and federal solid wastes laws, may, under rules adopted by the commission, grant a small municipal solid waste landfill unit an exemption from the requirements for groundwater protection design and operation and groundwater monitoring and corrective action if there is no evidence of groundwater contamination from the unit.

(e) The commission shall adopt rules as are necessary to implement this section in a manner that maintains compliance with and state program authorization under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

Acts 2005, 79th Leg., ch. 582, Sec. 4, eff. Sept. 1, 2005.

For text of section as added by Acts 2005, 79th Leg., ch. 1027, Sec. 1, See Sec. 361.123, post.

Sec. 361.123. LIMITATION ON LOCATION OF MUNICIPAL SOLID WASTE LANDFILLS. .

Text of section as added by Acts 2005, 79th Leg., ch. 1027, Sec. 1

(a) This section applies to an application for a permit for a new Type I or new Type IV municipal solid waste landfill or for a permit or permit amendment authorizing the conversion of a Type IV municipal solid waste landfill to a Type I municipal solid waste landfill only if the landfill or proposed site for the new landfill is located in a county that is adjacent to a county with a population of more than 3.3 million and inside the boundaries of a national forest, as designated by the United States Forest Service, on public or private land.

(b) The commission may not issue a permit for a new Type I or new Type IV municipal solid waste landfill to be located as described by Subsection (a).

(c) The commission may not issue a permit or permit amendment authorizing the conversion of a Type IV municipal solid waste landfill located as described by Subsection (a) to a Type I

municipal solid waste landfill.

(d) This section does not apply to an application for a permit or permit amendment authorizing an areal expansion of an existing Type I municipal solid waste landfill.

Added by Acts 2005, 79th Leg., ch. 1027, Sec. 1, eff. June 18, 2005. For text of section as added by Acts 2005, 79th Leg., ch. 582, Sec. 4, see Sec. 361.123, ante.

SUBCHAPTER D. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION, FACILITY, AND MANAGEMENT; FEES AND FUNDS

Sec. 361.131. DEFINITIONS. In this subchapter:

(1) "Captured facility" means a manufacturing or production facility which generates an industrial solid waste or hazardous waste which is routinely stored, processed, or disposed, on a shared basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

(2) "Commercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for a charge.

(3) "Dry weight" means the weight of constituents other than water.

(4) "Generator" means a person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to be regulated by the commission.

(5) "Hazardous waste" means solid waste not otherwise exempt that is identified or listed as hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended (42 U.S.C. Section 6901 et seq.).

(6) "Land disposal" does not include the normal application of agricultural chemicals or fertilizers.

(7) "Land disposal facility" includes:

(A) a landfill;

(B) a surface impoundment, excluding an impoundment treating or storing waste that is disposed of under Chapter 26 or 27, Water Code;

(C) a waste pile;

(D) a facility at which land treatment, land farming, or a land application process is used; and

(E) an injection well.

(8) "Noncommercial waste storage, processing, or disposal facility" includes any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, including incineration, or disposal for no charge or that stores, processes, or disposes of waste generated on site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 19, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 692, Sec. 1, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 1, eff. Aug. 30, 1993.

Sec. 361.132. HAZARDOUS AND SOLID WASTE FEES; WASTE MANAGEMENT ACCOUNT. (a) The waste management account is an account in the general revenue fund.

(b) The account consists of money:

(1) collected by the commission under this subchapter as:

(A) fees imposed on generators of industrial solid waste or hazardous waste under Section 361.134;

(B) fees imposed on owners or operators of permitted industrial solid waste or hazardous waste facilities, or owners or operators of industrial solid waste or hazardous waste facilities subject to the requirement of permit authorization, under Section 361.135;

(C) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for noncommercial and commercial management or disposal of hazardous waste or commercial disposal of industrial solid waste under Section 361.136;

(D) fees imposed on applicants for industrial solid waste and hazardous waste permits under Section 361.137; and

(E) interest and penalties imposed under Section 361.140 for late payment of industrial solid waste and hazardous waste fees authorized under this subchapter; or

(2) deposited to the account as otherwise provided by

law.

(c) Except as provided by Section 361.136(1)(1), the commission may use the money collected under this subchapter only for regulation of industrial solid and hazardous waste under this chapter, including payment to other state agencies for services provided under contract concerning enforcement of this chapter.

(d) Any unobligated balance in the account at the end of the state fiscal year may, at the discretion of the commission, be transferred to the hazardous and solid waste remediation fee account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 20, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 2, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 37, eff. Sept. 1, 1997.

Sec. 361.133. HAZARDOUS AND SOLID WASTE REMEDIATION FEE ACCOUNT. (a) The hazardous and solid waste remediation fee account is an account in the general revenue fund.

(b) The account consists of money collected by the commission from:

(1) fees imposed on the owner or operator of an industrial solid waste or hazardous waste facility for commercial and noncommercial management or disposal of hazardous waste or commercial disposal of industrial solid waste under Section 361.136 and fees imposed under Section 361.138;

(2) interest and penalties imposed under Section 361.140 for late payment of a fee or late filing of a report;

(3) money paid by a person liable for facility cleanup and maintenance under Section 361.197;

(4) the interest received from the investment of this account, in accounts under the charge of the treasurer, to be credited pro rata to the hazardous and solid waste remediation fee account;

(5) monies transferred from other agencies under provisions of this code or grants or other payments from any person made for the purpose of remediation of facilities under this chapter or the investigation, cleanup, or removal of a spill or release of a hazardous substance;

(6) fees imposed under Section 361.604; and

(7) federal grants received for the implementation or administration of state voluntary cleanup programs or federal brownfields initiatives.

(c) The commission may use the money collected and deposited to the credit of the account under this section, including interest credited under Subsection (b)(4), only for:

(1) necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable person, independent third person, or the federal government are not sufficient for the removal or remedial action;

(2) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if:

(A) funds from a liable person have been collected and deposited to the credit of the account for that purpose; or

(B) funds from a liable person, independent third person, or the federal government are not sufficient for the maintenance;

(3) expenses concerning compliance with:

(A) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) as amended;

(B) the federal Superfund Amendments and Reauthorization Act of 1986 (10 U.S.C. Section 2701 et seq.); and

(C) Subchapters F and I;

(4) expenses concerning the regulation and management of household hazardous substances and the prevention of pollution of the water resources of the state from the uncontrolled release of hazardous substances;

(5) expenses concerning the cleanup or removal of a spill, release, or potential threat of release of a hazardous substance where immediate action is appropriate to protect human health and the environment; and

(6) expenses concerning implementation of the voluntary cleanup program under Subchapter S or federal

brownfields initiatives.

(d) The commission shall establish the fee rates for waste management under Section 361.136 and revise them as necessary. The amount collected each year shall not exceed \$16 million after making payments to counties under Section 361.136(1)(1).

(e) The commission shall monitor the unobligated balance in the hazardous and solid waste remediation fee account and all sources of revenue to the account and may adjust the amount of fees collected under Subsection (d) and Section 361.138, within prescribed limits, to maintain an unobligated balance of no more than \$25 million at the end of each fiscal year.

(f) For the purpose of Subsection (e), the unobligated balance in the hazardous and solid waste remediation fee account shall be determined by subtracting from the cash balance of the account at the end of each quarter:

(1) the total of all operating expenses encumbered by the commission from the account;

(2) the sum of the total balances remaining on all contracts entered into by the commission to be paid from the account; and

(3) the estimated total cost of investigation and remedial action at any site eligible for funding under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, or Subchapter F or I and not currently under contract.

(g) Notwithstanding Subsection (c), the executive director may use money in the fund, including interest credited under Subsection (b)(4), for expenses concerning a cleanup or removal of a spill, release, or potential threat of release of a hazardous substance if the site is eligible for listing under Subchapter F, proposed for listing under Subchapter F, or listed under the state registry before September 1, 1989, and:

(1) immediate action is appropriate to protect human health or the environment and there is a substantial likelihood that the cleanup or removal will prevent the site from needing to be listed under Subchapter F; or

(2) a cleanup or removal:

(A) can be completed without extensive investigation and planning; and

(B) will achieve a significant cost reduction for the site.

(h) If the commission collects a fee that is deposited in a dedicated fund established for the purpose of cleaning up a facility, tank, or site described by this subsection, the commission may not use money in the hazardous and solid waste remediation fee fund to clean up a:

(1) waste tire recycling facility;

(2) municipal solid waste facility;

(3) petroleum storage tank; or

(4) used oil collection and recycling site that received used oil after August 31, 1995.

(i) Not later than the 31st day before the date the commission begins a cleanup or removal under Subsection (g), the commission must publish notice of its intent to perform the cleanup or removal in the Texas Register.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 21, eff. Sept. 6, 1990; Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 3, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 986, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 38, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 855, Sec. 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 10.05, eff. Sept. 1, 1997.

Sec. 361.134. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE GENERATION FEE. (a) The annual generation fee prescribed by this section is imposed on each generator who generates Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission shall:

(1) require each generator of industrial solid waste or hazardous waste to register its activities; and

(2) collect the annual generation fee imposed under this section.

(c) The commission by rule shall adopt a generation fee

schedule for use in determining the amount of fees to be charged. The annual generation fee may not be less than \$50 and may not be more than \$50,000 for generation of hazardous waste or more than \$10,000 for generation of nonhazardous waste.

(d) The commission by rule may exempt generators of small quantities of Class I industrial solid waste or hazardous waste from the payment of a generation fee under this section.

(e) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee account shall be exempt from any generation fee assessed under this section.

(f) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations, Part 261, Subpart C, relating to characteristics of hazardous waste, and are rendered nonhazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under this chapter are exempt from the assessment of hazardous waste generation fees. By rule, the commission may authorize additional exemptions if consistent with state waste management policy. An exemption from fee assessment does not limit a generator's obligation to report waste generation or waste management activity under any applicable regulation of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 4, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 39, eff. Sept. 1, 1997.

Sec. 361.135. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE FACILITY FEE. (a) The annual facility fee prescribed by this section is imposed on each person who holds one or more permits for the management of Class I industrial solid waste or hazardous waste or is operating a waste management unit subject to the requirement for permit authorization to process, store, or dispose of Class I industrial solid waste or hazardous waste during any part of the year.

(b) The commission by rule shall adopt a facility fee schedule for determining the amount of each annual fee to be charged.

(c) The annual facility fee may not be less than \$250. The maximum fee for a facility may not exceed \$25,000. The annual fee to be charged each Class I industrial solid waste or hazardous waste facility must be that set by the fee schedule adopted by the commission.

(d) The commission shall collect the facility fee imposed under this section.

(e) During a year in which a facility subject to interim status hazardous waste management requirements receives a final permit, the facility fee under this section may be imposed only on one of those classifications.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 4, eff. Aug. 26, 1991.

Sec. 361.136. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE MANAGEMENT FEE. (a) Except as provided by Subsections (e) through (i), a fee shall be imposed on the owner or operator of a waste storage, processing, or disposal facility for industrial solid waste and hazardous waste that is managed on site. This fee is in addition to any other fee that may be imposed under this chapter.

(b) The commission by rule shall establish fee rates for management of hazardous waste and commercial disposal of industrial solid waste, as well as the manner of collection, and shall revise the fee amounts as necessary.

(1) Fees under this section may apply only to the following:

(A) commercial and noncommercial storage, processing, or disposal of hazardous waste; or

(B) commercial disposal of Class I nonhazardous industrial solid waste.

(2) A fee established for the commercial disposal of a nonhazardous industrial solid waste shall not exceed 20 percent of the fee established for the disposal of a hazardous waste by the same method of disposal.

(3) A fee under this section shall not be assessed for the disposal of a waste subject to an assessment under Section 361.013.

(c) The waste management fee shall be based on the total weight or volume of a waste other than wastes that are disposed of in an underground injection well. The fee for those wastes shall be based on the dry weight of the waste.

(d) The waste management fee for wastes generated in this state may not exceed \$40 per ton for wastes that are landfilled. The commission by rule shall establish the amount of the fee for all other waste management methods at a lesser amount and shall base the amount on the factors specified in Section 361.139.

(e) A fee, which must be the same for wastes generated both in state and out of state and consistent with fees assessed for the management of other hazardous wastes, shall be established by the commission for the storage, processing, incineration, and disposal of hazardous waste fuels that the commission by rule shall define considering:

- (1) Btu content;
- (2) metals content;
- (3) chlorinated hydrocarbon content; and
- (4) the degree to which the waste fuel is used for energy recovery.

(f) A fee imposed on the owner or operator of a commercial industrial solid waste or hazardous waste storage, processing, or disposal facility, for wastes that are generated in this state and received from an affiliate or wholly-owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this subsection, an affiliate of a commercial industrial solid waste or hazardous waste facility must have a controlling interest in common with that facility.

(g) A fee may not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes for fewer than 90 days.

(h) A fee may not be imposed under this section on the operation of a facility permitted under Chapter 26, Water Code, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface water of the state.

(i) The storage, processing, or disposal of industrial solid wastes or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of money from the hazardous and solid waste remediation fee account or generated in a removal or remedial action in this state conducted by the United States Environmental Protection Agency shall be exempt from the assessment of a waste management fee under this section.

(j) The owner or operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed a fee amount required on wastes generated in state plus an additional increment that the commission by rule shall establish. In establishing an incremental fee for out-of-state wastes, the commission shall consider:

- (1) factors specified by Section 361.139;
- (2) added costs to the state of regulating the interstate transport and subsequent management and disposal of imported industrial solid wastes and hazardous wastes and their associated risks;

- (3) similar fees that may be imposed in a generator's state of origin for the storage, processing, or disposal of hazardous waste; and

- (4) contributions in both fees and taxes paid by generators in this state to the support of the state's industrial solid waste and hazardous waste regulatory programs.

(k) A fee for industrial solid wastes or hazardous wastes that are legitimately reclaimed, reused, or recycled at a waste storage, processing, or disposal facility must be the same for wastes generated in state and out of state.

(l) Fees collected under this section shall be credited as follows:

- (1) 25 percent of the waste management fees collected from each commercial waste storage, processing, or disposal facility under this section shall be credited to the waste management account to be distributed to the county in which the facility is located to assist that county in defraying the costs associated with commercial industrial solid waste and hazardous

waste management facilities; and

(2) of the remaining amount of the commercial waste management fees and of the total amount of the noncommercial waste management fees collected from each waste storage, processing, or disposal facility:

(A) 50 percent of each amount shall be credited to the hazardous and solid waste remediation fee account; and

(B) 50 percent of each amount shall be credited to the waste management account.

(m) Funds due an affected county under Subsection (1)(1) shall be paid by the commission not later than the 60th day after the receipt and verification of the payments from commercial facilities in the county.

(n) The commission by rule shall provide:

(1) for methods of computing the dry weight of industrial solid waste and hazardous waste; and

(2) for a method to determine or estimate the dry weight of small volumes of waste delivered to waste disposal facilities for which the costs of a dry weight analysis are disproportionate to the costs of disposal.

(o) A generator of industrial solid waste or hazardous waste shall provide to the operator of a land disposal facility certification of the computation of the dry weight of a waste to be disposed.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 24, eff. Sept. 6, 1990. Renumbered from Sec. 361.138 and amended by Acts 1991, 72nd Leg., ch. 710, Sec. 6, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 5, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 2, eff. Sept. 1, 1997.

Sec. 361.137. PERMIT APPLICATION FEE. (a) A permit application fee is imposed on each applicant for an industrial solid waste or hazardous waste permit.

(b) The commission by rule shall establish the fee for permit applications at an amount that is reasonable to recover the demonstrable costs of processing an application and developing a draft permit, but that is not less than \$2,000 nor more than \$50,000. An additional fee may not be assessed for a draft permit returned for further processing unless the application is withdrawn.

(c) The commission may also establish a fee rate for approval of applications or petitions other than new permits, including but not limited to minor amendments, modifications, and closure plans, which fee may be less than \$2,000.

(d) Application fees collected under this section shall be deposited to the credit of the waste management account.

Added by Acts 1991, 72nd Leg., ch. 710, Sec. 9, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 1044, Sec. 2, eff. June 20, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 41, eff. Sept. 1, 1997.

Sec. 361.138. FEE ON THE SALE OF BATTERIES. (a) In this section:

(1) "Engaged in business in this state" has the meaning provided under Sections 151.107(a) and (b), Tax Code.

(2) "Lead-acid battery" means any battery which contains lead and sulfuric acid.

(3) "Purchased for resale" means acquired by means of a sale for resale as defined in Section 151.006, Tax Code.

(4) "Storage" and "use" have the meanings assigned those terms by Section 151.011, Tax Code.

(b) A wholesale or retail battery dealer who sells or offers to sell lead-acid batteries not for resale shall collect at the time and place of sale a fee for each nonexempt lead-acid battery sold, according to the following schedule:

(1) for a lead-acid battery with a capacity of less than 12 volts, a fee of \$2;

(2) for a lead-acid battery with a capacity of 12 or more volts, a fee of \$3.

(c) A dealer required to collect a fee under this section:

(1) shall list as a separate item on an invoice a fee due under this section; and

(2) except as provided by Subsection (d), on or before the 20th day of the month following the end of each calendar month and on a form and in the manner prescribed by the comptroller, shall file a report with and shall remit to the comptroller the amount of fees collected during the preceding calendar month.

(d) A person required to collect a fee under this section who collects less than \$50 for a calendar month or less than \$150 for a calendar quarter is not required to file a monthly report but shall file a quarterly report with and make a quarterly remittance to the comptroller. The quarterly report and remittance shall include fees collected during the preceding calendar quarter. The report and remittance are due not later than the 20th day following the end of the calendar quarter.

(e) An invoice or other record required by this section or rules of the comptroller must be maintained for at least four years after the date on which the invoice or record is prepared and be available for inspection by the comptroller at all reasonable times.

(f) The comptroller shall adopt rules necessary for the administration, collection, reporting, and payment of the fees payable or collected under this section.

(g) A person who does not file a report as provided by this section or who possesses a fee collected or payable under this section and who does not remit the fee to the comptroller at the time and in the manner required by this section and the rules of the comptroller shall pay a penalty of five percent of the amount of the fee due and payable. If the person does not file the report or pay the fee before the 30th day after the date on which the fee or report is due, the person shall pay a penalty of an additional five percent of the amount of the fee due and payable.

(h) Except as provided in this section, the provisions of Chapters 101 and 111-113, Tax Code, apply to the administration, payment, collection and enforcement of fees under this section in the same manner that these provisions apply to the administration, payment, collection, and enforcement of taxes under Title 2, Tax Code.

(i) A dealer required to collect a fee under this section may retain 2-1/2 cents from each fee the dealer collects. A dealer shall account for amounts retained under this subsection in the manner prescribed by the comptroller.

(j) The comptroller may deduct a percentage of the fees collected under this section, not to exceed four percent of receipts, to pay the reasonable and necessary costs of administering and enforcing this section. The comptroller shall credit the amount deducted to the general revenue fund. The balance of the fees, penalties, and interest collected by the comptroller under this section shall be deposited to the hazardous and solid waste remediation fee account.

(k) A battery is exempt from this section if it meets all of the following criteria:

(1) the ampere-hour rating of the battery is less than 10 ampere-hours;

(2) the sum of the dimensions of the battery (height, width, and length) is less than 15 inches; and

(3) the battery is sealed so that no access to the interior of the battery is possible without destroying the battery.

(l) A fee is imposed on the storage, use, or other consumption in this state of a lead-acid battery, unless purchased for resale, at the same rate as provided by Subsection (b).

(m) A person storing, using, or consuming a lead-acid battery in this state is liable for the fee imposed by Subsection (l) and is responsible for reporting and paying it to the comptroller in the same manner as a person required to collect the fee provided for in Subsections (c)(2) and (d).

(n) A person storing, using, or consuming a lead-acid battery in this state is not liable for the fee if the person pays the fee to a wholesaler or retailer engaged in business in this state or other person authorized by the comptroller to collect the fee and receives from the person a receipt showing that the fee has been paid.

Added by Acts 1991, 72nd Leg., ch. 710, Sec. 11, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 6, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 1000, Sec. 64, eff. Oct. 1, 1995; Acts 1997, 75th Leg., ch. 333, Sec. 42, eff. Sept. 1, 1997.

Sec. 361.139. FACTORS TO BE CONSIDERED IN SETTING FEES. (a) To promote the public policy of preferred waste management methods under Section 361.023 and to provide for an equitable fee rate structure, the commission shall consider the following in establishing the fees authorized under this subchapter:

(1) the variation in risks to the public associated

with different waste management methods, including storage, specifically:

(A) promoting the establishment and maintenance of industrial solid waste and hazardous waste reclamation, reuse, and recycling facilities;

(B) promoting the public policy of preferred waste management methods for waste streams that are amenable to multiple waste management methods; and

(C) considering whether the waste is ultimately disposed of in the state;

(2) the funding needed to adequately and equitably support the regulation of industrial solid waste and hazardous waste generation, storage, processing, and disposal activities and the remediation of contaminated disposal sites, considering:

(A) the nature and extent of regulated activities and the variation in the cost of regulating different types of facilities;

(B) the cost to the state of operating an effective program for the regulation of industrial solid waste and hazardous waste which protects human health and the environment and is consistent with state and federal authority;

(C) the higher costs of regulation and oversight that may be required for commercial waste management facilities;

(D) the sources and causes of contamination at sites in need of remediation; and

(E) the benefits and beneficiaries of the regulatory programs and activities supported through fees assessed under this subchapter;

(3) promoting the efficient and effective use of existing industrial solid waste and hazardous waste storage, processing, and disposal facilities within the state;

(4) whether a volume of waste received by a facility has been or will be assessed a waste management fee at other facilities under Section 361.136; and

(5) the prevailing rates of similar fees for industrial solid waste and hazardous waste activities charged in other states to which wastes from this state may be exported or from which wastes may be imported for storage, processing, or disposal.

(b) In addition to the factors prescribed in Subsection (a), the commission, in establishing fees for the management of hazardous waste under Section 361.136, shall also consider:

(1) the amount of state matching funds necessary for remedial actions under the Comprehensive Environmental Response, Compensation and Liability Act; and

(2) the costs of state-funded remedial actions under Subchapter F.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 24, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 710, Sec. 7, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 379, Sec. 7, eff. Aug. 30, 1993.

Sec. 361.140. INTEREST AND PENALTIES. (a) The commission by rule shall establish requirements for the assessment of penalties and interest for late payment of fees owed the state under Sections 361.134 through 361.137. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(b) Interest collected under this section for late payment of a fee shall be deposited in the state treasury to the credit of the respective fund to which the late fee is credited.

(c) Relettered as subsec. (b) by Acts 1997, 75th Leg., ch. 1072, Sec. 32, eff. Sept. 1, 1997.

(d) Any penalty collected under this section for late filing of reports shall be deposited in the state treasury to the credit of the hazardous and solid waste remediation fee account.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 23, eff. Sept. 6, 1990. Renumbered from Sec. 361.137 and amended by Acts 1991, 72nd Leg., ch. 710, Sec. 8, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 8, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 43, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1072, Sec. 32, eff. Sept. 1, 1997.

SUBCHAPTER E. POWERS AND DUTIES OF LOCAL GOVERNMENTS

Sec. 361.151. RELATIONSHIP OF COUNTY AUTHORITY TO STATE AUTHORITY. (a) Each county has the solid waste management powers prescribed under this subchapter.

(b) The exercise of the licensing authority and other powers granted to a county by this chapter does not preclude the commission from exercising the powers vested in the commission under other provisions of this chapter, including the provisions authorizing the commission to issue a permit to construct, operate, and maintain a facility to process, store, or dispose of solid waste.

(c) The commission, by specific action or directive, may supersede any authority granted to or exercised by a county under this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.57, eff. Sept. 1, 1995.

Sec. 361.152. LIMITATION ON COUNTY POWERS CONCERNING INDUSTRIAL SOLID WASTE. The powers specified by Sections 361.154-361.162 and Section 364.011 (County Solid Waste Control Act) may not be exercised by a county with respect to the industrial solid waste disposal practices and areas to which Section 361.090 applies.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 570, Sec. 3, eff. Sept. 1, 1999.

Sec. 361.153. COUNTY SOLID WASTE PLANS AND PROGRAMS; FEES. (a) A county may appropriate and spend money from its general revenues to manage solid waste and to administer a solid waste program and may charge reasonable fees for those services.

(b) As sufficient funds are made available by the commission, a county shall develop county solid waste plans and coordinate those plans with the plans of:

(1) local governments, regional planning agencies, and other governmental entities, as prescribed by Subchapter D, Chapter 363; and

(2) the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 25, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.58, eff. Sept. 1, 1995.

Sec. 361.154. COUNTY LICENSING AUTHORITY. (a) Except as provided by Sections 361.151 and 361.152, a county may require and issue licenses authorizing and governing the operation and maintenance of facilities used to process, store, or dispose of solid waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(b) If a county exercises licensing authority, it shall adopt and enforce rules for the management of solid waste. The rules must be:

(1) compatible with and not less stringent than those of the commission; and

(2) approved by the commission.

(c) Sections 361.155-361.161 apply if a county exercises licensing authority under this section.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.59, eff. Sept. 1, 1995.

Sec. 361.155. COUNTY NOTIFICATION OF LICENSE APPLICATION TO COMMISSION. The county shall mail a copy of each license application with pertinent supporting data to the commission. The commission has at least 60 days to submit comments and recommendations on the license application before the county may act on the application unless that privilege is waived by the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.60, eff. Sept. 1, 1995.

Sec. 361.156. SEPARATE LICENSE FOR EACH FACILITY. (a) A county shall issue a separate license for each solid waste facility.

(b) A license under this subchapter may be issued only to the person in whose name the application is made and only for the facility described in the license.

(c) A license may not be transferred without prior notice to and approval by the county that issued it.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.157. CONTENTS OF LICENSE. A license for a solid waste facility issued by a county must include:

(1) the name and address of each person who owns the land on which the solid waste facility is located and the person who is or will be the operator or person in charge of the facility;

(2) a legal description of the land on which the

facility is located; and

(3) the terms and conditions on which the license is issued, including the duration of the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.158. LICENSE FEE. (a) A county may charge a license fee not to exceed \$100, as set by the commissioners court of the county.

(b) The fees shall be deposited to the credit of the county's general fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.159. LICENSE ISSUANCE; AMENDMENT, EXTENSION, AND RENEWAL. (a) A county may amend, extend, or renew a license it issues in accordance with county rules.

(b) The procedures prescribed by Section 361.155 apply to an application to amend, extend, or renew a license.

(c) A license for the use of a facility to process, store, or dispose of solid waste may not be issued, amended, renewed, or extended without the prior approval of the commission.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.61, eff. Sept. 1, 1995.

Sec. 361.160. LICENSE AMENDMENT. (a) A county may, for good cause, after hearing with notice to the license holder and to the commission, amend a license it issues for reasons concerning:

- (1) public health;
- (2) air or water pollution;
- (3) land use; or

(4) a violation of this chapter or of other applicable laws or rules controlling the processing, storage, or disposal of solid waste.

(b) For similar reasons, the commission may for good cause amend a license issued by a county, after hearing with notice to:

- (1) the license holder; and
- (2) the county that issued the license.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.62, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 33, eff. Sept. 1, 1997.

Sec. 361.161. PERMIT FROM COMMISSION NOT REQUIRED. If a county issues, amends, renews, or extends a license in accordance with Sections 361.154-361.160, the owner or operator of the facility is not required to obtain a permit from the commission for the same facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.62, eff. Sept. 1, 1995.

Sec. 361.162. DESIGNATION OF AREAS SUITABLE FOR FACILITIES. (a) Subject to the limitation under Sections 361.151 and 361.152, a county may designate land areas not in the territorial limits or extraterritorial jurisdiction of a municipality as suitable for use as solid waste facilities.

(b) The county shall base a designation on the principles of public health, safety, and welfare, including proper land use, compliance with state statutes, and other pertinent factors.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.163. COOPERATIVE AGREEMENTS WITH LOCAL GOVERNMENTS. A county may enter into cooperative agreements with local governments and other governmental entities to jointly operate solid waste management activities and to charge reasonable fees for the services.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.165. POLITICAL SUBDIVISIONS WITH JURISDICTION IN TWO OR MORE COUNTIES. (a) This section applies to a political subdivision of the state that:

(1) has jurisdiction of territory in more than one county; and

(2) has been granted the power by the legislature to regulate solid waste handling or disposal practices or activities in its jurisdiction.

(b) The governing body of the political subdivision may, by resolution, assume for the political subdivision the exclusive authority to exercise, in the area subject to its jurisdiction, the powers granted by this chapter to a county, to the exclusion of the exercise of the same powers by the counties otherwise having jurisdiction over the area.

(c) In the exercise of those powers, the political subdivision is subject to the same duties, limitations, and restrictions applicable to a county under this chapter.

(d) A political subdivision that assumes the authority granted under this section:

(1) serves as the coordinator of all solid waste management practices and activities for municipalities, counties, and other governmental entities in its jurisdiction that have solid waste management regulatory powers or engage in solid waste management practices or activities; and

(2) shall exercise the authority as long as the resolution of the political subdivision is effective.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.166. MUNICIPAL RESTRICTIONS. A municipality may not abolish or restrict the use or operation of a solid waste facility in its limits or extraterritorial jurisdiction if the solid waste facility:

(1) was in existence when the municipality was incorporated or was in existence when the municipality annexed the area in which it is located; and

(2) is operated in substantial compliance with applicable state and county regulations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.167. OPERATION OF FACILITY BY POLITICAL SUBDIVISION. A municipality or other political subdivision operating a solid waste facility may not be prevented from operating the solid waste facility on the ground that the facility is located in the limits or extraterritorial jurisdiction of another municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER F. REGISTRY AND CLEANUP OF CERTAIN HAZARDOUS WASTE FACILITIES

Sec. 361.181. STATE REGISTRY: ANNUAL PUBLICATION. (a) The commission shall annually publish an updated state registry identifying, to the extent feasible, each facility that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

(b) The registry shall identify the relative priority for action at each listed facility. The relative priority for action at facilities listed on the registry shall be periodically reviewed and revised by the commission as necessary to accurately reflect the need for action at the facilities.

(c) In this subchapter:

(1) "Facility" means any building, structure, installation, equipment, pipe, or pipeline (including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft), or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located. The term does not include any consumer product in consumer use or any vessel.

(2) "Homestead" has the meaning designated by Section 51, Article XVI, Texas Constitution.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 2003, 78th Leg., ch. 661, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.182. INVESTIGATIONS. (a) The executive director may conduct investigations of facilities that are listed on the state registry, or that the executive director has reason to believe should be included on the state registry, in accordance with Sections 361.032, 361.033, and 361.037.

(b) If there is a reasonable basis to believe there may be a release or threatened release of a hazardous substance at a facility, the executive director may submit requests for information and requests for the production of documents to any person who has or may have information or documents relevant to:

(1) the identification, nature, or quantity of materials that have been generated, treated, stored, or disposed of at a facility or transported to a facility;

(2) the identification of soils, groundwater, or surface water at a facility that have been or may be affected by an actual or threatened release of a hazardous substance;

(3) the nature or extent of a release or threatened release of a hazardous substance at or from a facility; or

(4) the ability of a person to pay for or to perform a remedial action.

(c) If the requested information or documents are not produced in a timely manner, the commission may issue an order directing compliance with the requests for information or production of documents. Information or documents requested under Subsection (b) or this subsection are public records, except that the commission shall consider the copied records as confidential if a showing satisfactory to the commission is made by the owner of the records that the records would divulge trade secrets if made public. This subsection does not require the commission to consider the composition or characteristics of hazardous substances being processed, stored, disposed of, or otherwise handled to be held confidential.

(d) The commission shall adopt rules regarding the provision of notice and an opportunity for a hearing before the commission on whether the requested information or documents should be produced.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.183. REGISTRY LISTING PROCEDURE: DETERMINATION OF ELIGIBILITY. (a) Before listing a facility on the state registry, the executive director shall determine whether the potential endangerment to public health and safety or the environment at the facility can be resolved by:

(1) the present owner or operator under the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901);

(2) some or all of the potentially responsible parties identified in Subchapter I, under an agreed administrative order issued by the commission; or

(3) an agreement under Subchapter S, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995.

(b) If the potential endangerment to public health and safety or the environment can be resolved in such a manner, the facility may not be listed on the state registry. Notice of the approach selected to resolve the apparent endangerment to public health and safety or the environment and the fact that this action is being taken in lieu of listing the facility on the state registry shall be published in the Texas Register.

(c) If after reasonable efforts the executive director determines that the potential endangerment to public health and safety or the environment cannot be resolved by either of the approaches under Subsection (a), the executive director shall evaluate the facility to determine whether the site exceeds the commission's minimum criteria for listing on the state registry. The commission by rule shall adopt the minimum criteria. The executive director shall also evaluate the facility to determine whether it is eligible for listing on the federal National Priorities List.

(d) The commission shall proceed under this subchapter only if, based on information available to the executive director, the facility is eligible for listing on the state registry but not eligible for the federal National Priorities List.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 3, eff. Sept. 1, 1997.

Sec. 361.184. REGISTRY LISTING PROCEDURE: NOTICES AND HEARING. (a) If the executive director determines that a facility is eligible for listing on the state registry, the commission shall publish in the Texas Register and in a newspaper of general circulation in the county in which the facility is located a notice of intent to list the facility on the state registry. The notice shall at least specify the name and location of the facility, the general nature of the potential endangerment to public health and safety or the environment as determined by information available to the executive director at that time, and the duties and restrictions imposed by Subsection (c). The notice also shall provide that interested parties may do either or both of the following:

(1) submit written comments to the commission relative to the proposed listing of the facility; or

(2) request a public meeting to discuss the proposed listing by submitting a request not later than the 30th day after the date on which the notice is issued.

(b) If the facility is determined to be eligible for listing on the state registry, the executive director shall make all reasonable efforts to identify all potentially responsible parties for remediation of the facility. Concurrent with the publication of general notice under Subsection (a), the executive director shall provide to each identified potentially responsible party direct, written notification of the proposed listing of the facility on the state registry and of the procedures for requesting a public meeting to discuss the listing and the information included in the general notice as required by Subsection (a). Written notifications under this subsection shall be by certified mail, return receipt requested, to each named responsible party at the party's last known address.

(c) If a public meeting is requested regarding the proposed listing of a facility on the state registry, the commission shall publish general notice of the date, time, and location of the public meeting in the Texas Register and in the same newspaper in which the notice of the opportunity to request the public meeting was published. The public meeting notice shall be provided not later than the 31st day before the date of the meeting. Notice of the meeting also shall be provided by certified mail, return receipt requested, to each identified potentially responsible party at the party's last known address.

(d) Nonreceipt of any notice mailed to a potentially responsible party under Subsection (b) or this subsection does not affect the responsibilities, duties, or liabilities imposed on the party. Contemporaneously with issuing the notice of the public meeting, the executive director shall make available to all interested parties the public records the executive director has regarding the facility. For the purposes of providing this information, the executive director shall provide a brief summary of those public records and make those public records available for inspection and copying during regular business hours.

(e) A public meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code. The meeting shall be held for the purpose of obtaining additional information regarding the facility relative to the eligibility of the facility for listing on the state registry and the identification of potentially responsible parties.

(f) After the public meeting or after opportunity to request a public meeting has passed, the commission shall file or cause to be filed an affidavit or notice in the real property records of the county in which the facility is located identifying the facility as one proposed for listing on the state registry unless the executive director determines, based on information presented at the public meeting, that efforts to list the facility on the state registry should not be pursued.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.185. INVESTIGATION/FEASIBILITY STUDY. (a) After the public meeting or after opportunity to request a public meeting has passed, but before any listing of the facility on the state registry, the commission shall allow all identified potentially responsible parties the opportunity to fund or conduct, if appropriate, a remedial investigation/feasibility study, or a similar study as approved by the executive director, for the facility. Not later than the 90th day after notice under Section 361.184(a) is issued, the potentially responsible parties may make a good faith offer to conduct the study. If a good faith offer from all or some of the potentially responsible parties is received by the commission within that period, those making the offer have an additional 60 days within which to negotiate an agreed administrative order from the commission, which must include a scope of work. In the agreed administrative order the commission may not require the participating potentially responsible parties to agree to perform the remedial action or admit liability for the facility remediation.

(b) If no potentially responsible party makes a good faith offer to conduct the remedial investigation/feasibility study or similar study as approved by the executive director or if the participating potentially responsible parties fail to conduct or complete an approved study, the commission may conduct or complete the study using funds from the hazardous waste disposal fee fund.

(c) To encourage potentially responsible parties to perform the remedial investigation/feasibility study or other similar study as approved by the executive director, costs for commission oversight of the study may not be assessed against those parties who fund or perform the study. Nonparticipating potentially responsible parties who are ultimately determined to be liable for remediation of the facility under this chapter or who subsequently enter into an agreed order relative to the remediation of the facility may be assessed up to the full costs for commission oversight of the study process. If all potentially responsible parties participate or agree to fund the remedial investigation/feasibility study or other similar study, all commission oversight costs shall be paid from the hazardous waste disposal fee fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.1855. PROPOSAL OF LAND USE OTHER THAN RESIDENTIAL. (a) The executive director shall hold a public meeting to obtain public input and information regarding the appropriate use of land on which a facility is located that is the subject of a remedial investigation/feasibility study if:

(1) a land use other than residential is proposed as appropriate for the land by:

(A) the executive director; or

(B) a potentially responsible party who has entered into an agreed order with the commission;

(2) the proposal is made before the study is completed; and

(3) a local government has not zoned the land as residential only.

(b) Any interested person may comment at the meeting.

(c) The meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code.

(d) Not later than the 31st day before the date of the meeting, the commission shall:

(1) publish notice of the meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located;

(2) mail notice of the meeting to each potentially responsible party by certified mail, return receipt requested, at the party's most recent address as shown on the records of the commission; and

(3) make the commission's records regarding the facility available to any interested person.

(e) The notice shall:

(1) state the date, time, and place of the meeting; and

(2) provide information regarding the proposed land use.

(f) The failure of a potentially responsible party to receive a notice under this section does not affect the responsibilities, duties, or liabilities of the party.

(g) After the meeting, the executive director shall select the appropriate land use for purposes of selecting a proposed remedial action.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 4, eff. Sept. 1, 1997.

Sec. 361.186. FACILITY ELIGIBLE FOR LISTING: ACTIVITIES AND CHANGE OF USE. (a) If the executive director determines that a facility is eligible for listing on the state registry, a person may not perform at the facility any partial or total removal activities except as authorized by the executive director in appropriate circumstances after notice and opportunity for comment to all other potentially responsible parties. The commission may adopt rules determining what constitutes an appropriate circumstance to take removal action under this subsection. Authorization by the executive director to conduct a partial or total removal action does not constitute:

(1) a final determination of the party's ultimate liability for remediation of the facility; or

(2) a determination of divisibility.

(b) If the facility is determined to be eligible for listing on the state registry, the owner or operator of the facility must provide the executive director with written notice of any substantial change in use of the facility before the 60th day before

the date on which the change in use is made. Notice of a proposed substantial change in use must be in writing, addressed to the executive director, sent by certified mail, return receipt requested, and include a brief description of the proposed change in use. A substantial change in use shall be defined by rule and must include actions such as the erection of a building or other structure at the facility, the use of the facility for agricultural production, the paving of the facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational use on the facility.

(c) If, within 30 days after the date of the notice, the executive director determines that the proposed substantial change in use will interfere significantly with a proposed or ongoing remedial investigation/feasibility study or similar study approved by the executive director or expose the public health and safety or the environment to a significantly increased threat of harm, the executive director shall notify the owner or operator of the determination. After the determination is made and notification given, the owner or operator may not proceed with the proposed substantial change in use. The owner or operator may request a hearing before the commission on whether the determination should be modified or set aside by submitting a request not later than the 30th day after the receipt of the executive director's determination. If a hearing is requested, the commission shall initiate the hearing not later than the 45th day after the receipt of the request. The hearing shall be conducted in accordance with Chapter 2001, Government Code. The executive director's determination becomes unappealable on the 31st day after issuance if a hearing is not requested.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.187. PROPOSED REMEDIAL ACTION. (a) Within a reasonable time after the completion of the remedial investigation/feasibility study or other similar study, if required, the executive director shall select a proposed remedial action. After the selection of a proposed remedial action, the commission shall hold a public meeting to discuss the proposed action.

(b) The commission shall publish notice of the meeting in the Texas Register and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. The notice shall provide information regarding the proposed remedial action and the date, time, and place of the meeting. The commission shall also mail the same information to each potentially responsible party by certified mail, return receipt requested, at the party's last known address at least 30 days before the public meeting. Contemporaneously with the issuance of notice of the public meeting, the executive director shall make available to all interested parties the public records the executive director has regarding the facility. For purposes of providing this information, the executive director shall provide a brief summary of those public records and make those public records available for inspection and copying during regular business hours. Nonreceipt of any notice mailed to a potentially responsible party under this section does not affect the responsibilities, duties, or liabilities imposed on the party.

(c) The public meeting is legislative in nature and not a contested case hearing under Chapter 2001, Government Code. The meeting shall be held for the purpose of obtaining additional information regarding the facility and the identification of additional potentially responsible parties. Those in attendance may comment on the proposed remedial action, and the executive director may revise the proposed remedial action in light of the presentations.

(d) After the public meeting on the proposed remedial action, the commission shall provide all identified potentially responsible parties an opportunity to fund or perform the proposed remedial action. Not later than the 60th day after the date of the public meeting, the potentially responsible parties may make a good faith offer to fund or perform the proposed remedial action. If a good faith offer is made by all or some of the potentially responsible parties within this period, those parties have an additional 60 days to negotiate an agreed administrative order from

the commission, which shall include a scope of work. The commission may not require an admission of liability in the agreed administrative order.

(e) To encourage potentially responsible parties to perform the remedial action, costs for commission oversight of the remedial action may not be assessed against those parties who fund or perform the remedial action. Nonparticipating potentially responsible parties who are ultimately determined to be liable for remediation of the facility may be assessed up to the full costs for commission oversight of the remedial action. If all potentially responsible parties conduct or fund the remedial action, all commission oversight costs shall be paid from the hazardous waste disposal fee fund. Participation in the remedial action does not relieve those who did not conduct or fund the remedial investigation/feasibility study or other similar study approved by the executive director from paying their portion of the oversight costs of that phase of the remediation.

(f) The executive director may authorize a potentially responsible party to conduct a partial remedial action at a portion of the facility if after notice and opportunity for comment to all other potentially responsible parties the executive director determines that the release or threatened release is divisible. In this subchapter, "divisible" means that the hazardous substance released or threatened to be released is capable of being managed separately under the remedial action plan. A determination of divisibility by the executive director does not have res judicata or collateral estoppel effect on a potentially responsible party's ultimate liability for remediation of the facility under Subchapter G or I.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.1875. EXCLUSION OF CERTAIN POTENTIALLY RESPONSIBLE PARTIES. The commission may not name a person as a responsible party for an enforcement action or require a person to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the person and as a result of the investigation has determined that:

(1) the contaminants that are the subject of investigation under this subchapter appear to originate from an up-gradient, off-site source that is not owned or operated by the person;

(2) additional corrective action is not required at the site owned or operated by the person; and

(3) the commission will not undertake a formal enforcement action in the matter.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 11.01, eff. Sept. 1, 2001.

Sec. 361.188. FINAL ADMINISTRATIVE ORDER. (a) After consideration of all good faith offers to perform a remedial action, the commission shall issue a final administrative order that must:

(1) list the facility on the state registry, thus determining that the facility poses an imminent and substantial endangerment to public health and safety or the environment;

(2) specify the appropriate land use for purposes of selecting the appropriate remedial action;

(3) specify the selected remedial action;

(4) list the parties determined to be responsible for remediating the facility;

(5) make findings of fact describing actions voluntarily undertaken by responsible parties;

(6) order the responsible parties to remediate the facility and, if appropriate, reimburse the hazardous waste disposal fee fund for remedial investigation/feasibility study and remediation costs;

(7) establish a schedule for completion of the remedial action;

(8) state any determination of divisibility of responsible party liability; and

(9) give notice of the duties and restrictions imposed by Section 361.190.

(b) The provisions in Subchapters I, K, and L relating to

administrative orders apply to orders issued under this section.

(c) If a potentially responsible party is newly identified after a final administrative order under Subsection (a) has been issued by the commission, that party has 60 days to negotiate an amendment to the existing order. The commission is not prohibited from issuing a separate order for the newly identified potentially responsible party if the commission determines that the circumstances warrant a separate order. The responsible parties identified in the order issued under Subsection (a) shall be allowed to comment on the issuance of a separate order for the newly identified potentially responsible party.

(d) Within a reasonable period after a determination has been made, the commission shall file or cause to be filed in the real property records of the county in which the facility is located an affidavit or notice stating that the facility has been listed on or deleted from the state registry or is no longer proposed for listing on the state registry.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 6, eff. Sept. 1, 1997.

Sec. 361.189. DELETIONS FROM REGISTRY. (a) The executive director or an owner or operator or other named responsible party of a facility listed or to be listed on the state registry may request the commission to delete the facility from the state registry, modify the facility's priority within the state registry, or modify any information regarding the facility by submitting a written statement setting forth the grounds of the request in the form the commission may by rule require.

(b) The commission by rule shall establish procedures, including public meetings, for review of requests submitted under this section.

(c) If the commission deletes a facility from the state registry because the cleanup of the facility is being addressed under Subchapter S, as added by Chapter 986, Acts of the 74th Legislature, Regular Session, 1995, the facility automatically reverts to the status the facility had immediately before the facility was deleted from the registry on the date of the executive director's determination that the cleanup of the facility is not being addressed adequately. A public meeting is not required for an action under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 7, eff. Sept. 1, 1997.

Sec. 361.190. CHANGE IN USE OF LISTED FACILITY. (a) After the listing of a facility on the state registry, a person may not substantially change the manner in which the facility is used without notifying the executive director and receiving written approval of the executive director for the change.

(b) A substantial change in use shall be defined by rule and shall include actions such as the erection of a building or other structure at the facility, the use of the facility for agricultural production, the paving of the facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational use on the facility.

(c) The notice must be in writing, addressed to the executive director, sent by certified mail, return receipt requested, and include a brief description of the proposed change in use.

(d) The executive director shall approve or disapprove the proposed action within 60 days after the date of receipt of the notice of proposed change in use. The executive director may not approve the proposed change in use if the new use will significantly interfere with a proposed, ongoing, or completed remedial action program at a facility or expose the public health and safety or the environment to a significantly increased threat of harm.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.191. IMMEDIATE REMOVAL. (a) If the commission, after investigation, finds that there exists a release or threatened release of a hazardous substance at a facility that is causing irreversible or irreparable harm to the public health and safety or the environment and that the immediacy of the situation

makes it prejudicial to the public interest to delay action until an administrative order can be issued to potentially responsible parties or until a judgment can be entered in an appeal of an administrative order, the commission may, with the funds available to the commission from the hazardous waste disposal fee fund, undertake immediate removal action at the facility to alleviate the harm.

(b) After the immediate danger of irreversible or irreparable harm has been alleviated, the commission shall proceed under this subchapter.

(c) Findings required under this section must be in writing and may be made ex parte by the commission subject to judicial review under the substantial evidence rule as provided by Chapter 2001, Government Code.

(d) The reasonable expenses of any immediate removal action taken by the commission may be recoverable from the persons described in Subchapter G or I, and the state may seek to recover the reasonable expenses in any court of appropriate jurisdiction.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 361.192. REMEDIAL ACTION BY COMMISSION. (a) If a person ordered to eliminate an imminent and substantial endangerment to the public health and safety or the environment has failed to do so within the time limits specified in the order or any extension of time approved by the commission, the commission may implement the remedial action program for the facility.

(b) The reasonable expenses of implementing the remedial action program by the commission shall be paid by the persons to whom the order was issued and shall be recoverable under Section 361.197.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.193. GOAL OF REMEDIAL ACTION. (a) The goal of any remedial action is the elimination of the imminent and substantial endangerment to the public health and safety or the environment posed by a release or threatened release of a hazardous substance at a facility. The appropriate extent of the remedial action at any particular facility shall be determined by the commission's selection of the remedial alternative that the commission determines is the lowest cost alternative that is technologically feasible and reliable and that effectively mitigates and minimizes damage to and provides adequate protection of the public health and safety or the environment.

(b) In considering the appropriate remedial action program at a particular facility, the commission may approve a program that does not attain a level or standard of control at least equivalent to a legally applicable or relevant and appropriate standard, requirement, criterion, or limitation, as required by state or local law, if the commission finds that:

(1) the remedial action selected is only part of a total remedial action that will attain that level or standard of control when completed;

(2) compliance with the requirement at that facility will result in greater risk to public health and safety or the environment than alternative options;

(3) compliance with the requirement is technically impracticable from an engineering perspective;

(4) the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criterion, or limitation through use of another method or approach;

(5) with respect to a local standard, requirement, criterion, or limitation, the locality has not consistently applied or demonstrated the intention to consistently apply the standard, requirement, criterion, or limitation in similar circumstances of other remedial actions within the locality; or

(6) with respect to an action using solely state funds, selection of a remedial action that attains those levels or standards of control will not provide a balance between the need for protection of public health and safety or the environment at the facility and the availability of state funds to respond to other sites that present a threat to public health and safety or the

environment, taking into consideration the relative immediacy of the threats.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.194. LIEN. (a) In addition to all other remedies available to the state under this chapter or other law, all remediation costs for which a person is liable to the state constitute a lien in favor of the state on the real property and the rights to the real property that are subject to or affected by a remedial action. This provision is cumulative of other remedies available to the state under this chapter.

(b) The lien imposed by this section arises and attaches to the real property subject to or affected by a remedial action at the time an affidavit is recorded and indexed in accordance with this section in the county in which the real property is located. For the purpose of determining rights of all affected parties, the lien does not relate back to a time before the date on which the affidavit is recorded, which date is the lien inception date. The lien continues until the liability for the costs is satisfied or becomes unenforceable through operation of law. The executive director shall determine whether to prepare an affidavit. In determining whether to prepare an affidavit or whether a lien is satisfied, the executive director:

(1) shall proceed in the manner that the executive director determines will most likely result in the least overall costs to the state after any cost recovery action; and

(2) may take into account a landowner's financial ability to satisfy the lien, including consideration of whether the landowner received financial compensation for the disposal of any substance addressed by the remedial action and whether the real property that is the subject of the lien:

(A) is a homestead and is being occupied as a home by the landowner; and

(B) has a fair market value of \$250,000 or less.

(c) An authorized representative of the commission must execute the affidavit. The affidavit must show:

(1) the names and addresses of the persons liable for the costs;

(2) a description of the real property that is subject to or affected by the remediation action for the costs or claims; and

(3) the amount of the costs and the balance due.

(d) The county clerk shall record the affidavit in records kept for that purpose and shall index the affidavit under the names of the persons liable for the costs.

(e) The commission shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(f) The lien may be foreclosed only on judgment of a court of competent jurisdiction foreclosing the lien and ordering the sale of the property subject to the lien.

(g) The lien imposed by this section is not valid or enforceable if real property, an interest in real property, or a mortgage, lien, or other encumbrance on or against real property is acquired before the affidavit is recorded, unless the person acquiring the real property, an interest in the property, or the mortgage, lien, or other encumbrance on the property had or reasonably should have had actual notice or knowledge that the real property is subject to or affected by a clean-up action or has knowledge that the state has incurred clean-up costs.

(h) If a lien is fixed or attempted to be fixed as provided by this section, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond must be filed with the county clerk of the county in which the real property subject to the lien is located. An action to establish, enforce, or foreclose any lien or claim of lien covered by the bond must be brought not later than the 30th day after the date of service of notice of the bond. The bond must:

(1) describe the real property on which the lien is claimed;

(2) refer to the lien claimed in a manner sufficient to identify it;

(3) be in an amount double the amount of the lien referred to;

(4) be payable to the commission;

(5) be executed by the party filing the bond as principal and a corporate surety authorized under the law of this state to execute the bond as surety; and

(6) be conditioned substantially that the principal and sureties will pay to the commission the amount of the lien claimed, plus costs, if the claim is proved to be a lien on the real property.

(i) After the bond is filed, the county clerk shall issue notice of the bond to the named obligee. A copy of the bond must be attached to the notice. The notice may be served on each obligee by having a copy delivered to the obligee by any person competent to make oath of the delivery. The original notice shall be returned to the office of the county clerk, and the person making service of copy shall make an oath on the back of the copies showing on whom and on what date the copies were served. The county clerk shall record the bond notice and return in records kept for that purpose. In acquiring an interest in real property, a purchaser or lender may rely on and is absolutely protected by the record of the bond, notice, and return.

(j) The commission may sue on the bond after the 30th day after the date on which the notice is served but may not sue on the bond later than one year after the date on which the notice is served. The commission is entitled to recover reasonable attorney's fees if the commission recovers in a suit on the lien or on the bond.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 8, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 2, eff. Sept. 1, 2003.

Sec. 361.195. PAYMENTS FROM HAZARDOUS AND SOLID WASTE REMEDIATION FEE ACCOUNT. (a) Money for actions taken or to be taken by the commission in connection with the elimination of an imminent and substantial endangerment to the public health and safety or the environment under this subchapter is payable directly to the commission from the hazardous and solid waste remediation fee account. These payments include any costs of inspection or sampling and laboratory analysis of wastes, soils, air, surface water, and groundwater done on behalf of a state agency and the costs of investigations to identify and locate potentially responsible parties.

(b) The commission shall seek remediation of facilities by potentially responsible parties before expenditure of federal or state funds for the remediations.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 333, Sec. 44, eff. Sept. 1, 1997.

Sec. 361.196. REMEDIATION: PERMITS NOT REQUIRED; LIABILITY. (a) Potentially responsible parties shall coordinate with ongoing federal and state hazardous waste programs although a state or local permit may not be required for any removal or remedial action conducted on site.

(b) Subject to Section 361.193, the state may enforce any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be required to conform if a permit were required.

(c) An action taken by the person to contain or remove a release or threatened release in accordance with an approved remedial action plan may not be construed as an admission of liability for the release or threatened release.

(d) A person who renders assistance in containing or removing a release or threatened release in accordance with an approved remedial action plan is not liable for any additional remediation costs at the facility resulting solely from acts or omissions of the person in rendering the assistance in compliance with the approvals required by this section, unless the remediation costs were caused by the person's gross negligence or wilful misconduct.

(e) Except as specifically provided by this section, these provisions do not expand or diminish the common law tort liability, if any, of private parties participating in a remediation action for civil damages to third parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.197. COST RECOVERY. (a) The commission shall file a cost recovery action against all responsible parties who have not complied with the terms of an administrative order issued under Section 361.188. The commission shall file the cost recovery action no later than one year after all remedial action has been completed.

(b) The state may seek a judgment against the noncompliant parties for the total amount of the cost of the remedial investigation and feasibility study, the remedial design, and the remedial action, including costs of any necessary studies and oversight costs, minus the amount agreed to be paid or expended by any other responsible parties under an order issued under Section 361.185 or 361.188.

(c) The action may also include a plea seeking civil penalties for noncompliance with the commission's administrative order and a claim for up to triple the state's costs if the responsible party's defenses are determined by the court to be unreasonable, frivolous, or without foundation.

(d) The commission shall file a cost recovery action against each responsible party for the total costs of an action taken under Section 361.133(c)(1), (2), (3), (5), or (6) or Section 361.133(g).

(e) The commission may not file a cost recovery action under this section against an individual if the individual's only significant asset is a homestead that:

(1) includes the facility subject to or affected by a remedial action;

(2) is occupied by the individual as a home; and

(3) has a fair market value of \$250,000 or less.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 552, Sec. 1, eff. June 8, 1993; Acts 1995, 74th Leg., ch. 883, Sec. 4, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 9, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 3, eff. Sept. 1, 2003.

Sec. 361.199. MIXED FUNDING PROGRAM. The commission by rule shall adopt a mixed funding program in which available money from potentially responsible parties is combined with state or federal funds to clean up a facility in a timely manner. Use of the state or federal funds in a mixed funding approach does not preclude the state or federal government from seeking recovery of its costs from nonparticipating potentially responsible parties.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

Sec. 361.200. SETTLEMENT. The commission shall assess and by rule may develop and implement a settlement program. Under the program, the commission shall consider the advantages of developing a final settlement with potentially responsible parties that are responsible for response costs at a facility because of hazardous substances. The settlement program may include:

(1) de minimis settlements;

(2) covenants not to sue;

(3) mixed funding; and

(4) partial settlements.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 793, Sec. 10, eff. Sept. 1, 1997.

Sec. 361.201. FINANCIAL CAPABILITY AND FUNDING PRIORITY. (a) The commission may determine whether a potentially responsible party is financially capable of conducting any necessary remediation studies or remedial action. The commission by rule shall adopt the criteria for determination of financial capability.

(b) If no financially capable, potentially responsible parties exist for a facility, the commission shall issue an administrative order stating its determination that the facility constitutes an imminent and substantial endangerment and that there are no financially capable, potentially responsible parties. The commission shall then conduct its own remediation study and remedial action, using federal funds if available, or, if federal funds are not available, using state funds from the hazardous and solid waste remediation fee account.

(c) Generally, the remediation of listed facilities shall be achieved first by private party funding, second with the aid of

federal funds, and third, if necessary, with state funds from the hazardous and solid waste remediation fee account.

(d) The commission shall determine whether a potentially responsible party is financially capable of conducting any necessary remediation studies or remedial action if the responsible party is an individual whose homestead includes the facility subject to or affected by a remedial action.

(e) The commission by rule shall adopt criteria for determining the financial capability of an individual under Subsection (d). The rules must provide that the value of the individual's homestead may not be included in the total amount of the individual's assets if:

(1) the individual is occupying the homestead as a home; and

(2) the fair market value of the homestead is \$250,000 or less.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990; Acts 1997, 75th Leg., ch. 333, Sec. 45, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 661, Sec. 4, eff. Sept. 1, 2003.

Sec. 361.202. DEADLINE EXTENSIONS. The executive director or the commission may extend any period specified in this section if considered appropriate.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 29, eff. Sept. 6, 1990.

SUBCHAPTER I. ENFORCEMENT; ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT

Sec. 361.271. PERSONS RESPONSIBLE FOR SOLID WASTE. (a) Unless otherwise defined in applicable statutes and rules, a person is responsible for solid waste if the person:

(1) is any owner or operator of a solid waste facility;

(2) owned or operated a solid waste facility at the time of processing, storage, or disposal of any solid waste;

(3) by contract, agreement, or otherwise, arranged to process, store, or dispose of, or arranged with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, by any other person or entity at:

(A) the solid waste facility owned or operated by another person or entity that contains the solid waste; or

(B) the site to which the solid waste was transported that contains the solid waste; or

(4) accepts or accepted any solid waste for transport to a solid waste facility or site selected by the person.

(b) A political subdivision or an officer or employee of the political subdivision is not a person responsible for solid waste released or threatened to be released from a facility or at a site if:

(1) the political subdivision acquired ownership or control of the facility or site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the subdivision involuntarily acquired title to the facility or site by virtue of the subdivision's function as sovereign; and

(2) the political subdivision, officer, or employee did not cause or contribute to the release or threatened release of solid waste at the facility or site.

(c) A political subdivision that is in a county with a population of 2.4 million or more or is in a county adjacent to a county with a population of 2.4 million or more and that builds or installs a drainage project on a site of a solid waste facility is not a person responsible for solid waste released or threatened to be released from the facility or at a site of the facility if:

(1) the political subdivision acquired ownership or control of the facility or site through bankruptcy, tax delinquency, abandonment, or other circumstances in which the subdivision involuntarily acquired title to the facility or site by virtue of the subdivision's function as sovereign; and

(2) the plans for the drainage project have been submitted to and reviewed by the commission.

(d) A political subdivision that builds or installs a drainage project under Subsection (c) is not subject to civil or criminal liability arising from the building or installation of the drainage project. This subsection does not apply to an injury or property damage claim that results from an act or omission of the political subdivision constituting gross negligence, recklessness,

or intentional misconduct.

(e) A fiduciary's responsibility for solid waste is subject to Subchapter T.

(f) A lender's responsibility for solid waste is subject to Subchapter U.

(g) A port authority or navigation district created under Section 59, Article XVI, or Section 52, Article III, Texas Constitution, is not a person responsible under this chapter for the release or threatened release of hazardous waste from a facility or at a site solely for its activities related to construction or maintenance of waterways to facilitate navigation if, in performing those activities:

(1) the port authority or navigation district is acting by virtue of the authority's or district's function as sovereign;

(2) the port authority or navigation district requires that dredged materials be sampled and analyzed before placement or storage of those materials on land or submerged land; and

(3) the port authority or navigation district, after exercising due diligence, does not accept dredged materials that are hazardous waste.

(h) Subsection (g) may not be construed to relieve a port authority or navigation district of liability if the port authority or navigation district causes or contributes to the generation of hazardous waste.

(i) As used in Subsection (g), activities related to construction or maintenance of waterways to facilitate navigation include:

(1) the dredging of materials from navigable waters or the banks of navigable waters;

(2) the placement or storage of dredged materials on land or submerged land; and

(3) the construction, operation, or maintenance of a placement area for dredged material.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 159, Sec. 1, eff. May 16, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.67, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 793, Sec. 11, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1072, Sec. 34, eff. Sept. 1, 1997; Acts 2005, 79th Leg., ch. 589, Sec. 1, eff. June 17, 2005.

Sec. 361.272. ADMINISTRATIVE ORDERS CONCERNING IMMINENT AND SUBSTANTIAL ENDANGERMENT. (a) The commission may issue an administrative order to a person responsible for solid waste if it appears that there is an actual or threatened release of solid waste that presents an imminent and substantial endangerment to the public health and safety or the environment:

(1) from a solid waste facility at which solid waste is stored, processed, or disposed of; or

(2) at any site at which one or more of those activities concerning solid waste have been conducted in the past, regardless of whether the activity was lawful at the time.

(b) An administrative order may be issued under this section to:

(1) restrain the person from allowing or continuing the release or threatened release; and

(2) require the person to take any action necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

(c) An administrative order issued under this section shall:

(1) be delivered to the persons identified by the order by certified mail, return receipt requested;

(2) be delivered by hand delivery to the person identified by the order; or

(3) on failure of delivery of the order by certified mail or hand delivery, be served on the persons by publication:

(A) once in the Texas Register; and

(B) once in a newspaper of general circulation in each county in which a person identified by the order had the person's last known address.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.68, eff. Sept. 1, 1995.

Sec. 361.273. INJUNCTION AS ALTERNATIVE TO ADMINISTRATIVE ORDER. The commission may cause a civil suit for injunctive relief

to be brought in a district court in the county in which the actual release is occurring or threatened release may occur to:

(1) restrain a person responsible for solid waste under Section 361.271 from allowing or continuing the release or threatened release; and

(2) require the person to take actions necessary to provide and implement a cost effective and environmentally sound remedial action plan designed to eliminate the release or threatened release.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.69, eff. Sept. 1, 1995.

Sec. 361.274. NO PRIOR NOTICE CONCERNING ADMINISTRATIVE ORDER. An administrative order under Section 361.272 does not require prior notice or an adjudicative hearing before the commission. An emergency administrative order may be issued under Subchapter L, Chapter 5, Water Code.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.69, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 35, eff. Sept. 1, 1997.

Sec. 361.275. DEFENSES. (a) A person responsible for solid waste under Section 361.271 is liable under Section 361.272 or 361.273 unless the person can establish by a preponderance of the evidence that the release or threatened release was caused solely by:

- (1) an act of God;
- (2) an act of war;
- (3) an act or omission of a third person; or
- (4) any combination of Subdivisions (1), (2), and (3).

(b) In a defense under Subsection (a)(3), the defendant must establish by a preponderance of the evidence that the defendant:

(1) exercised due care concerning the solid waste, considering the characteristics of the solid waste, in light of all relevant facts and circumstances; and

(2) took precautions against foreseeable acts or omissions of the third person and the consequences that could foreseeably result from those acts or omissions.

(c) The defense under Subsection (a)(3) does not apply if the third person:

- (1) is an employee or agent of the defendant; or
- (2) has a direct or indirect contractual relationship with the defendant and the act or omission of the third person occurred in connection with the contractual relationship.

(d) In Subsection (c)(2), "contractual relationship" includes land contracts, deeds, or other instruments transferring title or possession of real property.

(e) A defendant who enters into a contractual relationship as provided by Subsection (c)(2) is not liable under this subchapter if:

(1) the sole contractual relationship is acceptance for rail carriage by a common carrier under a published tariff; or

(2) the defendant acquired the real property on which the facility requiring the remedial action is located, after the disposal or placement of the hazardous substance on, in, or at the facility and the defendant establishes by a preponderance of the evidence that:

- (A) the defendant has satisfied Subsection (b);
- (B) at the time the defendant acquired the facility the defendant did not know and had no reason to know that a hazardous substance that is the subject of the release or threatened release was disposed of on, in, or at the facility;

(C) the defendant is a governmental entity that acquired the facility by escheat, by other involuntary transfer or acquisition, or by the exercise of the power of eminent domain; or

(D) the defendant acquired the facility by inheritance or bequest.

(f) To demonstrate the condition under Subsection (e)(2)(B), the defendant must have made, at the time of acquisition, appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. In deciding whether the defendant meets this condition, the court shall consider:

(1) any specialized knowledge or experience of the defendant;

(2) the relationship of the purchase price to the value of the property if the property were uncontaminated;

(3) commonly known or reasonably ascertainable information about the property;

(4) the obvious presence or likely presence of contamination of the property; and

(5) the defendant's ability to detect the contamination by appropriate inspection.

(g) This section does not decrease the liability of a previous owner or operator of a facility who is liable under this chapter. If the defendant obtained actual knowledge of the release or threatened release of a hazardous substance at a facility at the time the defendant owned the real property on which the facility is located and subsequently transferred ownership of the property to another person without disclosing that knowledge, the defendant is liable and a defense under this section is not available to the defendant.

(h) Subsections (e)-(g) do not affect the liability under this chapter of a defendant who, by an act or omission, caused or contributed to the release or threatened release of a hazardous substance that is the subject of the action concerning the facility.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.276. APPORTIONMENT OF LIABILITY. (a) If the release or threatened release caused by a person's acts or omissions is proved by a preponderance of the evidence to be divisible, that person is liable only for the elimination of that release or threatened release attributable to the person. If the release or threatened release is not proved to be divisible, persons liable under Section 361.272 or 361.273 are jointly and severally liable for eliminating the release or threatened release.

(b) In this section, "divisible" means that the waste released or threatened to be released has been and is capable of being managed separately under the remedial action plan.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.277. EFFECT OF SETTLEMENT AGREEMENT WITH STATE. (a) If fewer than all of the persons identified as liable under this subchapter agree with the state to take remedial action to abate an actual or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment under an administrative order issued under section 361.272 or an action filed by the state under this subchapter, the state may seek a judgment against a nonsettling person for the total amount of the cost of the remedial action minus that amount the settling persons agree to pay or spend

(b) A person who enters a settlement agreement with the state that resolves all liability of the person to the state for a site subject to Subchapter F is released from liability to a person described by Section 361.344(a) for cost recovery, contribution, or indemnity under Section 361.344 regarding a matter addressed in the settlement agreement.

(c) A settlement agreement does not discharge the liability of a nonsettling person to the state unless the agreement provides otherwise.

(d) Notwithstanding Subsection (c), a settlement agreement reduces the potential liability to the state of the nonsettling persons by the amount of the settlement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 793, Sec. 12, eff. Sept. 1, 1997.

Sec. 361.278. LIABILITY OF ENGINEER OR CONTRACTOR. (a) An engineer or contractor performing a program of remedial action or cleanup of hazardous waste or solid waste under a contract with a state agency or political subdivision of the state is liable under this subchapter for any negligent act or omission or for wilful misconduct that results in an actual or threatened release of hazardous waste or solid waste after the abandonment or conclusion of the program only to the extent that the endangerment to public health and safety or the environment is aggravated as a result of the act, omission, or misconduct.

(b) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with:

- (1) identifying a hazardous or solid waste site;
- (2) developing a plan to clean up the site; or
- (3) supervising or implementing the plan to clean up

the site.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.279. CONTRACTS WITH STATE. A state agency contracting for services or products shall consider whether the person proposing to contract with the state has been adjudicated during the preceding three-year period to have committed substantive, nonclerical violations resulting in an actual release of hazardous waste that presented an imminent and substantial danger to the public health and safety or the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER J. ENFORCEMENT; EMERGENCY ORDER; CORRECTIVE ACTION

Sec. 361.301. EMERGENCY ORDER. The commission may issue an emergency mandatory, permissive, or prohibitory order concerning an activity of solid waste management under its jurisdiction under Section 5.512, Water Code, even if the activity is not covered by a permit.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.70, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 36, eff. Sept. 1, 1997.

SUBCHAPTER K. APPEALS; JOINDER OF PARTIES

Sec. 361.321. APPEALS. (a) A person affected by a ruling, order, decision, or other act of the commission may appeal the action by filing a petition in a district court of Travis County.

(b) A person affected by a ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted by Section 361.165, may appeal by filing a petition in a district court with jurisdiction in the county or political subdivision.

(c) Except as provided by Section 361.322(a), the petition must be filed not later than the 30th day after the date of the ruling, order, decision, or other act of the governmental entity whose action is appealed. Service of citation must be accomplished not later than the 30th day after the date on which the petition is filed.

(d) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(e) Except as provided by Section 361.322(e), in an appeal from an action of the commission, a county, or a political subdivision exercising the authority granted by Section 361.165, the issue is whether the action is invalid, arbitrary, or unreasonable.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 11.71, eff. Sept. 1, 1995.

Sec. 361.322. APPEAL OF ADMINISTRATIVE ORDER ISSUED UNDER SECTION 361.272; JOINDER OF PARTIES. (a) Any person subject to an administrative order under Section 361.272 may appeal the order by filing a petition before the 46th day after the date of receipt, hand delivery, or publication service of the order.

(b) The plaintiff shall pursue the action with reasonable diligence. The court shall presume that the action has been abandoned if the plaintiff does not prosecute the action within one year after it is filed and shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed unless the plaintiff, after receiving notice, can show good and sufficient cause for the delay.

(c) The filing of a motion for rehearing under Chapter 2001, Government Code is not a prerequisite for an appeal of the order.

(d) The person appealing the order must join the commission as a party and may join as parties any other person named as a responsible party in the administrative order and any other person who is or may be liable for the elimination of the actual or threatened release of solid waste or hazardous substances governed by the administrative order.

(e) The filing of the petition does not prevent the commission from proceeding with the remedial action program under Subchapter F unless the court enjoins the remedial action under its general equity jurisdiction.

(f) The administrative order is final as to a nonappealing

party on the 46th day after the date of receipt, hand delivery, or publication service of the order by, to, or on the nonappealing party.

(g) The district court shall uphold the administrative order if the commission proves by a preponderance of the evidence that:

(1) there is an actual or threatened release of solid waste or hazardous substances that is an imminent and substantial endangerment to the public health and safety or the environment; and

(2) the person made subject to the administrative order is liable for the elimination of the release or threatened release, in whole or in part.

(h) If the appropriateness of the selected remedial action is contested in the appeal of the administrative order, the remedial action shall be upheld unless the court determines that the remedy is arbitrary or unreasonable.

(i) A person made a party to the appeal may join as a party any other person who is or may be liable for the elimination of the release or threatened release, but the failure by a party to file an action for contribution or indemnity does not waive any right under this chapter or other law.

(j) In an appeal under this section, the district court on establishing the validity of the order shall issue an injunction requiring any person named or joined against whom liability has been established by the commission or other party to comply with the order.

(k) As between parties determined to be liable under Subchapter I, the court may, as equity requires, apportion cleanup costs in accordance with Section 361.343 and grant any other appropriate relief.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), 11.72, eff. Sept. 1, 1995.

Sec. 361.323. JOINDER OF PARTIES IN ACTION FILED BY STATE. (a) In an action brought by the attorney general under Section 361.273 seeking an injunction to eliminate a release or threatened release, the attorney general shall, and a party may, join as a party a person reasonably believed to be liable for the release or threatened release in accordance with Section 361.272.

(b) Failure of the attorney general or a party to name or join a person as a party is not a defense to an action against that person for contribution or indemnity.

(c) In an action brought by the attorney general under Section 361.273, the district court shall grant relief on the grounds provided by Section 361.322(d), and Sections 361.322(f) and (g) apply to the action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER L. COST RECOVERY

Sec. 361.341. COST RECOVERY BY STATE. (a) The state is entitled to recover reasonable attorney's fees, reasonable costs to prepare and provide witnesses, and reasonable costs of investigating and assessing the facility or site if it prevails in:

(1) an appeal of an administrative order issued under Section 361.272 or Section 361.188;

(2) an action to enforce such an administrative order;

(3) a civil suit seeking injunctive relief under Section 361.273; or

(4) a cost recovery suit under Section 361.197.

(b) The court shall apportion the costs among liable parties as it determines is equitable and just.

(c) All such costs recovered by the state under Subchapter F shall be remitted to the commission and deposited to the credit of a separate account of the hazardous waste disposal fee fund. All other costs recovered by the state under Sections 361.271 through 361.277 shall be remitted to the commission and deposited to the credit of a separate account of the hazardous waste generation and facility fees fund.

(d) If an appeal or third party claim is found by the court to be frivolous, unreasonable, or without foundation, the court may assess damages against the party bringing the appeal or third party claim in an amount not to exceed triple the costs incurred by the state or the third party defendant, including reasonable attorney's fees, reasonable costs of preparing and providing witnesses, and

reasonable costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary for the preparation of the party's case.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 28, eff. Sept. 6, 1990; Acts 1993, 73rd Leg., ch. 552, Sec. 2, eff. June 8, 1993.

Sec. 361.342. COST RECOVERY BY APPEALING OR CONTESTING PARTY. If the court finds that an administrative order referred to by Section 361.341 is frivolous, unreasonable, or without foundation with respect to a party named by the order, the party appealing or contesting the order is entitled to recover from the state its reasonable:

- (1) attorney's fees;
- (2) costs to prepare and provide witnesses; and
- (3) costs of studies, analyses, engineering reports, tests, or other projects the court finds were necessary to prepare the party's case.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 361.343. APPORTIONMENT OF COSTS. (a) Apportionment of costs for the elimination of the release or threatened release of solid waste among the persons responsible for solid waste under Section 361.271 shall be made according to:

- (1) the relationship between the parties' actions in storing, processing, and disposing of solid waste and the remedy required to eliminate the release or threatened release;

- (2) the volume of solid waste each party is responsible for at the solid waste facility or site to the extent that the costs of the remedy are based on the volume of solid waste present;

- (3) consideration of toxicity or other waste characteristics if those characteristics affect the cost to eliminate the release or threatened release; and

- (4) a party's cooperation with state agencies, its cooperation or noncooperation with the pending efforts to eliminate the release or threatened release, or a party's actions concerning storing, processing, or disposing of solid waste, as well as the degree of care that the party exercised.

(b) In apportioning costs under Subsection (a), the court shall credit against a responsible party's share of the costs of eliminating a release or threatened release of solid waste the party's expenditures related to the cleanup at issue if the commission or the executive director approves the cleanup. If the expenditures were made before the property was proposed to be listed on the state registry and the commission or the executive director approves the cleanup, the court shall also reduce in an equitable and just manner the party's proportionate share of the costs.

(c) The apportionment of costs only adjusts the rights of parties identified by Section 361.271 and does not affect a person's liability to the state.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 793, Sec. 13, eff. Sept. 1, 1997.

Sec. 361.344. COST RECOVERY BY LIABLE PARTY OR THIRD PARTY. (a) A person who conducts a removal or remedial action that is approved by the commission and is necessary to address a release or threatened release may bring suit in a district court to recover the reasonable and necessary costs of that action and other costs as the court, in its discretion, considers reasonable. This right is in addition to the right to file an action for contribution, indemnity, or both in an appeal proceeding or in an action brought by the attorney general.

(b) Venue for the suit is:

- (1) in the county in which the release or threatened release is or was located; or

- (2) in any other county in which venue is proper under Chapter 15, Civil Practice and Remedies Code.

(c) To recover costs under this section in a proceeding that is not an appeal proceeding or an action brought by the attorney general under this subchapter, the person seeking cost recovery must have made reasonable attempts to notify the person against whom cost recovery is sought:

- (1) of the existence of the release or threatened release; and

- (2) that the person seeking cost recovery intended to

take steps to eliminate the release or threatened release.

(d) The court shall determine the amount of cost recovery according to the criteria prescribed by Section 361.343.

(e) A fact determination or ruling by a district court in an appeal of an administrative order under Section 361.322 is not res judicata or collateral estoppel as to an issue brought in a proceeding under this section concerning a party not joined in the appeal.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 20.02, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 14, eff. Sept. 1, 1997.

Sec. 361.345. CREATION OF RIGHTS. Subchapter I and Section 361.344 and the enforcement by the commission of that subchapter and section do not:

(1) create rights or causes of action on behalf of a person other than those expressly stated by this chapter; or

(2) change common law or a rule of decision except as limited by this chapter to actions by the commission to eliminate an actual release or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.73, eff. Sept. 1, 1995.

SUBCHAPTER M. REMOVAL AND REMEDIAL ACTION AGREEMENTS

Sec. 361.401. DEFINITIONS. In this subchapter:

(1) "Disposal facility" means a site or area at which a hazardous substance, pollutant, or contaminant has been deposited, stored, disposed of, or placed or otherwise come to be located that no longer receives hazardous substances, pollutants, and contaminants.

(2) "Fund" means the hazardous waste disposal fee fund.

(3) "Petroleum" means crude oil or any fraction of crude oil that is not otherwise listed or designated as a hazardous substance under Section 361.003.

(4) "Pollutant" or "contaminant" means any element, substance, compound, or mixture, including disease-causing agents, that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, natural gas, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(5) "Removal" means:

(A) cleaning up or removing released hazardous substances, pollutants, or contaminants from the environment;

(B) taking necessary action in the event of the threat of release of hazardous substances, pollutants, or contaminants into the environment;

(C) taking necessary action to monitor, assess, and evaluate the release or threat of release of hazardous substances, pollutants, or contaminants;

(D) disposing of removed material;

(E) erecting security fencing or taking other measures to limit access;

(F) providing alternate water supplies;

(G) temporarily evacuating and housing threatened individuals not otherwise provided for;

(H) taking action under Section 104(b) of the environmental response law;

(I) providing any emergency assistance under the Disaster Relief Act of 1974 (42 U.S.C. Section 5121 et seq.); and

(J) taking other action as may be necessary to prevent, minimize, or mitigate damage to the public health and safety or to the environment that may otherwise result from a release or threat of release.

(6) "Remedial action" means an action consistent with a permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance, pollutant, or contaminant into the environment to prevent or minimize the release of hazardous

substances, pollutants, or contaminants so that they do not migrate to cause substantial danger to present or future public health and safety or the environment. The term:

(A) includes:

(i) actions at the location of the release, including storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous substances, pollutants, contaminants, or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collections of leachate and runoff, on-site treatment or incineration, provision of alternate water supplies, and any monitoring reasonably required to assure that those reactions protect the public health and safety or the environment; and

(ii) the costs of permanent relocation of residents and businesses and community facilities where the president of the United States determines that alone or in combination with other measures this relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secure disposition off site of hazardous substances, pollutants, or contaminants or may otherwise be necessary to protect the public health or safety; but

(B) does not include off-site transport of hazardous substances or the storage, treatment, destruction, or secure disposition off site of the hazardous substances, pollutants, contaminants, or contaminated materials unless the president of the United States determines that those actions:

(i) are more cost-effective than other remedial actions;

(ii) will create new capacity to manage, in compliance with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.), hazardous substances in addition to those located at the affected facility; or

(iii) are necessary to protect the public health and safety or the environment from a present or potential risk that may be created by further exposure to the continued presence of those substances, pollutants, contaminants, or materials.

(7) "Response" means removal and remedial action.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990. Amended by Acts 1991, 72nd Leg., ch. 296, Sec. 1.21, eff. June 7, 1991.

Sec. 361.402. COMMISSION DUTIES AND POWERS. (a) The commission shall:

(1) administer this subchapter; and

(2) cooperate with municipalities and with agencies, departments, and political subdivisions of this state and the United States and its agencies in implementing this section and the environmental response law.

(b) The commission may:

(1) enter into contracts and cooperative agreements with the federal government to carry out removal and remedial action for a specific disposal facility as authorized by Section 104(c)(3) of the environmental response law or to carry out removal and remedial action with regard to a disposal facility under Section 104(d)(1) of the environmental response law;

(2) after notice and hearing, authorize the executive director to enter into contracts and cooperative agreements on behalf of the commission under Subdivision (1) under terms and conditions stated in the commission's order; and

(3) when acting under a cooperative agreement with the federal government under Subdivision (1), undertake the enforcement and remedial actions authorized under the environmental response law as may be reasonably necessary, in lieu of or in conjunction with actions by the federal government.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.403. TERMS AND CONDITIONS OF AGREEMENTS; COSTS. (a) If the commission enters into a contract or cooperative agreement under Section 104(c)(3) of the environmental response law, the commission shall include in the contract or agreement terms and conditions to:

(1) assure future maintenance of the removal and

remedial actions provided for the expected life of those actions as determined by the federal government;

(2) assure the availability of a hazardous waste disposal facility acceptable to the federal government that complies with Subchapter III of the federal Solid Waste Disposal Act (42 U.S.C. Section 6921 et seq.) for any necessary off-site storage, destruction, treatment, or secure disposition of the hazardous substances, pollutants, or contaminants; and

(3) assure payment by the state of:

(A) 10 percent of the costs of the remedial actions, including future maintenance; or

(B) at least 50 percent or more of the costs as determined appropriate by the federal government, taking into account the degree of responsibility of the state for any amount spent in response to a release at a disposal facility that was owned by the state at the time of disposal of hazardous substances at the disposal facility.

(b) A contract entered into with the federal government under Section 104(d)(1) of the environmental response law is subject to the same cost-sharing requirements provided for contracts in Subsection (a)(3).

(c) The state's share of reasonable response costs shall be paid from the fund.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.404. COOPERATION WITH FEDERAL GOVERNMENT. (a) Before entering into a contract or cooperative agreement under Section 361.402, the commission shall consult and work with the federal government in determining the response that will be necessary under the contract or cooperative agreement with regard to the particular disposal facility.

(b) The commission shall collect and shall file with the federal government any information required by the environmental response law and rules adopted under that law.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

Sec. 361.405. INDEMNIFICATION OF ENGINEER OR CONTRACTOR. (a) Notwithstanding any other law or rule, the commission may agree in a contract retaining an engineer or contractor to perform a program of removal, remedial action, or cleanup of a hazardous substance in connection with a contract or cooperative agreement under Section 361.402 to indemnify the engineer or contractor against any claim or liability arising from an actual or threatened release of a hazardous substance that occurs during the performance of any work, including:

(1) damages arising from economic loss, personal injury, property damages, or death;

(2) costs and expenses, including the cost of defense of a lawsuit brought against the engineer or contractor; and

(3) claims by third parties for indemnification, contribution, or damages for economic loss, personal injury, property damages, or death.

(b) In determining whether to contract to indemnify an engineer or contractor under this section, the commission shall consider the availability of insurance to the engineer or contractor for the claims and liabilities against which the commission may indemnify the engineer or contractor under this section on the date the engineer or contractor enters into a contract to perform services covered by this section. The commission may not contract to indemnify an engineer or contractor under this section if the engineer or contractor cannot demonstrate that insurance is unavailable at a reasonable cost or if another engineer or contractor submitting a comparable proposal demonstrates that insurance is available at a reasonable cost.

(c) The commission is not obligated to award a contract if it determines that adequate liability insurance is not available to an engineer or contractor and that the award of the contract is not in the public interest.

(d) The commission may not contract to indemnify an engineer or contractor under this section unless the federal government agrees in a contract or cooperative agreement to indemnify in turn the commission under Section 119 of the environmental response law. The commission's decision to contract or not to contract to indemnify an engineer or contractor may be made as an executive act without an adjudicative public hearing and is not subject to

judicial review.

(e) An engineer or contractor performing a program of removal, remedial action, or cleanup of a hazardous substance under a contract entered into in connection with a contract or cooperative agreement under Section 361.402 that results in an actual or threatened release of hazardous substance is not liable under Section 361.221, 361.223 through 361.229, or 361.252 for an act or a failure to act during the performance of the contract. This subsection does not in any way limit or otherwise affect the liability of an engineer or contractor in any other action.

(f) Subsections (a) and (e) do not apply to a grossly negligent act or omission or to wilful misconduct of an engineer or contractor during the performance of a contract. Notwithstanding any other law, an engineer or contractor performing a program of removal, remedial action, or cleanup of a hazardous substance under a contract entered into in connection with a contract or cooperative agreement under Section 361.402 is liable for a grossly negligent act or omission or for wilful misconduct that results in an actual or threatened release of a hazardous substance in violation of Subchapter G or I, or Section 361.252, only to the extent that the act, omission, or misconduct caused the violation.

(g) In this section, "engineer or contractor" means a person, including the employee or subcontractor of the person, who performs a contract for evaluation, planning, designing, engineering, construction, equipment, or auxiliary services in connection with the identification of a site containing a hazardous substance, the development of a plan of response to the site, or the supervision or performance of the response to the site.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 30, eff. Sept. 6, 1990.

SUBCHAPTER N. WASTE REDUCTION PROGRAMS; DISPOSAL FEES

Sec. 361.421. DEFINITIONS. In this subchapter:

(1) "Compost" is the disinfected and stabilized product of the decomposition process that is used or sold for use as a soil amendment, artificial top soil, growing medium amendment, or other similar uses.

(2) "Composting" means the controlled biological decomposition of organic materials through microbial activity. Depending on the specific application, composting can serve as both a volume reduction and a waste treatment measure. A beneficial organic composting activity is an appropriate waste management solution that shall divert compatible materials from the solid waste stream that cannot be recycled into higher grade uses and convert these materials into a useful product that is put to beneficial reuse as a soil amendment or mulch.

(3) "Life-cycle cost benefit analysis" means a method of determining the total equivalent costs and benefits of using products over their lifetimes or over any other period of time. These costs and benefits are all associated costs and all associated benefits of each product over the time under consideration and include initial costs, annual operating costs, annual savings, future costs, and residual (salvage) values. The use of this method permits exact comparisons of these total costs and benefits to determine the most cost-effective product.

(4) "Postconsumer waste" means a material or product that has served its intended use and has been discarded after passing through the hands of a final user. For the purpose of this subchapter, the term does not include industrial or hazardous waste.

(5) "Recyclable material" means material that has been recovered or diverted from the solid waste stream for purposes of reuse, recycling, or reclamation, a substantial portion of which is consistently used in the manufacture of products which may otherwise be produced using raw or virgin materials. Recyclable material is not solid waste unless the material is deemed to be hazardous solid waste by the Administrator of the United States Environmental Protection Agency, whereupon it shall be regulated accordingly unless it is otherwise exempted in whole or in part from regulation under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), by Environmental Protection Agency regulation. However, recyclable material may become solid waste at such time, if any, as it is abandoned or disposed of rather than recycled, whereupon it will be solid waste with respect only to the party actually abandoning or disposing of the material.

(6) "Recycled material" means materials, goods, or products that consist of recyclable material or materials derived from postconsumer waste, industrial waste, or hazardous waste which may be used in place of a raw or virgin material in manufacturing a new product.

(7) "Recycled product" means a product which meets the requirements for recycled material content as prescribed by the rules established by the commission described in Section 361.427.

(8) "Recycling" means a process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products. Recycling includes:

(A) the composting process if the compost material is put to beneficial reuse as defined by the commission; and

(B) the application to land, as organic fertilizer, of processed sludge or biosolids from municipal wastewater treatment plants and other organic matter resulting from poultry, dairy, livestock, or other agricultural operations.

(9) "Source reduction" means an activity or process that avoids the creation of municipal solid waste in the state by reducing waste at the source and includes:

(A) redesigning a product or packaging so that less material is ultimately disposed of;

(B) changing a process for producing a good or providing a service so that less material is disposed of; or

(C) changing the way a material is used so that the amount of waste generated is reduced.

(10) "State agency" means a department, commission, board, office, council, or other agency in the executive branch of government that is created by the constitution or a statute of this state and has authority not limited to a geographical portion of the state. The term does not include a university system or institution of higher education as defined by Section 61.003, Education Code.

(11) "Virgin material" means a raw material used in manufacturing that has not yet become a product.

(12) "Yard waste" means leaves, grass clippings, yard and garden debris, and brush, including clean woody vegetative material not greater than six inches in diameter, that results from landscaping maintenance and land-clearing operations. The term does not include stumps, roots, or shrubs with intact root balls.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.0301, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 899, Sec. 1.11, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 899, Sec. 4.01, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.74, eff. Sept. 1, 1995.

Sec. 361.422. STATE SOURCE REDUCTION AND RECYCLING GOAL. (a) It is the state's goal to reduce by January 1, 1994, the amount of municipal solid waste disposed of in this state by at least 40 percent through source reduction and recycling.

(b) In this section, "total municipal solid waste stream" means the sum of the state's total municipal solid waste that is disposed of as solid waste, measured in tons, and the total number of tons of recyclable material that has been diverted or recovered from the total municipal solid waste and recycled.

(c) The commission shall establish rules and reporting requirements through which progress toward achieving the established source reduction and recycling goals can be measured. The rules may take into consideration those ongoing community source reduction and recycling programs where substantial progress has already been achieved. The commission may also establish a limit on the amount of credit that may be given to certain high-volume materials in measuring recycling progress.

(d) For the purpose of measuring progress toward the municipal solid waste reduction goal, the commission shall use the weight of the total municipal solid waste stream in 1991 as a baseline for comparison. To compute progress toward the municipal solid waste reduction goal for a year, the commission shall compare the total number of tons disposed in the year under comparison, either by landfilling or by other disposal methods, to the total number of tons disposed in the base year, adjusting for changes in population, tons of solid waste imported and exported, and other relevant changes between the baseline year and the comparison year.

(e) Before January 1, 1994, the commission shall determine

whether the goal established in Subsection (a) is being achieved. If the commission finds that the goal is not being achieved, it shall convene an advisory task force consisting of representatives of the commission, local governments, the Municipal Solid Waste Management and Resource Recovery Advisory Council, and the commercial solid waste disposal industry and may recommend to the legislature a phased-in ban on the disposal of yard waste in a landfill. The task force may recommend a plan to the legislature for implementing the ban after considering how the ban will:

- (1) affect the state's disposal capacity;
- (2) affect the economy of the state;
- (3) affect local governments; and
- (4) be accepted and adhered to by the citizens of the state.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.02, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.75, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 80, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.423. RECYCLING MARKET DEVELOPMENT IMPLEMENTATION PROGRAM. (a) The commission, the Texas Building and Procurement Commission, and other consenting state agencies as appropriate shall regularly coordinate the recycling activities of state agencies and shall each pursue an economic development strategy that focuses on the state's waste management priorities established by Section 361.022 and that includes development of recycling industries and markets as an integrated component.

(b) The commission and the Texas Building and Procurement Commission, on an ongoing basis, shall jointly:

(1) identify existing economic and regulatory incentives and disincentives for creating an optimal market development strategy;

(2) analyze or take into consideration the market development implications of:

(A) the state's waste management policies and regulations;

(B) existing and potential markets for plastic, glass, paper, lead-acid batteries, tires, compost, scrap gypsum, coal combustion by-products, and other recyclable materials; and

(C) the state's tax structure and overall economic base;

(3) examine and make policy recommendations regarding the need for changes in or the development of:

(A) economic policies that affect transportation, such as those embodied in freight rate schedules;

(B) tax incentives and disincentives;

(C) the availability of financial capital including grants, loans, and venture capital;

(D) enterprise zones;

(E) managerial and technical assistance;

(F) job-training programs;

(G) strategies for matching market supply and market demand for recyclable materials, including intrastate and interstate coordination;

(H) the state recycling goal;

(I) public-private partnerships;

(J) research and development;

(K) government procurement policies;

(L) educational programs for the public, corporate and regulated communities, and government entities; and

(M) public health and safety regulatory policies;

(4) establish a comprehensive statewide strategy to expand markets for recycled products in Texas;

(5) provide information and technical assistance to small and disadvantaged businesses, business development centers, chambers of commerce, educational institutions, and nonprofit associations on market opportunities in the area of recycling; and

(6) with the cooperation of the Office of State-Federal Relations, assist communities and private entities in identifying state and federal grants pertaining to recycling and solid waste management.

(c) In carrying out this section, the commission and the Texas Building and Procurement Commission may obtain research and development and technical assistance from the Hazardous Waste Research Center at Lamar University at Beaumont or other similar

institutions.

(d) In carrying out this section, the commission and the Texas Building and Procurement Commission shall utilize the pollution prevention advisory committee as set out in Section 361.0215 of the Health and Safety Code.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.12, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.76, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 80, Sec. 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 80, Sec. 3, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 1122, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.425. GOVERNMENTAL ENTITY RECYCLING. (a) A state agency, state court or judicial agency, a university system or institution of higher education, a county, municipality, school district, or special district shall:

(1) in cooperation with the General Services Commission or the commission establish a program for the separation and collection of all recyclable materials generated by the entity's operations, including, at a minimum, aluminum, steel containers, aseptic packaging and polycoated paperboard cartons, high-grade office paper, and corrugated cardboard;

(2) provide procedures for collecting and storing recyclable materials, containers for recyclable materials, and procedures for making contractual or other arrangements with buyers of recyclable materials;

(3) evaluate the amount of recyclable material recycled and modify the recycling program as necessary to ensure that all recyclable materials are effectively and practicably recycled; and

(4) establish educational and incentive programs to encourage maximum employee participation.

(b) The commission by order shall exempt a school district or a municipality with a population of less than 5,000 from compliance with this section if the commission finds that compliance would work a hardship on the district or the municipality. The commission shall adopt rules for administering this subsection.

(c) Expired.

(d) In this section, "recyclable materials" includes materials in the entity's possession that have been abandoned or disposed of by the entity's officers or employees or by any other person.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 4.03, eff. Oct. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.77, eff. Sept. 1, 1995.

Sec. 361.426. GOVERNMENTAL ENTITY PREFERENCE FOR RECYCLED PRODUCTS. (a) A state agency, state court, or judicial agency not subject to Subtitle D, Title 10, Government Code, a county, municipality, school district, junior or community college district, or special district shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality.

(b) An entity subject to this section regularly shall review and revise its procurement procedures and specifications for the purchase of goods, supplies, equipment, and materials in order to:

(1) eliminate procedures and specifications that explicitly discriminate against products made of recycled materials;

(2) encourage the use of products made of recycled materials; and

(3) ensure to the maximum extent economically feasible that the entity purchases products that may be recycled when they have served their intended use.

(c) In developing new procedures and specifications, the entity shall encourage the use of recycled products and products that may be recycled or reused.

(d) The commission by order shall exempt a school district or a municipality with a population of less than 5,000 from compliance with this section if the commission finds that compliance would work a hardship on the district or the municipality. The commission shall adopt rules for administering this subsection.

(e) Expired.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.78, eff. Sept. 1,

1995; Acts 1997, 75th Leg., ch. 165, Sec. 17.19, eff. Sept. 1, 1997.

Sec. 361.427. SPECIFICATIONS FOR RECYCLED PRODUCTS. (a) The commission, in consultation with the General Services Commission, shall promulgate rules to establish guidelines which specify the percent of the total content of a product which must consist of recycled material for the product to be a "recycled product."

(b) The guidelines established under this section shall specify a minimum percent of the recycled material in a product which must be postconsumer waste.

(c) The guidelines established under this section shall be classified by types of products.

(d) The commission's guidelines shall be established taking into consideration the guidelines promulgated by the Environmental Protection Agency for federal procurement of recycled products as authorized by the Solid Waste Disposal Act (42 U.S.C. Sec. 3259 et seq.).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.79, eff. Sept. 1, 1995.

Sec. 361.428. COMPOSTING PROGRAM. (a) The commission shall put in place incentives for a composting program that is capable of achieving at least a 15 percent reduction in the amount of the municipal solid waste stream that is disposed of in landfills by January 1, 1994.

(b) The commission shall adopt rules establishing minimum standards and guidelines for the issuance of permits for processes or facilities that produce compost that is the product of material from the typical mixed solid waste stream generated by residential, institutional, commercial, or industrial sources. A reduction in the mixed solid waste stream that occurs as a result of the beneficial reuse of compost produced by a facility permitted under this subsection shall be used in achieving the goal established under Section 361.422. The minimum standards must include end-product standards and a definition of beneficial reuse. The commission shall consider regulations issued by the United States Environmental Protection Agency in developing minimum standards. Beneficial reuse does not include landfilling or the use of compost as daily landfill cover.

(c) A composting facility may not accept mixed municipal solid waste from a governmental unit for composting purposes at that facility unless residents have reasonable access to household hazardous waste collection and source-separated recycling programs in the area. The commission shall establish standards for household hazardous waste collection programs and source-separated recycling programs that qualify under this section.

(d) A person may not commercially compost grease trap waste, as defined by the commission, unless the person has first obtained a permit for composting grease trap waste issued by the commission under this section on or after September 1, 2003.

(e) The permit to compost grease trap waste must meet the minimum standards of a permit issued under rules adopted under Subsection (b).

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.13, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 596, Sec. 1, eff. June 20, 2003.

Sec. 361.429. HOUSEHOLD HAZARDOUS WASTE. The commission shall develop standards for household hazardous waste diversion programs such as collection facilities or waste collection days for municipalities, counties, or regions. The commission's waste management financial assistance program described in Section 363.092 shall be expanded to include matching grants for costs of planning and implementing approved household hazardous waste diversion programs, excluding costs of disposal.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.80, eff. Sept. 1, 1995.

Sec. 361.430. NEWSPRINT RECYCLING PROGRAM. (a) It is the policy of this state that recycling of all paper products including old newspapers is vital to our economy and the preservation of our environment. It is the purpose of this section to promote the state's policy by encouraging newspaper publishers to promote recycling through purchase of recycled products and by cooperating with local community organizations to establish and promote community collection efforts for all paper products.

(b)(1) In order to observe and promote this policy the newspaper publishers of Texas will work with state officials and state agencies to identify potential sites and offer economic incentives in order to attract additional de-inking facilities and recycled newsprint mills to Texas.

(2) The newspaper publishers of Texas will also assist and participate in the market development study and implementation program established by Section 361.423.

(c) The commission shall promulgate rules and regulations which establish a newsprint recycling program for the state.

(d) The program shall include guidelines which set goals for the use of recycled newsprint by newspaper publishers, using the following target percentages of recycled newsprint in the total newsprint consumption of each newspaper publisher:

(1) 10 percent by the end of the calendar year 1993;

(2) 20 percent by the end of the calendar year 1997;
and

(3) 30 percent by the end of the calendar year 2000.

(e) Smaller newspapers may find it difficult to implement use of recycled newsprint. Therefore, larger newspapers will be responsible for the necessary consumption to allow the percentages specified in Subsection (d) to represent total consumption of recycled newsprint by all Texas newspapers.

(f) In this section:

(1) "Newspaper" means a publication that is sold and that is printed on newsprint and published, printed, and distributed in the state, both daily and non-daily, to disseminate current news and information of general interest to the public.

(2) "Recycled newsprint" means newsprint which meets the specified guidelines under Section 361.427 to be classified as a recycled product.

(g)(1) Publishers of newspapers subject to regulation under the newsprint recycling program shall submit annually, on or before January 31, a report to the executive director which states the percentage of recycled newsprint used by the publisher in the preceding year, and, if the target percentage is not met, the publisher must include in the report:

(A) whether the publisher is able to obtain sufficient quantities of recycled newsprint at competitive prices and of satisfactory quality;

(B) whether the publisher has attempted to obtain recycled newsprint from every producer of recycled newsprint that offered to sell recycled newsprint to the publisher during the preceding calendar year; and

(C) the publisher's efforts to obtain recycled newsprint, including the name and address of each producer of recycled newsprint that the publisher contacted and the name and telephone number of the contact person at each of the producers.

(2) The executive director shall develop forms for and regulations governing the submission of the reports required by this subsection.

(h) If the executive director determines that newspaper publishers are not voluntarily meeting the target percentages prescribed by this section for the program, the commission may adopt mandatory enforcement measures.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.81, eff. Sept. 1, 1995.

Sec. 361.431. PRIORITIZATION OF NEW TECHNOLOGY. (a) A political subdivision or solid waste producer shall give preference in contracting for the disposal of solid waste to license or permit holders who use processes and technologies that reduce the volume of sludge and hazardous waste that is being disposed of through beneficial use land application, landfill disposal, and other methods.

(b) Technology that reduces the volume of solid waste, destroys the solid waste, or renders the solid waste inert is preferred to methods referred to under Subsection (a), to minimize the possibility of hazardous materials entering the state's air, waterways, and water sources.

Added by Acts 2001, 77th Leg., ch. 965, Sec. 9.06, eff. Sept. 1, 2001.

SUBCHAPTER O. LEAD-ACID BATTERIES

Sec. 361.451. LAND DISPOSAL PROHIBITED. (a) No person may place a used lead-acid battery in mixed municipal solid waste nor

discard or otherwise dispose of a lead-acid battery except by delivery to:

- (1) a battery retailer or wholesaler;
- (2) a secondary lead smelter; or
- (3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(b) No battery retailer shall dispose of a used lead-acid battery except by delivery to:

- (1) a battery wholesaler or a secondary lead smelter, or an agent thereof;
- (2) a battery manufacturer for delivery to a secondary lead smelter; or
- (3) a collection or recycling facility authorized under the laws of this state or by the United States Environmental Protection Agency.

(c) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

Sec. 361.452. COLLECTION FOR RECYCLING. A person selling lead-acid batteries at retail or offering lead-acid batteries for retail sale in this state shall:

- (1) accept from each customer, if offered, at least one but not more than three lead-acid batteries for recycling; and
- (2) post written notice, which must be at least 8-1/2 inches by 11 inches in size, containing the universal recycling symbol and the following language:

- (A) "It is illegal to discard or improperly dispose of a motor-vehicle battery or other lead-acid battery.";
- (B) "Recycle your used batteries."; and
- (C) "State law requires us to accept used motor-vehicle batteries or other lead-acid batteries for recycling."

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.14, eff. Aug. 30, 1993.

Sec. 361.453. INSPECTION OF BATTERY RETAILERS. The commission shall produce, print, and distribute the notices required by Section 361.452 to all places where lead-acid batteries are offered for sale at retail. In performing its duties under this section the commission may inspect any place, building, or premises governed by Section 361.452. Failure to post the required notice within three days following warning shall subject the establishment to an administrative or a civil penalty under Chapter 7, Water Code. Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.82, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1072, Sec. 37, eff. Sept. 1, 1997.

Sec. 361.454. LEAD-ACID BATTERY WHOLESALERS. Any person selling new lead-acid batteries at wholesale shall accept from customers, at the point of transfer, used lead-acid batteries for recycling, if offered by customers. A person accepting batteries in transfer from a battery retailer shall remove batteries from the retail point of collection within 90 days after acceptance.

Added by Acts 1991, 72nd Leg., ch. 303, Sec. 1, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 899, Sec. 1.15, eff. Aug. 30, 1993.

SUBCHAPTER Q. POLLUTION PREVENTION

Sec. 361.501. DEFINITIONS. In this subchapter:

(1) "Acute hazardous waste" means hazardous waste listed by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 C.F.R. Section 261.11(a)(2).

(2) Repealed by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.029, eff. Aug. 12, 1991.

(3) "Conditionally exempt small-quantity generator" means a generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time on his facility and who generates less than 100 kilograms of hazardous waste in any given month.

(4) "Committee" means the waste reduction advisory

committee established by Section 361.0215.

(5) "Environment" means water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(6) "Facility" means all buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

(7) "Generator" and "generator of hazardous waste" have the meaning assigned by Section 361.131.

(8) "Large-quantity generator" means a generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month; or

(B) more than one kilogram of acute hazardous waste in a month.

(9) "Media" and "medium" mean air, water, and land into which waste is emitted, released, discharged, or disposed.

(10) "Pollutant" or "contaminant" includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under Sections 101(14)(A) through (F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(11) "Source reduction" has the meaning assigned by the federal Pollution Prevention Act of 1990, Pub.L. 101-508, Section 6603, 104 Stat. 1388.

(12) "Waste minimization" means a practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification. Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.431 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.029, eff. Aug. 12, 1991.

Sec. 361.502. POLICY AND GOALS FOR SOURCE REDUCTION AND WASTE MINIMIZATION. (a) It is the policy of the state to reduce pollution at its source and to minimize the impact of pollution in order to reduce risk to public health and the environment and continue to enhance the quality of air, land, and waters of the state where feasible.

(b) Source reduction is the primary goal of the state in implementing this policy because hazardous wastes, pollutants, and contaminants that are not generated or produced pose no threat to the environment and eliminate societal management and disposal costs.

(c) To further promote this policy, hazardous wastes, pollutants, and contaminants that cannot be reduced at the source should be minimized wherever possible. Waste minimization, while secondary in preference to source reduction, is an important means for achieving more effective protection of public health and the environment while moving toward source reduction.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.432 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991.

Sec. 361.503. COMMISSION PLANS. (a) Consistent with state and federal regulations, to achieve the policies stated in Section 361.502, the commission by rule shall, to the maximum extent that is technologically and economically feasible:

(1) develop plans to reduce the release of pollutants or contaminants into the air;

(2) develop plans to reduce the release of pollutants or contaminants into water; and

(3) establish reasonable goals for the reduction of

the volume of hazardous waste generated in the state and the amount of pollutants and contaminants using source reduction and waste minimization.

(b) The commission by rule shall develop a list of pollutants or contaminants and the level of releases of those pollutants or contaminants subject to source reduction and waste minimization planning.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.433 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.84, eff. Sept. 1, 1995.

Sec. 361.504. APPLICATION. (a) Except as provided by Subsection (b), this subchapter applies to the following persons:

(1) all large-quantity generators of hazardous waste;
(2) all generators other than large-quantity generators and conditionally exempt small-quantity generators; and

(3) persons subject to Section 313, Title III, Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. Section 11023) whose releases exceed the levels established under Section 361.503(b).

(b) The commission by rule shall establish one or more schedules for the application of the requirements of this subchapter to designated classes of persons described by Subsection (a). The schedule shall provide for the inclusion of all persons described by Subsection (a) on a date to be determined by the commission, and until that date this subchapter applies only to those persons designated by rule of the commission.

(c) This subchapter does not apply to a facility regulated by the Railroad Commission of Texas under Section 91.101 or 141.012, Natural Resources Code.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.434 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.85, eff. Sept. 1, 1995.

Sec. 361.505. SOURCE REDUCTION AND WASTE MINIMIZATION PLANS. (a) Persons identified under Section 361.504(a)(1) or (a)(3) shall prepare a source reduction and waste minimization plan. Plans developed under this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities. The plan shall include, at a minimum:

(1) an initial survey that identifies:
(A) for facilities subject to Section 361.504(a)(1), activities that generate hazardous waste; and
(B) for facilities subject to Section 361.504(a)(3), activities that result in the release of pollutants or contaminants designated under Section 361.503(b);

(2) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;

(3) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

(4) an estimate of the type and amount of reduction anticipated;

(5) a schedule for the implementation of each source reduction and waste minimization project;

(6) source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(7) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(8) certification by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan, that the plan is complete and correct;

(9) an executive summary of the plan; and

(10) identification of cases in which the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may

shift the release to another medium.

(b) The source reduction and waste minimization plan may include:

(1) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(4) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and

(5) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(c) The commission shall adopt rules for the development of simplified, as appropriate, source reduction and waste minimization plans and reports for persons identified under Section 361.504(a)(2).

(d) The commission shall provide information to aid in the preparation of source reduction and waste minimization plans to be prepared by a person under this section.

(e) Repealed by Acts 1995, 74th Leg., ch. 76, Sec. 11.334(c), eff. Sept. 1, 1995.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.435 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.86, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 76, Sec. 11.334(c), eff. Sept. 1, 1995.

Sec. 361.506. SOURCE REDUCTION AND WASTE MINIMIZATION ANNUAL REPORT. (a) A person required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission an annual report and a current executive summary according to any schedule developed under Section 361.504.

(b) The annual report shall comply with rules adopted by the commission. The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(1) an assessment of the progress toward the achievement of the facility source reduction goal and the facility waste minimization goal;

(2) a statement to include, for facilities subject to Section 361.504(a)(1), the amount of hazardous waste generated and, for facilities subject to Section 361.504(a)(3), the amount of the release of pollutants or contaminants designated under Section 361.503(b) in the year preceding the report, and a comparison of those amounts with the amounts generated or released in a base year selected by the commission; and

(3) any modification to the plan.

(c) The annual report may include:

(1) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through source reduction or waste minimization;

(2) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(3) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals; and

(4) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(d) The annual report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.436 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.87, eff. Sept. 1, 1995.

Sec. 361.507. ADMINISTRATIVE COMPLETENESS. (a) The

commission may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter and rules adopted under Section 361.504, 361.505, or 361.506, as appropriate.

(b) Failure to have a source reduction and waste minimization plan in accordance with Sections 361.504 and 361.505 or failure to submit a source reduction and waste minimization annual report in accordance with Section 361.506 is a violation of this chapter.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.437 and amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.88, eff. Sept. 1, 1995.

Sec. 361.508. CONFIDENTIALITY. (a) A source reduction and waste minimization plan shall be maintained at each facility owned or operated by a person who is subject to this subchapter and shall be available to commission personnel for inspection. The source reduction and waste minimization plan is not a public record for the purposes of Chapter 552, Government Code.

(b) The executive summary and the annual report are public records. On request, the person shall make available to the public a copy of the executive summary or annual report.

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan has been prepared shows to the satisfaction of the commission that an executive summary, annual report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the commission shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual report, or portion of a plan, summary, or annual report would otherwise qualify as a trade secret, an action by the commission or an employee of the commission does not affect its status as a trade secret.

(e) Information classified by the commission as confidential under this section is not a public record for purposes of Chapter 552, Government Code, and may not be used in a public hearing or disclosed to a person outside the commission unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.438 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(88), 11.89, eff. Sept. 1, 1995.

Sec. 361.509. SOURCE REDUCTION AND WASTE MINIMIZATION ASSISTANCE. (a) The office of pollution prevention established under Section 361.0216 shall assist generators of hazardous waste and owners or operators of facilities that release pollutants or contaminants in reducing the volume, toxicity, and adverse public health and environmental effects of hazardous waste generated or pollutants or contaminants released in the state. To provide the assistance, the office may:

(1) compile, organize, and make available for distribution information on source reduction and waste minimization technologies and procedures;

(2) compile and make available for distribution to business and industry a list of consultants on source reduction and waste minimization technologies and procedures and a list of researchers at state universities who can assist in source reduction and waste minimization activities;

(3) sponsor and conduct conferences and individualized workshops on source reduction and waste minimization for specific classes of business or industry;

(4) facilitate and promote the transfer of source reduction and waste minimization technologies and procedures among businesses and industries;

(5) if appropriate, develop and distribute model source reduction and waste minimization plans for the major classes of business or industry, as identified by the office, that generate and subsequently treat, store, or dispose of hazardous waste or that release a pollutant or contaminant in the state;

(6) develop and make available for distribution recommended source reduction and waste minimization audit procedures for use by business or industry in conducting internal source reduction and waste minimization audits;

(7) provide to business and industry, as resources allow, on-site assistance in identifying potential source reduction and waste minimization techniques and practices and in conducting internal source reduction and waste minimization audits;

(8) compile and make available for distribution information on tax benefits available to business or industry for implementing source reduction and waste minimization technologies and practices;

(9) establish procedures for setting priorities among key industries and businesses for receiving assistance from the office;

(10) develop the information base and data collection programs necessary to set program priorities and to evaluate progress in source reduction and waste minimization;

(11) develop training programs and materials for state and local regulatory personnel and private business and industry regarding the nature and applicability of source reduction and waste minimization practices;

(12) produce a biennial report on source reduction and waste minimization activities, achievements, problems, and goals, including a biennial work plan;

(13) participate in existing state, federal, and industrial networks of individuals and groups involved in source reduction and waste minimization; and

(14) publicize to business and industry, and participate in and support, waste exchange programs.

(b) The commission shall provide education and training to river authorities, municipalities, and public groups on source reduction and waste minimization technologies and practices.

(c) The commission shall develop incentives to promote the implementation of source reduction and waste minimization, including:

(1) commission recommendations to the governor for awards in recognition of source reduction and waste minimization efforts;

(2) an opportunity by rules of the commission for an owner or operator of a facility to be exempted from the requirements of this subchapter on meeting appropriate criteria for practical economic and technical completion of the source reduction and waste minimization plan for the facility; and

(3) expedited review of a permit amendment application if the amendment is necessary to implement a source reduction and waste minimization project, considering only the directly affected parts of the permit.

(d) The commission shall work closely with the Gulf Coast Hazardous Substance Research Center to identify areas in which the center could perform research in the development of alternative technologies or conduct related projects to promote source reduction and waste minimization.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.01, eff. June 7, 1991. Renumbered from Sec. 361.439 by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.028(a), eff. Aug. 12, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.90, eff. Sept. 1, 1995.

SUBCHAPTER R. USE OF LAND OVER MUNICIPAL SOLID WASTE LANDFILLS

Sec. 361.531. DEFINITIONS. In this subchapter:

(1) "Develop" or "development" means an activity on or related to real property that is intended to lead to the construction or alteration of an enclosed structure for the use or occupation of people for a commercial or public purpose or to the construction of residences for three or more families.

(2) "Municipal solid waste landfill unit" means a discrete area of land or an excavation that receives municipal solid waste or other solid wastes approved under this chapter and that is not a land application unit, surface impoundment, injection well, or waste pile as those terms are defined by 40 C.F.R. Section 257.2.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.532. PERMIT REQUIRED FOR DEVELOPMENT OF CERTAIN LAND. (a) The owner or lessee of land located over any part of a closed municipal solid waste landfill unit may not develop the land unless the owner or lessee holds a permit for the development issued under this subchapter.

(b) This subchapter does not apply to an activity associated with solid waste disposal that is approved by the commission.

(c) The commission shall charge any applicant for a permit under this subchapter the actual cost of reviewing any application prior to the issuance of a permit.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.92, eff. Sept. 1, 1995.

Sec. 361.533. APPLICATION FOR DEVELOPMENT PERMIT. (a) The owner or lessee of land located over any part of a closed municipal solid waste landfill facility may apply for a permit to develop the land. The owner or lessee shall submit to the executive director an application for a permit on forms prescribed by the commission not later than 45 days before the development begins. The application must include a registered professional engineer's verified certification that the proposed development is necessary to reduce a potential threat to public health or the environment or that the proposed development will not increase or create a potential threat to public health or the environment. The certification must indicate the registered professional engineer's determination of whether the proposed development will damage the integrity or function of any component of the landfill's:

- (1) final cover;
- (2) containment systems;
- (3) monitoring systems; or
- (4) liners.

(b) The engineer's certification required under Subsection (a) must include documentation of all studies or data on which the engineer relied.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.534. PERMIT PUBLIC MEETING. (a) The commission may hold a public meeting on an application under this subchapter.

(b) The commission shall hold a public meeting on an application under this subchapter:

(1) on the request of a member of the legislature who represents the general area in which the development is proposed to be located; or

(2) if the executive director determines that there is substantial public interest in the proposed development.

(c) The commission by mail shall notify the applicant of the date, time, and place of the public meeting. The commission shall require the applicant to publish notice of the public meeting in a newspaper that is generally circulated in each county in which the property proposed for development is located. The published notice must appear at least once a week for the two weeks before the date of the public meeting.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 2005, 79th Leg., ch. 582, Sec. 5, eff. Sept. 1, 2005.

Sec. 361.535. ISSUANCE OF PERMIT; PERMIT CONDITIONS. (a) The commission may issue a permit for the development of land over a closed municipal solid waste landfill facility only if the commission finds that the proposed development will not increase or create a potential threat to public health or the environment.

(b) The commission may impose conditions on a permit that are designed to prevent a threat to public health or the environment. Conditions may include:

(1) restrictions on building types, construction methods, pilings, boring, or digging;

(2) requiring ventilation, emissions or water quality monitoring devices, soil testing, warnings to subsequent owners or lessees, maintenance of structures or landfill containment, or the placement of additional soil layers or building pads; or

(3) any other conditions the commission finds to be reasonable and necessary to protect the public health or the environment or to ensure compliance with rules or conditions adopted or imposed under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.536. REQUIREMENTS FOR STRUCTURES ON CLOSED MUNICIPAL SOLID WASTE LANDFILL FACILITY. (a) The owner or lessee of an existing or new structure that overlies a closed municipal solid waste landfill facility shall install automatic methane gas sensors approved by the commission and designed to trigger an audible alarm if the volumetric concentration of methane in the sampled air is greater than one percent.

(b) In the development of land that overlies a closed municipal solid waste landfill facility, a person may not, unless

approved by the commission:

(1) drive piling into or through the final cover or a liner;

(2) bore through or otherwise penetrate the final cover or a liner; or

(3) construct an enclosed area under the natural grade of the land or under the grade of the final cover of the closed landfill.

(c) The owner or lessee of a structure built over a closed municipal solid waste landfill facility shall modify the structure as is necessary to comply with commission rules for a new structure that overlies a landfill to minimize the effects of, or to prevent, gas accumulation. The commission shall adopt rules to allow the owner or lessee of a structure a reasonable amount of time to make required modifications.

(d) The commission by rule shall require plans for a new structure over a closed municipal solid waste landfill facility to prevent or minimize the effects of harmful gas accumulation. At a minimum, the commission shall require:

(1) ventilation or active gas collection systems;

(2) a low gas-permeable membrane and a vented, permeable layer of an open-graded, clean aggregate material installed between the area below the slab for the structure and the soil of the final cover; and

(3) automatic methane gas sensors that will sound an audible alarm if the sensor detects a methane gas volumetric concentration of greater than one percent installed:

(A) within the venting pipe or permeable layer; and

(B) inside the structure.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.537. LEASE RESTRICTION; NOTICE TO LESSEE. A person may not lease or offer for lease land that overlies a closed municipal solid waste landfill facility unless:

(1) existing development on the land is in compliance with this subchapter; or

(2) the person gives notice to the prospective lessee of what is required to bring the land and any development on the land into compliance with this subchapter and the prohibitions or requirements for future development imposed by this subchapter and by any permit issued for the land under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.538. SOIL TEST REQUIRED BEFORE DEVELOPMENT OF CERTAIN LAND. (a) A person may not undertake the development of a tract of land that is greater than one acre in area unless the person has conducted soil tests, in accordance with commission rules, to determine whether any part of the tract overlies a closed municipal solid waste landfill facility.

(b) Tests under this section must be conducted by a registered professional engineer.

(c) If an engineer who conducts a test under this section determines that part of the tract overlies a closed municipal solid waste landfill facility, the engineer shall notify the following persons of the determination:

(1) each owner and each lessee of the tract;

(2) the commission; and

(3) any local governmental official with the authority to disapprove an application for development.

(d) A local government official who receives a notice under this section shall prepare a written notice stating the legal description of the portion of the tract that overlies a closed municipal solid waste landfill facility, the current owner of the tract, notice of the tract's former use, and notice of the restrictions on the development or lease of the land imposed by this subchapter. The official shall file for record the notice in the real property records in the county where the tract is located.

(e) The owner or lessee of land for which a test is done under this section shall send the test results to the executive director not later than the 30th day before the development begins.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

Sec. 361.539. NOTICE TO BUYERS, LESSEES, AND OCCUPANTS. (a) An owner of land that overlies a closed municipal solid waste landfill facility shall prepare a written notice stating the former use of the facility, the legal description of the pertinent part of the land, notice of the restrictions on the development or lease of

the land imposed by this subchapter, and the name of the owner. The owner shall file for record the notice in the real property records in the county where the land is located.

(b) An owner of land that overlies a closed municipal solid waste landfill facility shall notify each lessee and each occupant of a structure that overlies the site of:

(1) the land's former use as a landfill; and

(2) the structural controls in place to minimize potential future danger posed by the landfill.

Added by Acts 1993, 73rd Leg., ch. 770, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER S. MEDICAL WASTE; CRIMINAL PENALTIES

Sec. 361.560. DEFINITIONS. In this subchapter:

(1), (2) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

(3) "Medical waste" includes animal waste, bulk blood and blood products, microbiological waste, pathological waste, sharps, and special waste from health care-related facilities as those terms are defined in 25 TAC Section 1.132 (Tex. Dept. of Health, Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities). The term does not include medical waste produced on farmland and ranchland as defined in Section 252.001(6), Agriculture Code. The term does not include artificial, nonhuman materials removed from a patient and requested by the patient, including but not limited to orthopedic devices and breast implants.

(4) Repealed by Acts 1997, 75th Leg., ch. 1072, Sec. 60(b)(3), eff. Sept. 1, 1997.

Added by Acts 1995, 74th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 185, Sec. 1, eff. Sept. 1, 1997.

Sec. 361.561. RADIOACTIVE MEDICAL WASTE. Disposal of radioactive medical waste is governed by Chapter 401.

Added by Acts 1995, 74th Leg., ch. 448, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.601. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes:

(A) solid waste;

(B) hazardous waste;

(C) a hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;

(D) a pollutant as defined in Section 26.001, Water Code; and

(E) a hazardous substance:

(i) as defined in Section 361.003; or

(ii) subject to Sections 26.261-26.268, Water Code.

(2) "Environmental assessment" means the assessment described by Section 361.604.

(3) "Response action" means the cleanup or removal of a hazardous substance or contaminant from the environment, excluding a waste, pollutant, or substance regulated by or that results from an activity under the jurisdiction of the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

(4) "Voluntary cleanup" means a response action taken under and in compliance with this subchapter.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.602. PURPOSE. The purpose of the voluntary cleanup program is to provide incentive to remediate property by removing liability of lenders and future landowners. The program does not replace other voluntary actions and is restricted to voluntary actions.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.603. ELIGIBILITY FOR VOLUNTARY CLEANUP PROGRAM. (a) Any site is eligible for participation in the voluntary cleanup program except the portion of a site that is subject to a commission permit or order.

(b) A person electing to participate in the voluntary cleanup program must:

(1) enter into a voluntary cleanup agreement as provided by Section 361.606; and

(2) pay all costs of commission oversight of the voluntary cleanup.

Text of subsec. (c) effective upon agreement with United States Environmental Protection Agency

(c) Notwithstanding Subsection (a), a site or portion of a

site that is subject to a commission permit or order is eligible for participation in the voluntary cleanup program on dismissal of the permit or order. An administrative penalty paid to the general revenue fund under the permit or order is nonrefundable.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 855, Sec. 2; Acts 1997, 75th Leg., ch. 1418, Sec. 1.

Sec. 361.6035. ELIGIBILITY OF CERTAIN PERSONS FOR RELEASE FROM LIABILITY.

Text of section effective upon agreement with United States Environmental Protection Agency

(a) A person who purchased a site before September 1, 1995, is released, on certification under Section 361.609, from all liability to the state for cleanup of contamination that was released at the site covered by the certificate before the purchase date, except for releases or consequences that the person contributed to or caused, if:

(1) the person did not operate the site, or any portion of the site, before the purchase date; and

(2) another person that is a responsible party under Section 361.271 or 361.275(g) successfully completes a voluntary cleanup of the site under this subchapter.

(b) A person described by Subsection (a)(2):

(1) remains liable to the state for any contamination that was released at the site before the date the certificate is issued; and

(2) is not liable to the state for any contamination that was released at the site after the date the certificate is issued unless the person:

(A) contributes to or causes the release of contamination; or

(B) changes the land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Added by Acts 1997, 75th Leg., ch. 855, Sec. 3; Acts 1997, 75th Leg., ch. 1418, Sec. 2.

Sec. 361.604. APPLICATION TO PARTICIPATE IN VOLUNTARY CLEANUP PROGRAM. (a) A person who desires to participate in the voluntary cleanup program under this subchapter must submit to the commission an application and an application fee as prescribed by this section.

Text of subsec. (b) effective until agreement with United States Environmental Protection Agency

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup; and

(ii) the site;

(B) other background information requested by the executive director; and

(C) an environmental assessment of the actual or threatened release of the hazardous substance or contaminant at the site;

(3) be accompanied by an application fee of \$1,000; and

(4) be submitted according to schedules set by commission rule.

Text of subsec. (b) effective upon agreement with United States Environmental Protection Agency

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup;

(ii) the site; and

(iii) whether the voluntary cleanup is subject to Section 361.6035;

(B) other background information requested by the executive director; and

(C) an environmental assessment of the actual or

threatened release of the hazardous substance or contaminant at the site;

(3) be accompanied by an application fee of \$1,000; and

(4) be submitted according to schedules set by commission rule.

(c) The environmental assessment required by Subsection (b) must include:

(1) a legal description of the site;
(2) a description of the physical characteristics of the site;

(3) the operational history of the site to the extent that history is known by the applicant;

(4) information of which the applicant is aware concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, or wherever the contamination came to be located; and

(5) relevant information of which the applicant is aware concerning the potential for human exposure to contamination at the site.

(d) An application shall be processed in the order in which it is received.

(e) Fees collected under this section shall be deposited to the credit of the waste management account.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 333, Sec. 57, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 855, Sec. 4; Acts 1997, 75th Leg., ch. 1418, Sec. 3.

Sec. 361.605. REJECTION OF APPLICATION. (a) The executive director may reject an application submitted under Section 361.604 if:

(1) an administrative, state, or federal enforcement action is pending that concerns the remediation of the hazardous substance or contaminant described in the application;

(2) a federal grant requires an enforcement action at the site;

(3) the application is not complete or accurate; or

(4) the site is ineligible under Section 361.603.

(b) If an application is rejected because it is not complete or accurate, the executive director, not later than the 45th day after receipt of the application, shall provide the person with a list of all information needed to make the application complete or accurate. A person may resubmit an application once without submitting an additional application fee if the person resubmits the application not later than the 45th day after the date the executive director issues notice that the application has been rejected.

(c) If the executive director rejects the application, the executive director shall:

(1) notify the person that the application has been rejected;

(2) explain the reasons for rejection of the application; and

(3) inform the person that the commission will refund half the person's application fee unless the person indicates a desire to resubmit an application.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 855, Sec. 5, eff. Sept. 1, 1997.

Sec. 361.606. VOLUNTARY CLEANUP AGREEMENT. (a) Before the executive director evaluates any plan or report detailing the remediation goals and proposed methods of remediation, the person desiring to participate in the voluntary cleanup program must enter into a voluntary cleanup agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans.

(b) A voluntary cleanup agreement must provide for:

(1) recovery by the commission of all reasonable costs:

(A) incurred by the commission in review and oversight of the person's work plan and reports and as a result of the commission's field activities;

(B) attributable to the voluntary cleanup agreement; and

(C) in excess of the amount of fees submitted by

the applicant under Section 361.604;

(2) a schedule of payments to the commission to be made by the person for recovery of all commission costs fairly attributable to the voluntary cleanup program, including direct and indirect costs of overhead, salaries, equipment, and utilities, and legal, management, and support costs; and

(3) appropriate tasks, deliverables, and schedules.

(c) The voluntary cleanup agreement shall:

(1) identify all statutes and rules that must be complied with;

(2) describe any work plan or report to be submitted for review by the executive director, including a final report that provides all information necessary to verify that all work contemplated by the voluntary cleanup agreement has been completed;

(3) include a schedule for submitting the information required by Subdivision (2); and

(4) state the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved.

(d) If an agreement is not reached between a person desiring to participate in the voluntary cleanup program and the executive director on or before the 30th day after good faith negotiations have begun:

(1) the person or the executive director may withdraw from the negotiations; and

(2) the commission retains the person's application fee.

(e) The commission may not initiate an enforcement action against a person who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for the activity that resulted in the contamination or release.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.607. TERMINATION OF AGREEMENT; COST RECOVERY. (a) The executive director or the person in its sole discretion may terminate the agreement by giving 15 days' advance written notice to the other. Only those costs incurred or obligated by the executive director before notice of termination of the agreement are recoverable under the agreement if the agreement is terminated.

(b) Termination of the agreement does not affect any right the executive director has under other law to recover costs.

(c) If the person does not pay to the commission the state's costs associated with the voluntary cleanup before the 31st day after the date the person receives notice that the costs are due and owing, the attorney general, at the request of the executive director, shall bring an action in the name of the state in Travis County to recover the amount owed and reasonable legal expenses, including attorney's fees, witness costs, court costs, and deposition costs.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.608. VOLUNTARY CLEANUP WORK PLANS AND REPORTS. (a) After signing a voluntary cleanup agreement, the person shall prepare and submit the appropriate work plans and reports to the executive director.

(b) The executive director shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The executive director may approve a voluntary cleanup work plan or report or, if a work plan or report is not approved, notify the person concerning additional information or commitments needed to obtain approval.

(c) At any time during the evaluation of a work plan or report, the executive director may request the person to submit additional or corrected information.

(d) After considering future land use, the executive director may approve work plans and reports submitted under this section that do not require removal or remedy of all discharges, releases, and threatened releases at a site if the partial response actions for the property:

(1) will be completed in a manner that protects human health and the environment;

(2) will not cause, contribute, or exacerbate discharges, releases, or threatened releases that are not required to be removed or remedied under the work plan; and

(3) will not interfere with or substantially increase the cost of response actions to address the remaining discharges,

releases, or threatened releases.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.609. CERTIFICATE OF COMPLETION. (a) If the executive director determines that a person has successfully completed a voluntary cleanup approved under this subchapter, the executive director shall certify that the action has been completed by issuing the person a certificate of completion.

(b) The certificate of completion shall:

(1) acknowledge the protection from liability provided by Section 361.610;

(2) indicate the proposed future land use; and

(3) include a legal description of the site and the name of the site's owner at the time the application to participate in the voluntary cleanup program was filed.

(c) If the executive director determines that the person has not successfully completed a voluntary cleanup approved under this subchapter, the executive director shall notify the person who undertook the voluntary cleanup and the current owner of the site that is the subject of the cleanup of this determination.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 855, Sec. 6, eff. Sept. 1, 1997.

Sec. 361.610. PERSONS RELEASED FROM LIABILITY. (a) A person who is not a responsible party under Section 361.271 or 361.275(g) at the time the person applies to perform a voluntary cleanup:

(1) does not become a responsible party solely because the person signs the application; and

(2) is released, on certification under Section 361.609, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(b) A person who is not a responsible party under Section 361.271 or 361.275(g) at the time the commission issues a certificate of completion under Section 361.609 is released, on issuance of the certificate, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(c) The release from liability provided by this section does not apply to a person who:

(1) acquires a certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information;

(2) knows at the time the person acquires an interest in the site for which the certificate of completion was issued that the certificate was acquired in a manner provided by Subdivision (1); or

(3) changes land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 855, Sec. 7, eff. Sept. 1, 1997.

Sec. 361.611. PERMIT NOT REQUIRED. (a) A state or local permit is not required for removal or remedial action conducted on a site as part of a voluntary cleanup under this subchapter. A person shall coordinate a voluntary cleanup with ongoing federal and state hazardous waste programs.

(b) The commission by rule shall require that the person conducting the voluntary cleanup comply with any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be subject if a permit were required.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.612. PUBLIC PARTICIPATION. The commission may adopt rules pertaining to public participation in voluntary cleanup decisions.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

Sec. 361.613. COST REPORT; BUDGET ALLOCATION. (a) The executive director annually shall calculate the commission's costs to administer the voluntary cleanup program under this subchapter and shall publish in the Texas Register the rates established for the purposes of identifying the costs recoverable by the commission under this subchapter.

(b) Costs recovered under this subchapter and appropriated to the commission shall be budgeted and distributed to each

organizational unit of the commission solely on the basis of costs fairly attributable to the voluntary cleanup program.

Added by Acts 1995, 74th Leg., ch. 986, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER T. FIDUCIARY LIABILITY

Sec. 361.651. DEFINITIONS. In this subchapter:

(1) "Fiduciary":

(A) means a person acting for the benefit of another party as a bona fide:

- (i) trustee;
- (ii) executor;
- (iii) administrator;
- (iv) custodian;
- (v) guardian of an estate or guardian ad

litem;

- (vi) receiver;
- (vii) conservator;
- (viii) committee of the estate of an

incapacitated person;

(ix) personal representative;

(x) trustee, including a successor to a trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

(xi) representative in any other capacity that the commission, after providing public notice, determines to be similar to the capacities described in Subparagraphs (i)-(x); and

(B) does not include:

(i) a person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person; or

(ii) a person that acquires ownership or control of a solid waste facility with the objective purpose of avoiding liability of the person or of any other person.

(2) "Fiduciary capacity" means the capacity of a person in holding title to a solid waste facility or otherwise having control of or an interest in the solid waste facility pursuant to the exercise of the responsibilities of the person as a fiduciary.

(3) "Solid waste facility":

(A) means:

(i) all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste, including a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units; and

(ii) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located; and

(B) does not include a:

- (i) consumer product in consumer use; or
- (ii) vessel.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.652. LIABILITY OF FIDUCIARIES. (a) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, the liability of a fiduciary under this code or the Water Code for the release or threatened release of solid waste at, from, or in connection with a solid waste facility held in a fiduciary capacity does not exceed the assets held in the fiduciary capacity.

(b) Subsection (a) does not apply to the extent that a person is liable independently of the person's ownership of a solid waste facility as a fiduciary or actions taken in a fiduciary capacity.

(c) Subsections (a) and (d) do not limit the liability pertaining to a release or threatened release of solid waste if negligence, gross negligence, or wilful misconduct of a fiduciary causes or contributes to the release or threatened release.

(d) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, a fiduciary is not liable in the fiduciary's personal capacity under this code or the Water Code for:

(1) undertaking or directing another person to undertake a response action under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator designated under the national contingency plan or a commission-approved cleanup plan;

(2) undertaking or directing another person to undertake any other lawful means of addressing solid waste in connection with the solid waste facility;

(3) terminating the fiduciary relationship;

(4) including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law or monitoring or enforcing the term or condition;

(5) monitoring or undertaking one or more inspections of the solid waste facility;

(6) providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

(7) restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

(8) administering, as a fiduciary, a solid waste facility that was contaminated before the fiduciary relationship began; or

(9) declining to take an action described by Subdivisions (2)-(8).

(e) This section does not:

(1) affect a right, immunity, or defense available under this code or the Water Code that is applicable to a person subject to this section;

(2) create any liability for a person; or

(3) create a private right of action against a fiduciary or any other person.

(f) This section does not apply to a person if the person:

(1) acts in a capacity other than that of a fiduciary or in a beneficiary capacity and, in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

(2) is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

(g) This section does not preclude a claim under this code or the Water Code against:

(1) the assets of the estate or trust administered by the fiduciary; or

(2) a nonemployee agent or independent contractor retained by a fiduciary.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER U. LENDER LIABILITY

Sec. 361.701. DEFINITIONS. In this subchapter:

(1) "Extension of credit" includes a lease finance transaction:

(A) in which the lessor does not initially select the leased solid waste facility and does not during the lease term control the daily operations or maintenance of the solid waste facility; or

(B) that conforms with, as appropriate, regulations issued by:

(i) the appropriate federal banking agency or the appropriate state bank supervisor, as those terms are defined by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813); or

(ii) the National Credit Union Administration Board.

(2) "Financial or administrative function" includes a function such as a function of a credit manager, accounts payable officer, accounts receivable officer, personnel manager,

comptroller, or chief financial officer, or a similar function.

(3) "Foreclosure" and "foreclose" mean, respectively, acquiring, and to acquire, a solid waste facility through:

(A) purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

(B) a deed in lieu of foreclosure, or similar conveyance from a trustee;

(C) repossession, if the solid waste facility was security for an extension of credit previously contracted;

(D) conveyance under an extension of credit previously contracted, including the termination of a lease agreement; or

(E) any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a solid waste facility in order to protect the security interest of the person.

(4) "Lender" means:

(A) an insured depository institution, as that term is defined by Section 3, Federal Deposit Insurance Act (12 U.S.C. Section 1813);

(B) an insured credit union, as that term is defined by Section 101, Federal Credit Union Act (12 U.S.C. Section 1752);

(C) a bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. Section 2001 et seq.);

(D) a leasing or trust company that is an affiliate of an insured depository institution;

(E) any person, including a successor or assignee of any such person, that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

(F) the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Agricultural Mortgage Corporation, or any other entity that in a bona fide manner buys or sells loans or interests in loans;

(G) a person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person;

(H) a person that provides title insurance and that acquires a solid waste facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement; and

(I) an agency of this state that makes an extension of credit to or acquires a security interest from:

(i) a federal or state agency;

(ii) a county, municipality, or other body politic or corporate of this state, including:

(a) a district or authority created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution;

(b) an interstate compact commission to which this state is a party; or

(c) a nonprofit water supply corporation created and operating under Chapter 67, Water Code; or

(iii) another person.

(5) "Operational function" includes a function such as that of a facility or plant manager, operations manager, chief operating officer, or chief executive officer.

(6) "Security interest" includes a right under a mortgage, deed of trust, assignment, judgment lien, pledge, security agreement, factoring agreement, or lease and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

(7) "Solid waste facility":

(A) means:

(i) all contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of solid waste, including a publicly or privately owned solid waste facility consisting of several processing, storage, or disposal operational units such as one or more landfills, surface impoundments, or a combination of units; and

(ii) any building, structure, installation, equipment, pipe, or pipeline, including any pipe into

a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, placed, or otherwise come to be located; and

- (B) does not include a:
 - (i) consumer product in consumer use; or
 - (ii) vessel.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.30, eff. Sept. 1, 1999.

Sec. 361.702. EXCLUSION OF LENDERS NOT PARTICIPANTS IN MANAGEMENT. (a) In Section 361.271, the term "owner or operator" does not include a person that is a lender that:

- (1) without participating in the management of a solid waste facility, holds a security interest in or with regard to the solid waste facility; or

- (2) did not participate in management of a solid waste facility before foreclosure, notwithstanding the fact that the person:

- (A) forecloses on the solid waste facility; and

- (B) after foreclosure, sells, re-releases, in the case of a lease finance transaction, or liquidates the solid waste facility, maintains business activities, winds up operations, undertakes a response action with respect to the solid waste facility under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator appointed under the national contingency plan or a commission-approved cleanup plan, or takes any other measure to preserve, protect, or prepare the solid waste facility before sale or disposition, if the person seeks to sell, re-lease, in the case of a finance transaction, or otherwise divest the person of the facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

- (b) For purposes of Subsection (a)(2)(B), a lender is presumed to divest the lender of the solid waste facility at the earliest practicable, commercially reasonable time if, within 12 months after foreclosure, the lender:

- (1) lists the solid waste facility with a broker, dealer, or agent who deals in that type of property; or

- (2) advertises the solid waste facility for sale or other disposition at least monthly in:

- (A) a real estate publication;

- (B) a trade or other publication appropriate for the solid waste facility being advertised; or

- (C) a newspaper of general circulation in the area in which the solid waste facility is located.

- (c) For purposes of Subsection (b), the 12-month period begins:

- (1) when the lender acquires marketable title if the lender, after the expiration of any redemption period or other waiting period required by law, was acting diligently to acquire marketable title; or

- (2) on the date of foreclosure or its equivalent if the lender does not act diligently to acquire marketable title.

- (d) Except as otherwise provided by Subchapter I, Chapter 26, Water Code, or rules adopted under that subchapter, a lender is not liable under this code or the Water Code to undertake a removal or remedial action or to pay a fine or penalty arising from the release or threatened release of solid waste at, from, or in connection with the solid waste facility in which the lender maintains a security interest or that the lender has acquired through foreclosure if:

- (1) the lender has not participated in management before foreclosure;

- (2) the conditions giving rise to the release or threat of release existed before foreclosure; and

- (3) the lender seeks to divest the lender of the property under Subsections (a)(2)(B) and (b).

- (e) Notwithstanding Subsection (d), if a lender after foreclosure operates, directs the operation of, or maintains the operation of business activities, this section does not exempt or excuse the lender from compliance with legal requirements

applicable to the operation of that business. Those operational requirements include permitting, reporting, monitoring, compliance with emission limitations, financial responsibility and assurance requirements, payment of fees, and payment of fines and penalties for noncompliance with those requirements.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.703. PARTICIPATION IN MANAGEMENT. (a) For purposes of Section 361.702, the term "participate in management":

(1) means actually participating in the management or operational affairs of a solid waste facility; and

(2) does not include merely having the capacity to influence, or the unexercised right to control, a solid waste facility or facility operations.

(b) A person that is a lender that holds a security interest in or with regard to a solid waste facility is considered to participate in management only if, while the borrower is still in possession of the solid waste facility encumbered by the security interest, the person:

(1) exercises decision-making control over the environmental compliance related to the solid waste facility such that the person has undertaken responsibility for the solid waste handling or disposal practices related to the solid waste facility; or

(2) exercises control at a level comparable to that of a manager of the solid waste facility such that the person has assumed or manifested responsibility:

(A) for the overall management of the solid waste facility encompassing day-to-day decisionmaking with respect to environmental compliance; or

(B) over all or substantially all of the operational functions, as distinguished from financial or administrative functions, of the solid waste facility other than the function of environmental compliance.

(c) The term "participate in management" does not include:

(1) performing an act or failing to act before the time at which a security interest is created in a solid waste facility;

(2) holding a security interest or abandoning or releasing a security interest;

(3) including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

(4) monitoring or enforcing the terms and conditions of the extension of credit or security interest;

(5) monitoring or undertaking one or more inspections of the solid waste facility;

(6) requiring a response action or other lawful means of addressing the release or threatened release of solid waste in connection with the solid waste facility before, during, or on the expiration of the term of the extension of credit;

(7) providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the solid waste facility;

(8) restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

(9) exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

(10) conducting a response action under the national contingency plan adopted under 42 U.S.C. Section 9605, under a commission-approved cleanup plan, or under the direction of an on-scene coordinator appointed under the national contingency plan or a commission-approved cleanup plan, if the actions do not rise to the level of participating in management within the meaning of Subsections (a) and (b).

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER V. IMMUNITY FROM LIABILITY OF INNOCENT OWNER OR OPERATOR

Sec. 361.751. DEFINITIONS. In this subchapter:

(1) "Contaminant" has the meaning assigned by Section 361.601.

(2) "Innocent owner or operator" means a person that:

(A) is an owner or operator of property that has become contaminated as a result of a release or migration of contaminants from a source or sources not located on or at the

property; and

(B) did not cause or contribute to the source or sources of the contamination referred to in Paragraph (A).

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.752. IMMUNITY FROM LIABILITY; ACCESS TO PROPERTY. (a) An innocent owner or operator of property is not liable under this code or the Water Code for investigation, monitoring, remediation, or corrective or other response action regarding the conditions attributable to a release or migration of a contaminant or otherwise liable regarding those conditions.

(b) A person that acquires a portion of the tract on which the source of a release of contaminants is located from the person that caused the release is eligible for immunity under Subsection (a) only if, after appropriate inquiry consistent with good commercial or customary practice, the person did not know or have reason to know of the contamination at the time the person acquired the property.

(c) To be eligible for immunity under Subsection (a), an owner or operator must grant reasonable access to the property for purposes of investigation or remediation to a person designated by the executive director. An agreement for reasonable access may provide:

(1) that the designated person may not unreasonably interfere with the use of the property;

(2) for payment of reasonable compensation for access to the property; or

(3) that the owner or operator is indemnified from liability for an intentional or negligent act of the designated person arising from the person's access to and use of the property.

(d) This section does not limit any right of the commission under another provision of this code or the Water Code to obtain access to the property.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.753. CERTIFICATION. (a) A person may apply to the commission for a certificate confirming that the person is an innocent owner or operator. The application must include a complete site investigation report that demonstrates that:

(1) the property has become contaminated as a result of a release or migration of contaminants from a source or sources not located on or at the property;

(2) the owner or operator has not caused or contributed to the source or sources of the contamination referred to in Subdivision (1); and

(3) the owner or operator is eligible for immunity under Section 361.752(b).

(b) The commission may charge an application fee in an amount not to exceed the cost of reviewing the application. The commission shall deposit a fee collected under this subsection to the credit of the hazardous and solid waste remediation fee fund.

(c) Not later than the 45th day after the date the commission receives the application, the commission shall notify the applicant whether the application is complete.

(d) Not later than the 90th day after the date the commission receives the application, the commission shall:

(1) issue or deny the certificate; or

(2) notify the applicant of any additional information needed to review the application.

(e) Not later than the 45th day after the date the commission receives the additional information requested under Subsection (d)(2), the commission shall issue or deny the certificate.

(f) The certificate evidences the immunity from liability of the applicant as provided by Section 361.752.

(g) The commission may condition the issuance of the certificate on the placement of restrictions on the use of the property that are reasonably necessary to protect the public health, including:

(1) institutional controls such as deed restrictions or municipal zoning restrictions; or

(2) at the owner's or operator's option, other control measures.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

Sec. 361.754. RIGHTS OF INNOCENT OWNER OR OPERATOR REGARDING CONTAMINATION FROM SOURCE NOT LOCATED ON OR AT PROPERTY. This subchapter does not limit the right of an innocent owner or operator

to pursue any remedy available at law or in equity for conditions attributable to the release or migration of contaminants from a source or sources that are not located on or at the property.

Added by Acts 1997, 75th Leg., ch. 793, Sec. 15, eff. Sept. 1, 1997.

SUBCHAPTER W. MUNICIPAL SETTING DESIGNATIONS

Sec. 361.801. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes:
(A) solid waste;
(B) hazardous waste;
(C) a hazardous waste constituent listed in 40 C.F.R. Part 261, Subpart D, or Table 1, 40 C.F.R. Section 261.24;
(D) a pollutant as defined in Section 26.001, Water Code; and
(E) a hazardous substance:
(i) as defined in Section 361.003; or
(ii) subject to Subchapter G, Chapter 26, Water Code.

(2) "Potable water" means water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.

(3) "Response action" means the cleanup or removal from the environment of a hazardous substance or contaminant, excluding a waste, pollutant, or substance regulated by or that results from an activity under the jurisdiction of the Railroad Commission of Texas under Chapter 91 or 141, Natural Resources Code, or Chapter 27, Water Code.

Added by Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.8015. LEGISLATIVE FINDINGS. (a) The legislature finds that access to and the use of groundwater may need to be restricted to protect public health and welfare where the quality of groundwater presents an actual or potential threat to human health.

(b) The legislature finds that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate a municipal setting designation advances a substantial and legitimate state interest where the quality of the groundwater subject to the designation is an actual or potential threat to human health.

Added by Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.802. PURPOSE. The purpose of this subchapter is to provide authorization to the executive director to certify municipal setting designations for municipal properties in order to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant.

Added by Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.803. ELIGIBILITY FOR A MUNICIPAL SETTING DESIGNATION. A person, including a local government, may submit a request to the executive director for a municipal setting designation for property if:

(1) the property is within the corporate limits or extraterritorial jurisdiction of a municipality authorized by statute that has a population of at least 20,000; and

(2) a public drinking water supply system exists that satisfies the requirements of Chapter 341 and that supplies or is capable of supplying drinking water to:

(A) the property for which designation is sought; and
(B) property within one-half mile of the property for which designation is sought.

Added by Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.804. APPLICATION FOR A MUNICIPAL SETTING DESIGNATION. (a) A person seeking to obtain a municipal setting designation under this subchapter must submit an application to the executive director as prescribed by this section.

(b) An application submitted under this section must:

(1) be on a form provided by the executive director;
(2) contain the following:
(A) the applicant's name and address;
(B) a legal description of the outer boundaries of the proposed municipal setting designation and a specific description of the designated groundwater that will be restricted under the ordinance or restrictive covenant described by Section 361.8065(a)(2);

(C) a statement as to whether the municipalities or the retail public utilities entitled to notice under Section 361.805 support the proposed designation;

(D) an affidavit that affirmatively states that:
(i) the municipal setting designation eligibility criteria contained in Section 361.803 are satisfied;
(ii) true and accurate copies of all documents demonstrating that the municipal setting designation eligibility criteria provided by Section 361.803 have been satisfied are included with the application;

(iii) a true and accurate copy of a legal description of the property for which the municipal setting designation is sought is included with the application; and

(iv) notice was provided in accordance with Section 361.805;

(E) a statement regarding the type of known contamination in the groundwater beneath the property proposed for a municipal setting designation;

(F) proof of notice, as required by Section 361.805(c); and

(G) if available at the time of the application, a copy of the ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065, or a statement that the applicant will provide a copy of the ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065 before the executive director certifies the municipal setting designation in accordance with Section 361.807; and

(3) be accompanied by an application fee of \$1,000.

(c) Not later than 90 days after receiving an application submitted as provided by Subsection (b), the executive director shall:

(1) issue a municipal setting designation certificate in accordance with Section 361.807;

(2) deny the application in accordance with Section 361.806; or

(3) request additional information for the municipal setting designation application.

(d) Not later than the 45th day after the date the executive director receives any additional information requested under Subsection (c)(3), the executive director shall certify or deny the application.

(e) Fees collected under this section shall be deposited to the credit of the waste management account.

Added by Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.805. NOTICE. (a) On or before the date of submission of an application to the executive director, a person seeking a municipal setting designation must provide notice to:

(1) each municipality:

(A) in which the property for which the designation is sought is located;

(B) with a boundary located not more than one-half mile from the property for which the designation is sought; or

(C) that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought;

(2) each owner of a private water well registered with the commission that is located not more than five miles from a boundary of the property for which the designation is sought; and

(3) each retail public utility, as defined by Section 13.002, Water Code, that owns or operates a groundwater supply well located not more than five miles from the property for which the designation is sought.

(b) The notice must include, at a minimum:

(1) the purpose of the municipal setting designation;

(2) the eligibility criteria for a municipal setting designation;

(3) the location and description of the property for which the designation is sought;

(4) a statement that a municipality described by Subsection (a)(1) or retail public utility described by Subsection (a)(3) may provide written comments on any information relevant to the executive director's consideration of the municipal setting designation;

(5) a statement that the executive director will certify or deny the application or request additional information from the applicant not later than 90 days after receiving the application;

(6) the type of contamination on the property for which the designation is sought; and

(7) identification of the party responsible for the contamination of the property, if known.

(c) The applicant must submit copies of the notice letters delivered in accordance with Subsection (a) and the signed delivery receipts to the executive director with the application.

(d) For the purpose of this section, notice to a municipality must be provided to the city secretary for the municipality and notice to a retail public utility must be to the registered agent, the owner, or the manager.

(e) A municipality, retail public utility, or private well owner entitled to notice under this section may file comments with the executive director not later than the 60th day after the date the municipality, retail public utility, or private well owner receives the notice under this section.

Added by Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.806. DENIAL OF APPLICATION. (a) The executive director shall deny an application submitted under Section 361.804 if:

(1) any of the eligibility criteria described in Section 361.803 have not been met for the property for which the municipal setting designation is sought;

(2) the application is incomplete or inaccurate; or

(3) after the 60-day comment period described by Section 361.805(e), the executive director determines that the municipal setting designation would negatively impact the current and future regional water resource needs or obligations of a municipality, a retail public utility, or a private well owner described by Section 361.805(a).

(b) If the executive director determines that an application is incomplete or inaccurate, the executive director, not later than the 90th day after receipt of the application, shall provide the applicant with a list of all information needed to make the application complete or accurate.

(c) If the executive director denies the application, the executive director shall:

(1) notify the applicant that the application has been denied; and

(2) explain the reasons for the denial of the application.

Added by Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.8065. PRECERTIFICATION REQUIREMENTS. (a) Before the executive director may issue a municipal setting designation certificate under Section 361.807, the applicant must provide documentation of the following:

(1) that the application is supported by a resolution adopted by:

(A) the city council of each municipality described by Section 361.805(a)(1)(B) or (C); and

(B) the governing body of each retail public utility described by Section 361.805(a)(3); and

(2) that the property for which designation is sought is:

(A) subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; or

(B) subject to a restrictive covenant enforceable by the municipality in which the property for which the designation is sought is located that prohibits the use of designated groundwater from beneath the property as potable water and appropriately restricts other uses of and contact with that groundwater.

(b) A designation described by Subsection (a)(2)(B) must be supported by a resolution passed by the city council of the municipality.

Added by Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.807. CERTIFICATION. (a) If the executive director determines that an applicant has complied with Section 361.8065 and submitted a complete application, the executive director shall

issue a copy of the municipal setting designation certificate to:

(1) the applicant for the municipal setting designation;

(2) each municipality, retail public utility, and private well owner described by Section 361.805(a); and

(3) each person who submitted comments on the application for the municipal setting designation and anyone else who requested a copy during the review period.

(b) The municipal setting designation certificate shall:

(1) indicate that the municipal setting designation eligibility criteria described in Section 361.803 are satisfied and that the executive director has certified the municipal setting designation;

(2) indicate that any person addressing environmental impacts for a property located in the certified municipal setting designation shall complete any necessary investigation and response action requirements in accordance with Section 361.808; and

(3) include a legal description of the outer boundaries of the municipal setting designation.

(c) If the executive director determines that an applicant has submitted a complete application except that an ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065 have not been submitted, the executive director shall issue a letter to the applicant listed in Subsection (a) stating that a municipal setting designation will be certified on submission of a copy of the ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065. On submission of the ordinance or restrictive covenant and any required resolutions satisfying the requirements described in Section 361.8065, the executive director shall issue a municipal setting designation certificate in accordance with Subsections (a) and (b).

Added by Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

Sec. 361.808. INVESTIGATION AND RESPONSE ACTION REQUIREMENTS. (a) If no potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, the executive director shall not require a person addressing environmental impacts for a property located in the municipal setting designation to:

(1) investigate the nature and extent of contamination in groundwater except to satisfy the requirements of Subsection (b); or

(2) conduct response actions to remove, decontaminate, or control environmental impacts to groundwater based solely on potential potable water use.

(b) Notwithstanding Subsection (a), the executive director shall require a responsible person to complete a response action to address environmental impacts to groundwater in a certified municipal setting designation if action is necessary to ensure:

(1) the protection of humans from exposures to environmental impacts to groundwater that are not related to a potable water use, including exposures from nonconsumptive uses and exposures resulting from inadvertent contact with contaminated groundwater; or

(2) the protection of ecological resources.

(c) If potable water wells are located within one-half mile beyond the boundary of a municipal setting designation, the executive director shall require a person addressing environmental impacts for a property located in the municipal setting designation to complete an investigation to determine whether groundwater contamination emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation.

(d) If an investigation described in Subsection (c) confirms that groundwater emanating from the property has not caused and is not reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, the executive director shall approve the completion of groundwater response actions at the property except to the extent that response actions are necessary to satisfy Subsection (b).

(e) If an investigation described in Subsection (c) confirms that groundwater emanating from the property has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in the area located within one-half mile beyond the boundary of the certified municipal setting designation, the executive director shall approve the completion of groundwater response action at the source property if the person addressing environmental impacts:

(1) completes response actions at the source property to remove, decontaminate, or control environmental impacts to groundwater to meet applicable human health or ecological standards; or

(2) completes response actions at the source property to remove, decontaminate, or control environmental impacts to groundwater that are not related to a potable water use, including actions to protect humans from exposures from nonconsumptive uses and exposures resulting from inadvertent contact with contaminated groundwater and actions to protect ecological resources, and:

(A) provides to owners of impacted potable water wells described in Subsection (c) a reliable alternate water supply that will provide a volume of water sufficient for the intended use for a period not shorter than the period that the impacted wells exceed the human health or ecological standards and, after obtaining permission from such owners, files a restrictive covenant that prohibits the use of groundwater from those wells as potable water and restricts other uses of groundwater in a manner consistent with groundwater quality; or

(B) expands the municipal setting designation in accordance with the procedures under this subchapter relating to the initial application for a municipal setting designation to include the properties with impacted potable water wells described in Subsection (c).

(f) Notwithstanding any other provision of this section, the executive director may require a person responsible for property within a certified municipal setting designation to complete a response action to address environmental impacts to groundwater emanating from the property that has caused or is reasonably anticipated to cause applicable human health or ecological standards to be exceeded in an area located more than one-half mile beyond the boundary of the certified municipal setting designation, provided such action is necessary to ensure:

(1) the protection of humans from exposures to environmental impacts to groundwater; or

(2) the protection of ecological resources.

(g) This subchapter relates to the scope of the response action that can be required by the executive director in municipal settings designated under this subchapter. Nothing in this subchapter shall be construed to alter or affect the private rights of action of any person under any statute or common law for personal injury or property damage caused by the release of contaminants. Nothing in this subchapter is meant to alter or supersede any requirement of a federally authorized environmental program administered by the State of Texas.

Added by Acts 2003, 78th Leg., ch. 731, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER X. COUNTY PROGRAMS FOR CLEANUP AND ECONOMIC REDEVELOPMENT OF BROWNFIELDS

Sec. 361.901. DEFINITIONS. In this subchapter:

(1) "Assessment" means an environmental assessment described by Section 361.904.

(2) "Brownfield" means real property the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of environmental contamination.

(3) "Brownfield program" means a county brownfield cleanup and economic redevelopment program described by Section 361.902.

(4) "Eligible owner" means the owner of a brownfield who demonstrates to the commissioners court of the county in which the brownfield is located that the owner:

(A) became the owner after the contamination occurred;

(B) did not contribute to the contamination as an owner responsible for contamination or through association with previous owners responsible for the contamination;

(C) exercises appropriate care at the brownfield by taking reasonable steps to stop continuing releases, prevent any

threatened future releases, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance; and

(D) complies with local, state, and federal laws with respect to land use and requests for information.

(5) "Eligible site" means a property or facility that is owned by a county or, if not owned by a county, for which the owner applies to a county for brownfield assistance or certification and a county determines is a brownfield under the county's brownfield program.

(6) "Licensed professional engineer" means a person licensed by the Texas Board of Professional Engineers.

(7) "Remediation" means an action included within the meanings of "remedial action" and "removal," as those terms are defined by Section 361.003.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.902. COUNTY BROWNFIELD CLEANUP AND ECONOMIC REDEVELOPMENT PROGRAM. (a) The commissioners court of a county with a population of 250,000 or more may establish a program for the cleanup and economic redevelopment of brownfields located in the county, as authorized by Section 52-a, Article III, Texas Constitution.

(b) A brownfield program must include:

(1) procedures to:

(A) identify eligible sites;

(B) conduct assessments;

(C) prioritize the remediation of eligible sites, with consideration given to:

(i) the number of jobs related to the remediation; and

(ii) the resulting economic and environmental benefits to the county;

(D) conduct the remediation of an eligible site;

(E) conduct the inspection of a property or facility after remediation; and

(F) guide eligible owners in applying for county assistance under the program; and

(2) standards by which the county can determine:

(A) the eligibility of a person for a grant or loan under the program;

(B) the eligibility of a person to enter into a contract with the county to perform remediation or inspection; and

(C) the completeness of the remediation of a property or facility.

(c) The county shall make available to the public and to the commission a draft of the proposed program at least 60 days before a public hearing to receive comments on the proposed program.

(d) The county shall review comments received and make amendments to the draft as appropriate before adopting and implementing the program.

(e) The county shall submit a copy of the final draft of a program adopted under this section to the commission and shall make the final draft available to the public.

(f) The county may amend a program adopted under this section by applying the procedures described by Subsections (c), (d), and (e) to the proposed amendment.

(g) The county may assign current or employ additional staff to implement a program adopted under this section.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.903. BROWNFIELD CLEANUP AND ECONOMIC REDEVELOPMENT FUND. (a) The commissioners court of a county may establish a fund for a brownfield program and deposit to the credit of the fund any money the commissioners court considers appropriate, including revenue from property taxes, sales taxes, fees, gifts or grants, principal and interest payments made to repay loans from the fund, proceeds from the issuance of bonds, and contributions of other resources.

(b) Money from a fund established under this section may be used only to provide for economic growth and development of the county by paying for all or part of:

(1) the cost of an assessment;

(2) the cost of remediating a brownfield;

(3) the cost of inspecting a property or facility after remediation;

(4) a loan to an eligible owner or licensed

professional engineer to conduct assessment, eligible site remediation, or inspection of a property or facility after remediation; or

(5) administrative expenses associated with implementing the brownfield program.

(c) For the purposes of the county's brownfield program, a county may solicit and leverage money from other sources, including federal money that may be available for brownfield assessment and eligible site remediation.

(d) Before a county may issue bonds payable from ad valorem taxes to provide money for a fund, the bond issuance must be approved by a majority of the voters voting on the issue at an election held for that purpose.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.904. ENVIRONMENTAL ASSESSMENT. An assessment under this subchapter must include:

(1) a legal description of the property or facility;

(2) a description of the physical characteristics of the property or facility;

(3) the operational history of the property or facility to the extent that history is known by the owner;

(4) information of which the owner is aware concerning the nature and extent of any relevant contamination or release at the property or facility and immediately contiguous to the property or facility, or wherever the contamination came to be located; and

(5) relevant information of which the owner is aware concerning the potential for human exposure to contamination at the property or facility.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.905. TAX ABATEMENT AGREEMENT INCENTIVES. Subject to the requirements of Subchapter C, Chapter 312, Tax Code, a county may designate an area of the county that contains a brownfield as a reinvestment zone and enter into a tax abatement agreement based on the remediation of the brownfield with the eligible owner of the brownfield.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.906. CONTRACTS FOR SITE REMEDIATION OR INSPECTION. (a) A county may contract with a licensed professional engineer or contractor to:

(1) conduct remediation for an eligible site owned by the county; or

(2) inspect a property or facility after remediation to determine whether it meets county standards for completeness of the remediation.

(b) To be eligible to enter into a contract with a county under this section or to receive a loan under Section 361.907, a licensed professional engineer or contractor at a minimum must provide evidence to the county of previous success in conducting remediation or inspection, as applicable, of at least one brownfield or other property or facility contaminated by a hazardous substance.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.907. GRANTS AND LOANS. To help finance an assessment, eligible site remediation, or inspection, a county may provide money as a grant or a loan from a county fund established under Section 361.903 to:

(1) an eligible owner; or

(2) a licensed professional engineer or contractor who meets the requirements of Section 361.906.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.908. LIAISON TO ENVIRONMENTAL PROTECTION AGENCY. A county that establishes a brownfield program may act as a liaison between an eligible owner, licensed professional engineer, or contractor and the Environmental Protection Agency to assist in obtaining a federal grant for an assessment or eligible site remediation under the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9601 et seq.).

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.909. LIAISON TO COMMISSION. A county that establishes a brownfield program may act as a liaison between the commission and an eligible owner, licensed professional engineer, or contractor to assist in obtaining any available commission assistance for an assessment, eligible site remediation, or property or facility inspection after remediation.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.910. LIMITATIONS ON LIABILITY. (a) A person who is an eligible owner, licensed contractor, or licensed professional engineer engaged in an assessment, eligible site remediation, or property or facility inspection after remediation under a program adopted under this subchapter is not liable for damages or costs resulting from a release or threatened release of a hazardous substance that occurs during the assessment, remediation, or inspection unless the person:

(1) qualified as an eligible owner, licensed professional engineer, or contractor by fraud, misrepresentation, or knowing failure to disclose material information; or

(2) negligently or knowingly contributed to or caused the release or threatened release.

(b) The county shall inspect a property or facility after remediation is completed to determine whether the remediation meets county standards for completeness under the brownfield program. On a finding that the remediation meets the standards, the county shall issue a certificate signifying the satisfactory remediation to the owner of the property or facility and shall file a copy of the certificate in the county property records. The owner or a subsequent owner of a remediated property or facility is not liable for the costs of any additional assessment or remediation for environmental contamination that occurred before the issuance of the certificate.

(c) This subchapter does not limit or impair any immunity or defense to liability or suit that may be available to a county under any other provision of law.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.911. FAILURE TO PASS INSPECTION. The owner of a property or facility who is denied a certificate under Section 361.910:

(1) is entitled to receive a detailed description of actions needed for the property or facility to meet county standards; and

(2) may apply for additional county assistance under the county's brownfield program.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.

Sec. 361.912. COMMISSION ASSISTANCE. The commission may provide:

(1) educational, advisory, and technical services concerning assessment, remediation, and inspection of brownfields to a county that establishes a brownfield program under this subchapter; and

(2) assistance to a county in obtaining federal grants for assessment and remediation of brownfields.

Added by Acts 2005, 79th Leg., ch. 379, Sec. 2, eff. Sept. 1, 2005.