

CHAPTER 566

H.B. No. 2358

An Act relating to the regulation of the treatment, storage, management and disposal of hazardous waste and solid waste.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 2, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2. **DEFINITIONS.** As used in this Act, unless the context requires a different definition:

(1) "*Administratively complete*" means that a complete permit application form, as well as the report and fees required to be submitted with a permit application, have been submitted to the department or the department of water resources and the permit application is ready for technical review in accordance with the rules of the department or department of water resources.

(2) "*Apparent recharge zone*" means that recharge zone designated on maps prepared or compiled by, and located in the offices of, the department of water resources.

(3) "Board" means the Texas Water Development Board.

(4) [(2)] "Board of health" means the Texas Board of Health.

(5) [(3)] "Class I industrial solid waste" means any industrial solid waste designated as Class I by the Executive Director of the Texas Department of Water Resources as any industrial solid waste or mixture of industrial solid wastes which because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste.

(6) [(4)] "Commission" means the Texas Water Commission.

(7) [(5)] "Commissioner" means the Commissioner of Health.

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

(9) [(7)] "Department" means the Texas Department of Health.

(10) [(8)] "Department of water resources" means the Texas Department of Water Resources.

(11) [(9)] "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(12) "*Environmental response law*" means the federal *Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Pub. L. No. 96-510)*.

(13) ~~[(10)]~~ “Executive director” means the Executive Director of the Texas Department of Water Resources.

(14) ~~[(11)]~~ “Garbage” means solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(15) ~~[(12)]~~ “Hazardous waste” means any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(16) ~~[(13)]~~ “Industrial solid waste” means solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(17) ~~[(14)]~~ “Local government” means a county; an incorporated city or town; or a political subdivision exercising the authority granted under Section 6 of this Act.

(18) ~~[(15)]~~ “Management” means the systematic control of any or all of the following activities of generation, source separation, collection, handling, storage, transportation, processing, treatment, recovery, or disposal of solid waste.

(19) ~~[(16)]~~ “Municipal solid waste” means solid waste resulting from or incidental to municipal, commercial, institutional, and recreational activities including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(20) *“Notice of intent to file an application” means that notice filed pursuant to Section 4(e)(12) of this Act.*

(21) ~~[(17)]~~ “Person” means individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

(22) ~~[(18)]~~ “Person affected” means any person who is a resident of a county or any county adjacent or contiguous to the county in which a solid waste facility is to be located including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government. Such person affected shall also demonstrate that he has suffered or will suffer actual injury or economic damage.

(23) ~~[(19)]~~ “Processing” means the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste, or so as to render such waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. Unless the state agency determines that regulation of such activity under this Act is necessary to protect human health or the environment, the definition of “processing” does not include activities relating to those materials exempted by the Administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(24) ~~[(20)]~~ “Radioactive waste” means that waste which requires specific licensing under Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon’s Texas Civil Statutes), and the rules adopted by the Texas Board of Health under that law.

(25) *“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, escaping, leaching, dumping, or disposing into the environment, but excludes:*

(A) a release that results in exposure to persons solely within a workplace, with respect to a claim which those persons may assert against the employer of those persons;

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

(C) release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.) if the release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of that Act, or, for the purposes of Section 104 of the environmental response law or any other response action, any release of source, by-product, or special nuclear material from any 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. 7912 and 7942); and

(D) the normal application of fertilizer.

(26) *“Remedial action” means those actions 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 waste into the environment to prevent or minimize the release of hazardous wastes so that they do*

not migrate to cause an imminent and substantial danger to present or future public health and safety or the environment. The term includes such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches, or ditches, clay cover, neutralization, cleanup of released hazardous wastes or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, 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. The term includes the costs of permanent relocation of residents and businesses and community facilities where the Administrator of the United States Environmental Protection Agency or the executive director 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 wastes or may otherwise be necessary to protect the public health or safety. The term does not include off-site transport of hazardous wastes or the storage, treatment, destruction, or secure disposition off site of the hazardous wastes or contaminated materials unless the Administrator of the United States Environmental Protection Agency or the executive director determines those actions:

(A) are more cost effective than other remedial actions;

(B) will create new capacity to manage, in compliance with Subtitle C of the federal Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), hazardous wastes in addition to those located at the affected facility; or

(C) are necessary to protect 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 wastes or materials.

(27) "Removal" means the cleanup or removal of released hazardous wastes from the environment; the actions necessary to be taken in the event of the threat of release of hazardous wastes into the environment; the actions necessary to monitor, assess, and evaluate the release or threat of release of hazardous wastes; the disposal of removed material; or the taking of other actions as may be necessary 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. The term also includes security fencing or other measures to limit access, provision of alternate water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under Section 104(b) of the environmental response law, and any emergency assistance that may be provided under the federal Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.).

(28) [(21)] "Rubbish" means nonputrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials; combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials which will not burn at ordinary incinerator temperatures (1600°F to 1800°F).

(29) [(22)] "Sanitary landfill" means a controlled area of land upon which solid waste is disposed of in accordance with standards, rules, or orders established by the board of health or the board.

(30) [(23)] "Sludge" means any solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

(31) [(24)] "Solid waste" means any garbage, rubbish, 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, but 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 pursuant to 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 which result from activities associated with the exploration, development, or production of oil or gas and are subject to control by the Texas Railroad Commission.

(32) [(25)] "Solid waste facility" means all contiguous land, and structures, other appurtenances, and improvements on the land, used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and consist of several processing, storage, or disposal operational units; e.g., one or more landfills, surface impoundments, or combinations of them.

(33) ~~[(26)]~~ "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 board or board of health.

(34) ~~[(27)]~~ "Storage" means the holding of solid waste for a temporary period, at the end of which the solid waste is processed, disposed of, or stored elsewhere.

SECTION 2. Section 3, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsections (e), (f), (g), and (h) to read as follows:

(e)(1) *In order to protect the public health and environment, it is declared to be the public policy of this state that, in generating, treating, storing, and disposing of hazardous wastes, preference shall be given to the following methods, to the maximum extent economically and technologically feasible, in the order named:*

- (A) *minimization of waste production;*
- (B) *reuse and/or recycling of waste;*
- (C) *treatment to destroy hazardous characteristics;*
- (D) *treatment to reduce hazardous characteristics;*
- (E) *underground injection;*
- (F) *land disposal.*

(2) *In the case of treatment to destroy hazardous characteristics described in Section 3(e)(1)(C) above, on-site destruction is preferred but must be evaluated in the context of other relevant factors such as transportation hazard, distribution of risk, quality of destruction, operator capability, and site suitability.*

(f) *The department of water resources and the Railroad Commission of Texas shall jointly prepare an exclusive list of activities which are associated with oil and gas exploration, development and production and, hence, are exempted from regulation under this Act and the department of water resources' solid waste regulatory program. Such list shall be amended as necessary. Such list shall be a rule as that term is defined in Section 3(7) of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).*

(g)(1) *There is created the interagency coordination council which shall coordinate the activities of its member agencies related to the regulation of solid waste and solid waste management facilities and the enforcement of the applicable solid waste laws and regulations. The council shall be comprised of the executive head or his/her designee of the following agencies:*

- (A) *the department of water resources;*
- (B) *the department;*
- (C) *the Texas Air Control Board; and*

(D) *the Railroad Commission of Texas. The representative from the department of water resources shall act as chairman of the council.*

(2) *The council shall conduct meetings on at least a quarterly basis during which it shall review the solid waste regulatory and enforcement activities of the previous quarter and coordinate future planned activities in the interest of efficiency and cooperation, including, but not limited to, the consideration of the use of waste exchange programs; the establishment of a clearinghouse for scientific and engineering information and data concerning hazardous waste management; the coordination of hazardous waste research and development activities; the coordination and development of consistent agency rules relevant to regulation of hazardous waste activities; the evaluation of means to assist small quantity hazardous waste generators and affected communities in the effective and safe management and disposal of their regulated wastes; the assessment of any pre-application public interactions with applicants to evaluate their effectiveness and to consider development of rules to incorporate such activities if appropriate; the consideration of the use of incentives to encourage waste minimization, reuse, recycling, and the use of resource recovery and detoxification equipment; and evaluation of the feasibility of household hazardous waste collection and disposal programs. The chairman shall prepare a report summarizing each quarterly meeting. The report shall be submitted for approval by a majority of agencies represented by the council and shall be a public document.*

(h) *The department and department of water resources shall submit a report to the presiding officers of the legislature and the governor on January 1, 1987, and each two years thereafter, providing the following information:*

(1) *a summary of a performance report of the imposed hazardous waste permit and disposal fees, if the fees are approved by the legislature, and related activities to determine the appropriateness of the fee structure;*

(2) *an evaluation of progress made in accomplishing the public policy of the state in regard to the preference of waste management methods as set forth in Section (3)(e)(1) of this Act;*

(3) *projections, for a period of three years from the due date of the report, of waste volumes by type of waste, disposition of wastes, and remaining capacity for the disposal of the wastes. The*

department and the department of water resources shall adopt rules requiring persons who generate, store, treat, or dispose of hazardous waste to submit to the state agency of appropriate jurisdiction on an annual basis reports detailing projections of waste volumes, disposition, and remaining capacity, as it relates to each facility owned or operated by such persons, in order that the state agencies may develop their report. The first report shall be submitted by March 1, 1986, and subsequent reports shall be submitted annually by March 1 thereafter.

SECTION 3. Subsection (c), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Each state agency may adopt and promulgate rules consistent with the general intent and purposes of this Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction under this Act. In developing rules relating to hazardous waste, each state agency 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. ~~Each [Within one year after the effective date of this Act, each]~~ state agency shall adopt rules that:

(1) condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater;

(2) prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a facility, if the landfill is to be located in the 100-year floodplain existing prior to site development unless the landfill is to be located in areas with flood depths less than three feet;

(3) 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 hazardous waste management unit is to be located in wetlands, as defined by the state agencies. For the purposes of this paragraph, a "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility, used to manage hazardous waste;

(4) 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;

(5) require applicants for a new hazardous waste landfill, land treatment facility or surface impoundment which 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;

(6) 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 such landfill or land treatment facility is to be located within 1000 feet of an established residence, church, school, or dedicated public park which is in use at the time the notice of intent to file a permit application is filed with the state agency, or if no such notice is filed, at the time the permit application is filed with the state agency;

(7) define the characteristics that make other areas ~~an area~~ unsuitable for a hazardous waste management facility including, but not limited to, consideration of:

(A) flood hazards;

(B) discharge from or recharge to a groundwater aquifer; ~~or~~

(C) soil conditions;

(D) areas of direct drainage within one mile of a lake used to supply public drinking water;

(E) active geological processes;

(F) coastal high hazard areas, such as areas subject to hurricane storm surge and shoreline erosion; or

(G) critical habitat of endangered species;

(8) ~~(2)~~ prohibit 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 agency pursuant to Paragraph (7) unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics; ~~and~~

(9) require applicants for a new hazardous waste landfill filed after January 1, 1986, to provide an engineering report evaluating the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above grade construction, and the potential adverse effects, if any, which would be associated with the above grade construction;

(10) allow local governments to petition the appropriate state agency for a rule which restricts or prohibits the siting of new hazardous waste disposal facilities or other new hazardous waste management facilities in areas including, but not limited to, those meeting one or more of the

characteristics delineated in Paragraph (7); provided, however, that no rule adopted by a state agency under this paragraph shall 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 with respect to such facility has been filed with the appropriate state agency prior to the filing of a petition under this paragraph;

(11) prohibit 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 such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed of at the landfill;

(12) [(4)] require persons who generate, transport, process, store, or dispose of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that such wastes are transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose; and

(13) prohibit the issuance of a permit for a new hazardous waste management unit if the landfill 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 the effective date of this Act as zone A1-99, V0, or V1-30; and this paragraph applies only to units that receive hazardous waste for a fee.

In adopting rules under Paragraphs (1)-(13) [(3)] of this section, the state agencies may distinguish between solid waste facilities based on type or hazard of hazardous wastes managed and the type of waste management method used. *The minimum standards set by the department of water resources for on-site storage of hazardous waste must be at least the minimum standards set by the manufacturer of the chemical.*

SECTION 4. Paragraphs (1), (4), (6), and (10), Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(1) *When a permit application has been determined to be administratively complete, the [The] state agency to whom the permit application is submitted shall mail a copy of the application or a summary of its contents to the Texas Air Control Board, to the other state agency, to the mayor and health authorities of any city or town within whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and health authorities of the county in which the facility is located. The governmental entities to whom the information is mailed shall have a reasonable time, as prescribed by the state agency to whom the application was originally submitted, to present comments and recommendations on the permit application before that state agency acts on the application.*

(4) *Before a permit is issued, amended, extended, or renewed, the state agency to which the application is submitted shall provide an opportunity for a hearing to the applicant and persons affected; the state agency may also hold such a hearing upon its own motion.*

(A)(i) *The owner or operator of a hazardous waste or solid waste management facility shall not be required to obtain a permit for the storage, processing, treatment, disposal, or destruction of solid waste or hazardous waste from any agency of the state other than the department or the department of water resources unless a permit is required under the new source review requirements of Part C or D of Title I of the federal Clean Air Act, 42 U.S.C. 7401 et seq., for a major source or a major modification, or unless a permit is required by the Railroad Commission of Texas under Chapter 27, Water Code; except with respect to major sources or major modifications described above, and except with respect to facilities required to be permitted by the Railroad Commission of Texas under Chapter 27, Water Code, all participation in the review of a permit application shall be through one agency hearing, which shall be the sole permit hearing and which shall be conducted by either the department or the department of water resources as the lead agency, in accordance with the division of jurisdiction between them established in Section 3 of this Act. The Texas Air Control Board and other agencies which might otherwise have jurisdiction for permitting hazardous or solid waste facilities shall enter into joint rules or memoranda of agreement with the department or the department of water resources. Such joint rules or memoranda of agreement shall include such criteria as the Texas Air Control Board or other agency which might otherwise have jurisdiction may prescribe for use by the lead agency in addressing the concerns of the Texas Air Control Board or other agency in the permitting process. Such joint rules or memoranda shall at a minimum be consistent with applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.*

(ii) *It is the intent of the Legislature that to the extent possible in conformance with this subpart (A), the lead agency shall defer to the policies, rules, and interpretations of the Texas Air Control Board on the air quality impact of the proposed hazardous waste or solid waste management activities, and that the Texas Air Control Board remain the principal authority of the state in*

matters of air pollution control. The Texas Air Control Board shall be responsible for performing a technical review of the air quality aspects of an application for a solid waste or a hazardous waste management facility, which relate to the criteria established under (A)(i). It shall complete such review and shall forward all recommendations or proposed permit provisions to the lead agency within the time limits established in the rules of the lead agency for the completion of technical review of the application. The lead agency shall incorporate into its proposed action all recommendations or proposed permit provisions submitted by the Texas Air Control Board, unless such recommendation or proposed permit provisions are determined by the lead agency to be less stringent than applicable requirements of the United States Environmental Protection Agency for state program authorization under the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended. If the Texas Air Control Board's proposed permit provisions conflict with provisions proposed by the lead agency technical staff, the staffs of the two agencies shall attempt to resolve such conflict prior to the end of the technical review of the application. If no contested case hearing on the permit application is held by the lead agency, the recommendations or proposed permit provisions submitted by the Texas Air Control Board shall be incorporated into any permit issued by the lead agency. If a contested case hearing is held, all evidence and testimony of the state regarding air quality aspects of the application shall be developed and presented by the Texas Air Control Board. All parties, including the lead agency, shall have the right to cross-examine any testifying witnesses of the Texas Air Control Board. At the conclusion of the presentation of testimony, the hearings examiner shall afford the Texas Air Control Board at least thirty (30) days in which to submit a set of proposed findings of fact and conclusions of law and, if applicable, proposed permit language, respecting the air quality aspects of the application which relate to the criteria established under (A)(i), which shall be accepted by the hearings examiner and the final decision-making body of the lead agency unless such body finds that the recommendations of the Texas Air Control Board are not supported by a preponderance of the evidence. The Texas Air Control Board may seek judicial review of the air quality aspects of any final decision of the lead agency. Both the lead agency and the Texas Air Control Board shall have authority to enforce the terms of any permit issued by the lead agency which relate to air quality. Permit applications for hazardous waste or solid waste management facilities for which contested evidentiary hearings have commenced at the Texas Air Control Board prior to the effective date of this provision, or appeals from decisions of the Texas Air Control Board on such applications, shall not be affected by this subpart. An applicant may not withdraw a permit application to circumvent the intent of the preceding sentence. The Texas Air Control Board may delegate to its Executive Director any or all of the duties, responsibilities, or authority conferred by this subpart (A).

(iii) After the lead agency has completed its technical review of the permit application, any agency other than the Texas Air Control Board which might otherwise have jurisdiction for permitting the facility and which has requested an opportunity to review the proposed lead agency on the permit application shall have a period of twenty (20) calendar days from the end of the lead agency's technical review period to review the proposed action and determine whether its concerns have been adequately addressed. In the event such other agency determines its concerns have not been adequately addressed, its sole remedy with respect to permitting shall be to present its concerns in the permit proceedings of the lead agency; and such other agency shall have the right to request a hearing, to intervene as a matter of law, and to seek judicial review. In addition, such other agency shall have the right to enforce the aspects of any lead agency permit which relate to its jurisdiction.

(iv) The provisions of this subpart (A) shall not apply to facilities which burn hazardous waste unless they are required to obtain a permit for such burning from the department or the department of water resources under rules adopted by such agency pursuant to a state hazardous waste regulatory program.

(v) Nothing herein shall be construed to abridge, modify, or restrict the authority of the department or the department of water resources to promulgate rules under Section 4(c) of this Act, to issue permits and to enforce the terms and conditions of such permits, relating to all aspects of hazardous waste management, to the extent necessary for the department and the department of water resources 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, 42 U.S.C. 6901 et seq., as amended.

(B) The state agency by rule shall establish procedures for public notice and any public hearing authorized under this paragraph. To improve the timeliness of notice to the public pertaining to any public hearing authorized under this paragraph, public notice of receipt of the permit application shall be provided at the time a permit application is ruled administratively complete by the department or the department of water resources. A hearing on a permit involving a solid waste facility for hazardous industrial solid waste must include one session held in the county in which the solid waste facility is located. Hearings under this paragraph shall be

conducted in accordance with the hearing rules adopted by the state agency and the applicable provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

(6) If a permit is issued, amended, renewed, or extended by a state agency in accordance with this Subsection (e), the owner or operator of the solid waste facility does not need to obtain a license for the same facility from a county, or from a political subdivision exercising the authority granted in Section 6 of this Act. *Except as specifically provided in this Act, nothing in this section shall limit the powers and duties of any local government or other political subdivision of the state as vested under this or any other law; provided, however, that an applicant shall not be required to obtain a permit for the siting, construction or operation of a hazardous waste management facility from any local government or other political subdivision of the state, and no local government or other political subdivision of the state shall be empowered to adopt any rule, regulation, or ordinance which conflicts with or is inconsistent with the requirements for hazardous waste management facilities as specified in the rules of a state agency or any permit heretofore or hereafter issued by the state agency. In any action to enforce a rule, regulation, or ordinance of a local government or political subdivision, the burden shall be on the owner or operator of the facility or on the applicant to demonstrate conflict or inconsistency with state requirements. The validity or applicability of any such rule, regulation, or ordinance of a local government or a political subdivision may be determined in an action for declaratory judgment pursuant to the Uniform Declaratory Judgments Act (Article 2524-1, Vernon's Texas Civil Statutes), if it is alleged that the rule, regulation, 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 regarding any application for or the issuance of a permit for the siting, construction or operation of a hazardous waste management facility. The local government or political subdivision whose rule, regulation, or ordinance is being questioned must be made a party to the action and the department or the department of water resources shall be given written notice by certified mail of the pendency of any such action and either the department or the department of water resources may become a party thereto. A declaratory judgment may be rendered whether the plaintiff has requested the department, the department of water resources, the local government or political subdivision or any other court to pass on the validity or applicability of the rule, regulation, or ordinance in question. Nothing in this paragraph shall affect the power of local governments or political subdivisions to adopt or enforce codes for buildings.*

(10) Each state agency may issue an emergency order, either mandatory or prohibitory in nature, regarding any activity of solid waste management within its jurisdiction, whether such activity is covered by a permit or not, if the state agency determines that *an emergency exists requiring immediate action to protect the public health and safety or the environment [the activity is creating or will cause extensive or severe property damage or economic loss to others or is posing an immediate and serious threat to human life or health and that other procedures available to the state agency to remedy or prevent the occurrence of the situation will result in unreasonable delay]*. The order may be issued without notice and hearing, or with such notice and hearing as the state agency deems practicable under the circumstances.

(i) If an emergency order is issued under this authority without a hearing, the issuing agency shall fix a time and place for a hearing to be held in accordance with the departmental rules by the state agency, so as to affirm, modify, or set aside the emergency order.

(ii) The requirements of Paragraph (4) of this subsection relating to public notice do not apply to such a hearing, but such general notice of the hearing shall be given in accordance with the departmental rules of the state agency.

SECTION 5. Subsection (e), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Paragraphs (11) and (12) to read as follows:

(11) *Each state agency shall establish a procedure by rule for the state agency to prepare compliance summaries relating to solid waste management activities of the applicant within the jurisdiction of such state agency. The compliance summaries shall be made available to the applicant and any interested person after the lead agency has completed its technical review of the permit application and prior to the issuance of the public notice relating to an opportunity for a hearing on the permit application. Evidence of compliance or noncompliance by an applicant for a solid waste facility with agency rules, permits or other orders relating to solid waste management may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. All evidence admitted, including compliance history, shall be considered by the agency in determining whether to issue, amend, extend or renew a permit.*

(12) *The state agencies shall encourage applicants for solid waste facilities under the jurisdiction of the department or for hazardous waste management facilities to enter into agreements with affected persons through a local review committee process. During this process,*

persons are encouraged to identify issues of concern and work with the applicant to resolve such issues.

(A) If an applicant decides to participate in a local review committee process, such applicant shall file with the appropriate state agency a notice of intent to file an application, setting forth the proposed location and type of hazardous waste management facility. If the proposed facility is to be located within the corporate limits or the extraterritorial jurisdiction of a city, then a copy of the notice shall be delivered to the mayor of such city and the county judge. If the proposed facility is to be located in an unincorporated area of a county, then a copy of the notice shall be delivered to the county judge. The filing of the notice with the appropriate state agency shall initiate the pre-application review process.

(B) Within fifteen (15) days after the filing of the notice of intent pursuant to Subparagraph (A) of this paragraph, the local review committee shall be appointed. The state agencies shall adopt rules relating to the composition and appointment of local review committees.

(C) The local review committee shall meet within twenty-one (21) days after the filing of the notice pursuant to Subparagraph (A) of this paragraph. The pre-application review process shall continue for a period of ninety (90) days unless the process is shortened or lengthened by mutual agreement between the applicant and the local review committee.

(D) Any person, other than the applicant, who has participated in the local review committee process pursuant to this paragraph with respect to an application for a hazardous waste management facility, may be awarded its reasonable costs or any part thereof for technical studies and reports and expert witnesses associated with the presentation of evidence at the public hearing relating to issues raised by such person in the local review committee process but which are still unresolved at the time of the commencement of the hearing on the permit application if the department or the department of water resources finds that such an award is appropriate; provided, however, that the total award granted to all such persons by the state agency with respect to such application may not exceed \$25,000. In determining the appropriateness of such an award, the state agency shall consider the following:

(i) whether the evidence or analysis provided through such studies, reports, and witnesses is significant to the evaluation of the application;

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

(iii) whether the local review committee was established in accordance with the rules of the department or department of water resources.

(E) Except as provided in Subparagraph (I) of this paragraph, when an applicant has not entered into a local review committee process, the state agency, in determining the appropriateness of an award of costs pursuant to Subparagraph (D) of this paragraph, shall waive any requirement that the person affected has participated in a local review committee process.

(F) Costs awarded by the department or the department of water resources pursuant to Subparagraph (D) of this paragraph shall be taxed against the applicant. Rules shall be promulgated for the award of such costs. Judicial review of any award by the department or the department of water resources shall be pursuant to the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(G) A local review committee shall:

(i) interact with the applicant in a structured manner during the pre-application 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 non-technical issues of concern; and

(ii) produce a fact-finding report documenting resolved and unresolved issues and unanswered questions. The applicant shall submit such report to the state agency with its permit application.

(H) For the purposes of this paragraph, "participation in a local review process" is defined as a good faith effort to identify issues of concern, describe them to the applicant through the local review committee process, and attempt to resolve such issues prior to the commencement of the hearing on the permit application. A person is not required to be a member of a local review committee in order to meet the test of "participation in a local review process."

(I) If an applicant, after reasonable efforts to determine whether any local opposition exists to its proposed facility including, but not limited to, 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 good faith efforts of the applicant, then such applicant shall not be subject to an award of costs pursuant to Subparagraph (D) of this paragraph.

(J) Paragraph (12) of Section 4(e) shall not apply to a solid waste or hazardous waste management facility for which an application has been filed, or which has otherwise been authorized to operate, as of the effective date of such paragraph.

SECTION 6. Subsection (f)(2), Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

(2) No person shall process, store, or dispose of hazardous [~~industrial solid~~] wastes under this subsection without having first obtained a hazardous waste permit issued by the commission; provided, however, that any person who has on or before November 19, 1980, commenced on-site processing, storing or disposing of hazardous waste under this subsection and who has filed a hazardous waste permit application in accordance with the rules of the board may continue to process, store, or dispose of hazardous waste until such time as the commission approves or denies the application. Upon 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 Section 4(e)*. The board by rule shall establish procedures for public notice and any public hearing authorized by this subsection. The commission may include requirements in the permit for any remedial actions by the applicant that are determined by the commission to be necessary to protect the public health and safety and the environment.

SECTION 7. Section 4, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsection (k) to read as follows:

(k) *The state agencies shall provide by rule for interested persons to engage in activities which involve the collection and disposal of household materials which could be classified as hazardous wastes. Such rules shall specify any necessary requirements relating to the training of persons involved in the collection and disposal of such household materials. No person shall be liable for damages as a result of actions taken or omitted in the course of advertising, promoting or distributing educational materials relating to the collection or disposal of such household materials in accordance with the rules of the state agency. This shall not preclude liability for damages as a result of gross negligence or intentional misconduct on the part of such a person.*

SECTION 8. Section 7, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by redesignating existing Subsection (c) as Subsection (d) and adding Subsections (e), (f), and (g) to read as follows:

(c) *Regulated hazardous waste management and disposal facilities shall be inspected periodically by the department or department of water resources as required by the U.S. Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended. In supplementing these inspections, the department and the department of water resources shall give priority to inspecting and reinspect those facilities, including generators, deemed most likely to be noncompliant or most likely to pose an environmental or public health threat, regardless of whether they are characterized as major or non-major facilities. The state agencies may also randomly perform less comprehensive checks of facilities to supplement the more comprehensive inspections required by the U.S. Environmental Protection Agency.*

(d) [~~(e)~~] Records copied pursuant to Subsection (b) of this section shall be public records, except that, if a showing satisfactory to the commissioner of the department or to the executive director is made by the owner of such records that the records would divulge trade secrets if made public, then the department or the department of water resources shall consider such copied records as confidential. Nothing in this subsection shall require the department of water resources or the department to consider the composition or characteristics of solid waste being processed, stored, disposed, or otherwise handled to be held confidential.

(e) *The department and department of water resources shall publish annually beginning in January, 1986, a report to be known as the annual inspection report, which shall summarize the agency's inspection strategy and the results of all inspections conducted during the previous fiscal year, and list hazardous waste treatment, storage and disposal facilities not inspected. The annual inspection report shall identify each hazardous waste facility inspected and shall include the following information: a listing of those facilities found to be compliant with all hazardous waste regulations, those facilities with only minor or clerical violations, and those found to have substantive, non-clerical violations. In addition, for substantive, non-clerical violations, the report shall identify the violations and either summarize corrective actions or describe the status of unresolved violations.*

(f) *The annual inspection report shall be submitted to the governor, lieutenant governor, and speaker of the house. The state agencies shall provide notice of the availability of the report by publication of notice in the Texas Register.*

(g) *The report of each state agency shall identify those facilities having demonstrated an exemplary record of compliance over the preceding three-year period and those facilities which have been adjudicated during the preceding three-year period to have committed substantive, non-clerical violations which have resulted in an actual release of hazardous waste that presented an imminent and substantial endangerment to the public health and safety or the environment.*

SECTION 9. Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsections (g) and (h) to read as follows:

(g) *Imminent and Substantial Endangerment to the Public Health and Safety or the Environment.*

(1) *Notwithstanding any other provision of this Act, wherever it appears 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 from a solid waste facility where solid waste is stored, processed or disposed of or at any site where any one or more of such activities with respect to solid waste have been conducted in the past, regardless of whether such activity was lawful at the time, then the department or the department of water resources, as appropriate, may issue an administrative order to the persons identified in Paragraph (2) of this subsection restraining such person or persons from allowing or continuing the release or threatened release and requiring those persons 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. An administrative order issued pursuant to this subsection shall be mailed to the persons identified in the order by certified mail, return receipt requested, or may be delivered by hand delivery to the persons identified in the order; or, upon failure of service of the order by certified mail or hand delivery, such order may be served on such persons by publication one time in the Texas Register and one time in a newspaper of general circulation in each county in which any of such persons had his last known address. An administrative order under this subsection shall be an executive act and shall not require prior notice or an adjudicative hearing before the state agency. Alternatively, the department or department of water resources, as appropriate, may cause a civil suit to be instituted in a district court in the county in which the actual release is occurring or threatened release may occur for injunctive relief to restrain the person or persons, as identified in Paragraph (2) of this subsection, from allowing or continuing the release or threatened release and requiring those persons 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. The provisions of this subsection are cumulative of all other remedies and nothing in this subsection exempts any person from complying with or being subject to any other provision of law.*

(2) *The persons subject to this subsection, subject only to the defenses listed in Paragraph (3) of this subsection, are as follows:*

(A) *any owner or operator of a solid waste facility;*

(B) *any person who at the time of processing, storage or disposal of any solid waste owned or operated the solid waste facility;*

(C) *any person who by contract, agreement, or otherwise, arranged for the processing, storage or disposal, or arranged with a transporter for transport for processing, storage or disposal of solid waste owned or possessed by such person, by any other party or entity, at the solid waste facility owned or operated by another party or entity and containing such solid waste, or at the site to which such solid waste was transported and which site contains such solid wastes; and*

(D) *any person who accepts or accepted any solid waste for transport to a solid waste facility or site selected by such person, from which there is a release or threatened release of a solid waste which presents an imminent and substantial endangerment to the public health and safety or the environment.*

(3) *The persons identified in Paragraph (2) of this subsection shall be liable under Paragraph (1) of this subsection unless such person can establish by a preponderance of the evidence that the release or threatened release was caused solely by:*

(A) *an act of God;*

(B) *an act of war;*

(C) *an act or omission of a third party other than an employee or agent of the defendant or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) he exercised due care with respect to the solid wastes concerned, taking into consideration the characteristics of such solid wastes, in light of all relevant facts and circumstances, and (ii) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or*

(D) *any combination of the foregoing paragraphs.*

(4) *Where 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 shall be liable only for the elimination of that release or threatened release attributable to him. Where the release or threatened release is not proved to be divisible, all persons liable under Paragraph (1) shall be jointly and severally liable for eliminating the release or threatened release. For purposes of 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.

(5) When fewer than all of the parties identified in this subsection 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 pursuant to an administrative order issued under this section or an action filed by the state, the state may seek a judgment against the non-settling parties for the total amount of the cost of the remedial action minus that amount agreed to be paid or expended by any settling parties. In any action for contribution brought by a non-settling party against a settling party, the non-settling party shall have the burden to prove that the amount of cleanup costs agreed to be paid by a settling party pursuant to an agreement with the state was unreasonable considering the factors delineated in Section 11(a) and the need to undertake timely cleanup action with respect to the release or threatened release.

SECTION 10. Section 8, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Subsection (h) to read as follows:

(h) A state agency contracting for services or products shall take into consideration whether the person proposing to contract with the state has been adjudicated during the preceding three-year period to have committed substantive, non-clerical violations which have resulted in an actual release of hazardous waste that presented an imminent and substantial endangerment to the public health and safety or the environment.

SECTION 11. Section 9, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. **APPEALS; JOINDER.** (a) A person affected by any ruling, order, decision, or other act of the department or the department of water resources may appeal by filing a petition in a district court of Travis County. A person affected by any ruling, order, decision, or other act of a county, or of a political subdivision exercising the authority granted in Section 6 of this Act, may appeal by filing a petition in a district court having jurisdiction in the county or political subdivision. Except as provided in Section 9(b), the [The] petition must be filed within 30 days after the date of the action, ruling, order, or decision of the governmental entity complained of. Service of citation must be accomplished within 30 days after the date the petition is filed. Any person filing a petition appealing an administrative order issued pursuant to Section 8(g) must join as parties the state agency issuing the administrative order and may join as parties any other person named 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 governed by the administrative order. The plaintiff shall pursue his action with reasonable diligence. If the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the governmental entity whose action is appealed, unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay. Except as provided in Section 9(c), in [It] an appeal from an action of the department, the department of water resources, a county, or a political subdivision exercising the authority granted in Section 6 of this Act, the issue is whether the action is invalid, arbitrary or unreasonable.

(b) The filing of a petition appealing an order issued pursuant to Section 8(g) within 45 days after the date of receipt, hand delivery, or publication service of the order shall stay the administrative order as to the appealing party pending action by the district court. However, the filing of the petition shall not affect any other enforcement powers of the department or department of water resources. An order issued pursuant to Section 8(g) shall become final as to non-appealing parties 45 days after the date of receipt, hand delivery, or publication service of the order by, to, or upon such non-appealing parties.

(c) The district court shall uphold an administrative order issued pursuant to Section 8(g) if the department or department of water resources, by a preponderance of the evidence, proves:

(1) that there is an actual or threatened release of solid waste that is an imminent and substantial endangerment to the public health and safety or the environment; and

(2) that the person made subject to the administrative order is liable for the elimination of the release or threatened release, in whole or in part.

(d) Any person made a party to an appeal of an administrative order issued pursuant to Section 8(g) may join as parties any other persons who are or may be liable for the elimination of the release or threatened release, in whole or in part.

(e) Failure by any party to file an action for contribution and/or indemnity in an appeal proceeding relating to an administrative order issued pursuant to Section 8(g) shall not constitute a waiver of any rights under this Act or any other provision of law.

(f) *In appeals of an administrative order issued pursuant to Section 8(g), the district court upon establishing the validity of the order, shall issue an injunction requiring all persons named or joined against whom liability has been established by the department or department of water resources or any other party to comply with the terms of the administrative order.*

(g) *As between parties determined to be liable pursuant to Section 8(g), the court may, as equity requires, apportion cleanup costs in accordance with the provisions of Section 11(a) and grant any other appropriate relief.*

SECTION 12. The Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) is amended by adding Sections 10, 11, 12, and 13 to read as follows:

Sec. 10. JOINDER OF PARTIES IN ACTIONS FILED BY THE STATE. (a) *In any action brought by the attorney general under Section 8(g) of this Act seeking an injunction to eliminate a release or threatened release, the attorney general shall, and any party may, join as parties all persons reasonably believed to be liable for the release or threatened release in accordance with Section 8(g)(1) of this Act.*

(b) *Failure of the attorney general or any party to name or join a person as a party shall not be a defense to any action against that person for contribution and/or indemnity.*

(c) *In any action brought by the attorney general under Section 8(g) the district court shall grant relief on the same basis as provided in Sections 9(c), (f) and (g) of this Act.*

Sec. 11. COST RECOVERY. (a) *Apportionment of costs for the elimination of a release or threatened release of solid waste shall be in accordance with the following factors (provided, however, that such apportionment shall only adjust the rights of parties identified in Section 8(g)(2) among themselves, and shall not affect their liability to the State): (1) the relationship between the parties' actions in storing, processing and disposal 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 these characteristics affect the cost of elimination of 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 regarding the processing, storage or disposal of solid waste, as well as the degree of care which the party exercised.*

(b) *Persons subject to a court injunction or an administrative order issued pursuant to this Act, or those third parties identified in Section 13(g) who take action to eliminate a release or threatened release, in addition to having the right to file an action for contribution and/or indemnity in an appeal proceeding or in an action brought by the attorney general, may bring suit in the district court of the county where the release or threatened release is or was located or in such other county where venue would be proper under Article 1995, Revised Statutes, for cost recovery against any other person who is or may be liable if the persons seeking cost recovery made reasonable attempts to notify the persons against whom recovery is sought (i) of the existence of the release or threatened release and (ii) that the person seeking cost recovery intended to take steps to eliminate the release or threatened release. Any fact determination or ruling by a district court in an appeal of an administrative order under Section 9(b) shall not constitute res judicata or collateral estoppel as to any issue brought in a proceeding under this subsection with respect to any party not joined in such appeal.*

(c)(1) *For suits seeking cost recovery under Section 11(b), the court shall determine the amount of cost recovery based on the criteria listed in Section 11(a).*

(2) *Recoverable costs under this section may include not only the costs incurred in eliminating the release or threatened release, but also such other costs as the court, in its discretion, may deem reasonable to award.*

Sec. 12. CREATION OF RIGHTS. *The provisions of Section 8(g) and the provisions of Section 11(b) and the enforcement by the department or department of water resources of such provisions shall not create any rights or causes of action on behalf of any person other than those specifically and expressly stated herein or change any common law or rule of decision except as limited in this Act to actions by the department or department of water resources for the elimination of 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.*

Sec. 13. IDENTIFICATION AND ASSESSMENT OF HAZARDOUS WASTE FACILITIES. (a) *The department of water resources, in cooperation with the department, shall conduct and complete a survey of the state by July 1, 1986, the purpose of which is to identify to the extent feasible every hazardous waste facility which may constitute an imminent and substantial endangerment to public health and safety or the environment. The work already performed to identify candidate sites for inclusion in the federal National Priorities List shall serve as the basis for such a survey. As soon as possible after completion of a draft survey, the department of water resources shall conduct a public hearing to solicit comments on the draft survey and information*

on additional candidate sites. Not later than January 1, 1987, the department of water resources shall publish a registry identifying each facility listed by the survey, the relative priority of the need for action at each facility to remedy environmental and health problems resulting from the presence of hazardous wastes at such facilities, and setting forth recommendations for actions which may be pursued to achieve effective, efficient, and timely cleanup or other resolution of the problems identified for each facility. Such recommendations shall not constitute the remedial investigation/feasibility study for the relevant facility, but shall form the preliminary basis for such a study. The cleanup of such 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 waste permit and disposal fee, if the fee is approved by the legislature. A draft copy of the registry shall be circulated to the department for comment prior to publication. Three copies of the registry, as published, shall be delivered to the Office of the Governor.

(b)(1) The department of water resources may conduct investigations of the facilities listed in the registry and may investigate areas or sites which it has reason to believe should be included in the registry, in accordance with Section 7 of this Act.

(2) The department of water resources shall, as part of the registry, assess by January 1, 1987, and each year thereafter, and, based upon new information received from sources including but not limited to public hearings, reassess, in cooperation with the department, the relative priority of the need for action at each facility listed in the registry to remedy environmental and health problems resulting from the presence of hazardous wastes at such facilities.

(c) The department of water resources shall update the registry periodically to add facilities which may constitute an imminent and substantial endangerment to public health and safety or the environment and to delete facilities which have been cleaned up pursuant to Subsection (g) of this section or delisted pursuant to Subsection (e) of this section.

(d) The department of water resources shall file an affidavit or notice in the real property records of the county in which a facility is located identifying those facilities included in the registry, as well as those facilities deleted from the registry.

(e)(1) Within thirty (30) days after the survey pursuant to Subsection (a) of this section is completed, the department of water resources shall notify in writing the parties identified as responsible for all or any part of each facility or area included in the registry prepared pursuant to such Subsection (a) of the inclusion of the facility or area on such survey. Thereafter, two months before any unlisted facility or area is added to the registry, the department of water resources shall notify in writing the parties identified as responsible for all or any part of such facility or area of the contemplated inclusion of such facility or area on such registry. Written notifications under this subsection shall be by certified mail, return receipt requested, by mailing notice to each such named responsible party at the party's last known address.

(2) Notice pursuant to Paragraph (1) of this subsection shall include but not be limited to a description of the duties and restrictions imposed by Subsection (f) of this section.

(3) Non-receipt of any notice mailed to a named responsible party pursuant to this subsection shall in no way affect the responsibilities, duties or liabilities imposed on any such party.

(4) Any owner or operator or other named responsible party of a facility listed or to be listed in the registry of the department of water resources pursuant to this section may request the department of water resources to delete such facility from the registry, modify the facility's priority within the registry or modify any information regarding such facility by submitting a written statement setting forth the grounds of the request in such form as the department of water resources may require.

(5) Within one hundred and eighty (180) days after the effective date of this provision, the department of water resources shall propose rules establishing procedures, including public hearings, for review of delisting requests submitted pursuant to this subsection.

(f)(1) Subsequent to the listing of a facility on the registry prepared and maintained by the department of water resources, no person may substantially change the manner in which the facility is used without notifying the department of water resources and receiving written approval of the department of water resources for such change. A substantial change of use shall be defined in rules adopted by the board and shall include, but not be limited to, actions such as the erection of a building or other structure at such facility, the use of such facility for agricultural production, the paving of such facility for use as a roadway or parking lot, and the creation of a park or other public or private recreational facility on such facility. Such notice shall be in writing, addressed to the executive director and shall include a brief description of the proposed change of use. Such notice shall be submitted in writing at least sixty days before any physical alteration of the land or construction will occur or, in the event any alteration or construction is not required to initiate such change of use, at least sixty days before any change of use.

(2) The executive director shall not approve such change of use if such new use will interfere significantly with a proposed, ongoing or completed hazardous waste facility remedial action

program at such facility or expose the environment or public health to a significantly increased threat of harm.

(g)(1) *The cleanup of a facility identified by the department of water resources in the registry which constitutes an imminent and substantial endangerment to the public health and safety or the environment shall proceed on an expedited basis pursuant to the following guidelines:*

(A) *wherever possible, parties identified as liable parties pursuant to Section 8(g)(1) should be notified by the department of water resources of an opportunity to participate in a voluntary cleanup of the facility;*

(B) *if all persons liable under Section 8(g)(1) do not volunteer to develop and implement a remedial action program for the facility, then private parties who are willing to participate in cleanup activities voluntarily should be allowed to do so and they may seek cost recovery pursuant to Section 11(b) from those liable parties not participating in the voluntary cleanup;*

(C) *if no parties identified as liable under Section 8(g)(1) volunteer to develop and implement a remedial action program for the facility, then independent third parties who are willing to participate voluntarily in the cleanup of the facility should be permitted to contract with the department of water resources to do so and they may seek cost recovery pursuant to Section 11(b) from those liable parties not participating in the voluntary cleanup;*

(D) *where voluntary assistance from the private sector is not forthcoming, federal funds should be used for facility cleanup if such funds are timely available; and*

(E) *state funds should be used only when a liable party or independent third party cleanup or federal funds are not timely available.*

(2) *Whenever the department of water resources finds that there exists an actual or threatened release of hazardous wastes at a hazardous waste facility listed on the registry that presents an imminent and substantial endangerment to the public health and safety or the environment, it may order the owner and/or operator of such facility and/or any other person responsible for the release or threatened release at such facility (A) to develop a remedial action program, subject to the approval of the department of water resources, at such facility, and (B) to implement such program within reasonable time limits specified in the order. The provisions in Sections 8(g), 9, 10 and 11 of this Act relating to administrative orders shall apply to orders issued pursuant to this paragraph.*

(3) *Whenever the department of water resources, after investigation, finds that there exists a release or threatened release of hazardous wastes at a facility identified in the registry that:*

(A) *is causing irreversible or irreparable harm to the public health and safety or the environment; and*

(B) *the immediacy of the situation makes it prejudicial to the public interest to delay action until an administrative order can be issued to liable parties pursuant to Paragraph (2) of this subsection or until a judgment can be entered in an appeal of an administrative order; the department of water resources may, with the funds available to the department of water resources from the hazardous waste permit and disposal fees, if approved by the Legislature, undertake immediate removal action at the facility to alleviate the harm. After the immediate danger of irreversible or irreparable harm has been alleviated, the department of water resources shall proceed pursuant to Paragraph (2) of this subsection. Findings required pursuant to this paragraph shall be in writing and may be made by the department of water resources on an ex parte basis subject to judicial review pursuant to the substantial evidence rule as provided by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).*

(4) *Whenever 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, and no third party has agreed to develop and implement a remedial action program for the facility pursuant to Paragraph (1)(C) of this subsection, the department of water resources may develop and implement a remedial action program for such facility. The reasonable expenses of developing and implementing such remedial action program by the department of water resources shall be paid by the persons to whom the order was issued and the state may seek to recover such reasonable expenses in any court of appropriate jurisdiction. Any action instituted by the department of water resources pursuant to this paragraph shall be subject to the provisions of Sections 8(g), 9, 10, and 11 of this Act.*

(5) *In the event that the department of water resources has found that there exists a release or threatened release of hazardous wastes at a facility on the registry which presents an imminent and substantial endangerment to the public health and safety or the environment but, after a reasonable attempt to determine who may be liable for such release or threatened release in accordance with Section 8(g), is either unable to determine who may be liable, or is unable to locate a person who may be liable, and no independent third party agrees to develop and implement a remedial action program for the facility in accordance with Paragraph (1)(C) of this*

subsection, the department of water resources may develop and implement a remedial action program for such facility. Federal funds shall be used for such cleanup to the maximum extent timely available in accordance with Paragraph (1)(D) of this subsection. The department of water resources shall make every effort to secure appropriate relief from any person subsequently identified or located who is liable for the release or threatened release of hazardous waste at such facility, including, but not limited to, development and implementation of a remedial action program, payment of the cost of such a program and recovery of any reasonable expenses incurred by the state.

(6) The goal of any remedial action program shall be 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 hazardous wastes at a facility. The appropriate extent of remedy at any particular facility shall be determined by the department of water resources' selection of the remedial alternative which the state agency determines is cost effective (i.e., the lowest cost alternative that is technologically feasible and reliable and which effectively mitigates and minimizes damage to and provides adequate protection of the public health and safety or the environment).

(7) All cleanup costs for which a person is liable to the state shall constitute a lien in favor of the state on the real property and the rights to such real property that are subject to or affected by a cleanup action.

(A) The lien imposed by this paragraph shall arise and attach to the real property subject to or affected by a cleanup action at the time an affidavit is recorded and indexed in accordance with this paragraph in the county in which such real property is located. For the purpose of determining rights of all affected parties, the lien shall not relate back to a time prior to the date on which the affidavit is recorded, which date shall be the lien inception date. The lien shall continue until the liability for the costs is satisfied or becomes unenforceable through operation of law.

(B) The affidavit shall be executed by an authorized representative of the department of water resources and must show:

- (i) the names and addresses of the persons liable for such costs;
- (ii) a description of the real property that is subject to or affected by the cleanup action for the costs or claims; and
- (iii) the amount of the costs and the balance due.

(C) 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 such costs.

(D) The department of water resources shall record a relinquishment or satisfaction of the lien when the lien is paid or satisfied.

(E) 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.

(F) The lien imposed by this paragraph shall not be valid or enforceable if:

- (i) real property or an interest therein, or
- (ii) a mortgage, lien, or other encumbrance upon or against real property, is acquired before the affidavit is recorded unless the person acquiring the real property or an interest therein or acquiring the mortgage, lien or other encumbrance thereon 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.

(G) If a lien is fixed or attempted to be fixed as provided in this paragraph, the owner of the real property affected by the lien may file a bond to indemnify against the lien. The bond shall 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.

(H) The bond must:

- (i) describe the real property upon which the lien is claimed;
- (ii) refer to the lien claimed in a manner sufficient to identify it;
- (iii) be in an amount double the amount of the lien referred to;
- (iv) be payable to the department of water resources;
- (v) 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
- (vi) be conditioned substantially that the principal and sureties will pay to the department of water resources 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 department of water resources may sue on the bond after the 30th day following 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. If the department of water resources recovers in a suit on the lien or on the bond, it is entitled to also recover a reasonable attorney's fee.

(8) Money for actions taken or to be taken by the department of water resources in connection with the elimination of an imminent and substantial endangerment to the public health and safety or the environment pursuant to this section shall be payable directly to the agency from the hazardous waste permit and disposal fees, if approved by the legislature. This includes any costs of inspection or sampling and laboratory analysis of wastes, soils, air, surface water and groundwater done on behalf of a state agency.

(9) The department of water resources shall seek private party cleanup of facilities prior to expenditure of federal or state funds for such cleanups. Private parties shall coordinate with ongoing federal and/or state hazardous waste programs and obtain necessary approvals for any such cleanup actions. No action taken by any such person to contain or remove a release or threatened release in accordance with an approved remedial action plan shall be construed as an admission of liability for said release or threatened release. No person who renders assistance in containing or removing a release or threatened release in accordance with an approved remedial action plan shall be liable for any additional cleanup costs at the facility resulting solely from acts or omissions of such person in rendering such assistance in compliance with the approvals required by this subsection, unless such cleanup costs were caused by such person's gross negligence or willful misconduct. Except as specifically provided herein, the provisions of this subsection shall not be construed to expand or diminish the common law tort liability, if any, of private parties participating in a cleanup action for civil damages to third parties.

SECTION 13. Section 10, Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is redesignated as Section 14 and amended to read as follows:

Sec. 14 [10]. **RELATIONS TO OTHER LAWS [CUMULATIVE ACT].** Except as specifically provided in this Act, nothing [This Act is cumulative of and supplemental to any other laws and parts of laws relating to the same subject and does not repeal those other laws or parts of laws. Nothing] in this Act diminishes or limits, or is intended to diminish or limit, the authority of the department, the department of water resources, the Texas Air Control Board, or local governments in performing any of the powers, functions, and duties vested in those governmental entities by other laws.

SECTION 14. Section 27.002, Water Code, is amended by adding Subsection (15) to read as follows:

(15) "Hazardous waste" has the meaning assigned to that term by Section 2(15), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes).

SECTION 15. Section 27.018, Water Code, is amended by adding Subsection (c) to read as follows:

(c) An application for an injection well to dispose of hazardous waste shall be subject to the pre-application local review process established by Section 4(e)(12), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes).

SECTION 16. Section 27.051, Water Code, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) The Texas Water Commission, in determining if the use or installation of an injection well for the disposal of hazardous waste is in the public interest under Subsection (a)(1) of this section, shall consider, but shall not be limited to the consideration of:

(1) compliance history of the applicant in accordance with the provisions of Subsection (e) of this section;

(2) whether there is a practical, economic, and feasible alternative to an injection well reasonably available to manage the types and classes of hazardous waste; and

(3) whether the applicant will maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the department in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the department of water resources for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this subdivision if the policy also covers the injection well itself.

(e) The department of water resources shall establish a procedure by rule for its preparation of compliance summaries relating to the history of compliance and noncompliance by the applicant with the rules adopted or orders or permits issued by the department of water resources under this chapter for any injection well for which a permit has been issued under this chapter. The compliance summaries shall be made available to the applicant and any interested person after the department of water resources has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for an injection well for the disposal of hazardous waste with the rules adopted or orders or permits issued by the department of water resources under this chapter may be offered by any party at a hearing on the applicant's application and admitted into evidence subject to applicable rules of evidence. All evidence admitted, including compliance history, shall be considered by the department of water resources in determining whether to issue, amend, extend or renew a permit.

(f) In the issuance of a permit for a hazardous waste injection well into a salt dome, the department of water resources shall consider the location of any geologic fault in the salt dome in the immediate proximity of the injection well bore, the presence of an underground water aquifer, and the presence of sulfur mines or oil and gas wells in the area.

SECTION 17. The amendments to the Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes) created by Section 3 of this Act and the amendments of the Water Code set out in Section 16 of this Act shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the Texas Department of Health or the Texas Department of Water Resources, or to a hazardous waste management facility which has otherwise been authorized to operate by the rules of the Texas Department of Health or the Texas Department of Water Resources as of the effective date of this Act, with the exception that Subsections (d)(1) and (e) of Section 16 shall apply to any application on which a hearing for the permit has not commenced prior to the effective date of this Act.

SECTION 18. Notwithstanding any other provision to the contrary in this Act, nothing contained in this Act shall change, alter, or enlarge upon the contractual liability of a person other than those persons listed in Section 8(g)(2), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), for the violation of, or a duty created by, any provision herein for acts or omissions which occurred prior to the effective date hereof.

SECTION 19. This Act takes effect September 1, 1985.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 15, 1985, by the following vote: Yeas 144, Nays 0, 1 present, not voting; House concurred in Senate amendments to H.B. No. 2358 on May 27, 1985, by a non-record vote; passed by the Senate, with amendments, on May 23, 1985, by a viva-voce vote.

Approved: June 12, 1985

Effective: September 1, 1985