

PERMIT REQUIREMENTS FOR DEVELOPMENT OF ENERGY AND
OTHER SELECTED NATURAL RESOURCES FOR THE
STATE OF TEXAS

PREPARED FOR
OZARKS REGIONAL COMMISSION
AND THE
U.S. GEOLOGICAL SURVEY

BY RADIAN CORPORATION

This technical assistance study was accomplished by professional consultants under contract with the Ozarks Regional Commission. The statements, findings, conclusions, recommendations, and other data in this report are solely those of the contractor, and do not necessarily reflect the views of the Ozarks Regional Commission or the U.S. Geological Survey.

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SECTION I. INTRODUCTION

This handbook has been compiled to assist applicants in complying with Texas environmental and land use regulatory programs. The handbook presents the requirements for permitting industrial projects and particularly those activities associated with energy developments. Only state programs are described, although the relationship between a state program and a parallel federal program is addressed, where appropriate. Also, only environmental protection regulatory programs are described in the handbook. Other programs, such as health and safety requirements, taxes, or zoning, which may affect a proposed activity were excluded.

The information presented is not intended to cover all aspects of the state regulatory process but is designed to provide basic procedural and information requirements and to identify programs and responsible authorities. Applicability of a program(s) to a particular activity will require confirmation by the appropriate agency(s). Also, because regulatory programs are frequently being revised, particularly in response to changes in authorizing legislation, applicants should contact each agency for the latest compliance requirements.

The information presented in this handbook was obtained through review of state laws and regulations and supplemented by personal interviews with agency officials. The information is divided into the following sections:

- State Environmental Policy and Administrative Procedures
- Resource Extraction
- Land Use Regulation
- Local Regulatory Policy
- Environmental Quality Management
- Social/Ecological Preservation

SECTION II. STATE ENVIRONMENTAL POLICY AND ADMINISTRATIVE PROCEDURES

CHAPTER I. STATE POLICY AND PROCEDURES

PART A. State Environmental Policy Statutes

There is no state statutory authority or procedures equivalent to those established at the federal level in the National Environmental Policy Act (NEPA, P.L. 91-190). Similarly, there are no authorities establishing a state clearinghouse or one-stop permitting process for environmental and land use regulatory functions. The Governor's Office of Budget and Planning does, however, receive NEPA-mandated Environmental Impact Statements and other environmental assessment documents and distributes these documents for review and comment to state agencies as appropriate.

PART B. The Texas Energy and Natural Resources Advisory Council

The Texas Energy and Natural Resources Advisory Council (TENRAC) was created in 1979 to coordinate State responses to Federal actions and promote beneficial action unique to the State. The Council is composed of 21 members, co-chaired by the Governor and Lieutenant Governor with members drawn from throughout Texas state government. The function of the Council is to fully utilize the expertise and resources of its membership to achieve the following statutorily-mandated goals:

- Adopt and continually reassess an energy policy for the State;
- Adopt and continually reassess a natural resources policy for the State;
- Recommend legislation to the United States Congress and the Texas Legislature implementing energy policy and natural resources policy of the State;

- Review existing and proposed actions and policies of the Federal agencies to determine the energy and natural resource impacts on this State and to recommend to the Legislature and the Governor alternative actions and policies consistent with State energy and natural resources policy;
- Adopt a plan and award contracts for the development of alternative energy technologies under the Energy Development Fund;
- Develop projects and programs to encourage proper protection and development of the State's natural resources, including the participation of all necessary entities; and
- Study problems and issues connected with State agency permitting processes.

The Council has created nine Advisory Committees, each composed of a combination of public officials and private citizens and chaired by a Council member. Advisory Committees have been created to provide advice in the specific policy areas of: Agriculturally Derived Fuels, Coal and Lignite, Energy Efficiency, Industrial and Electrical Fuel Use Policy, Nuclear Energy, Petroleum and Natural Gas, Solar Energy, Natural Resources, and Gasoline Rationing/Energy Emergency Planning.

PART C. The Administrative Procedure and Texas Register Act

The Administrative Procedure and Texas Register Act (Tex. Rev. Civ. Stat. Ann. Article 6252-13a) was adopted to provide minimum standards of uniform practice and procedure for state agencies, to provide for public participation in the rulemaking process, to provide adequate and proper public notice of proposed agency rules and agency actions through publication of a state register, and to restate the law of judicial review of agency action.

For most state agency regulatory programs and permitting requirements the Administrative Procedure and Texas Register Act prescribes the appeals process

to be followed when contesting an agency's actions; agencies may have more liberal notice (e.g., longer notice periods) and hearing requirements. The Act requires that in contesting a permitting or regulatory decision all parties be afforded an opportunity for hearing before the permitting agency after reasonable notice of not less than 10 days. A motion for rehearing is a prerequisite to judicial appeal through the courts and must be filed with the permitting agency with 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with 25 days after decision, and the agency must take action within 45 days after the decision. If the agency fails to take action in the 45-day period or does not grant itself an extension, the motion for rehearing is overruled by operation of law. A person who has exhausted all administrative remedies may seek judicial review by filing a petition in a District Court of Travis County within 30 days of the final appealable decision. Judicial review of contested cases is either by trial de novo, where the court does not consider the agency action or decision, or by non-de novo review, where the court reviews and considers the entire administrative record of the case. The manner of review is stipulated in each agency's statutory authorities.

SECTION III. RESOURCE EXTRACTION

CHAPTER 2. ENERGY RESOURCES

The Railroad Commission of Texas (RRC) has principal regulatory jurisdiction over activities relating to the extraction of energy resources. This jurisdiction extends to oil and gas production and transportation; gas utility operations in natural gas transportation; liquified petroleum gas handling, storage, and transportation; geothermal energy exploration and production; and coal and uranium mining and land reclamation. In addition, the Railroad Commission has responsibilities for the control of pollution generated incidental to the extraction of many energy resources. Parts A and B (below) describe the Railroad Commission's regulatory responsibilities relating to the surface mining of coal, lignite, and uranium. Parts C through J (below) discuss Railroad Commission responsibilities relating to the regulation of oil and gas production.

PART A. Surface Mining of Coal and Lignite

1. Authorizing Statute

Texas Surface Coal Mining and Reclamation Act, [Tex. Rev. Civ. Stat. Ann. Art. 5920-11 (1979)]

2. Title of Regulations

"Railroad Commission of Texas Rules" Title 16, Texas Administrative Code (T.A.C.) Part I, Chapter 11, Sections 11.221 et seq.

3. Summary of Permit Process

a. Applicability

Any coal or lignite surface mining operation except for:

- (1) coal/lignite produced by a landowner for own non-commercial use;
- (2) commercial operations not exceeding two acres land area disturbed;
- (3) coal/lignite extraction incidental to governmental financed highway or other construction, and coal extraction incidental to the extraction of other minerals if the coal/lignite does not exceed more than $16 \frac{2}{3}$ percent of the total tonnage removed; and
- (4) coal/lignite operations where total tonnage removed will not exceed 100,000 tons.

b. General Requirements

A permit is required from the Railroad Commission to conduct a coal or lignite surface mining operation or to engage in exploration activities.

c. Submittal Requirements

Application for a permit to conduct a coal or lignite surface mining operation must identify the land to be mined, the landowner, and others with an interest in the land. Other submittal requirements include information on environmental resources, geophysical/geologic information, and an operation and reclamation plan prepared in accordance with minimum requirements. Once the Railroad Commission approves a permit, the permittee must file a performance bond with the Commission prior to beginning operations.

d. Public Hearings

Public hearings on an application to conduct a coal or lignite surface mining operation are not required; however, the applicant, the Railroad Commission, or any interested party may request that a hearing be held.

e. Time Requirements

Applicants for a permit must publish a notice of application filing at least once weekly for four consecutive weeks in a newspaper of general circulation in each county where the proposed mining operation is to take place.

Interested parties are then given 45 days from the date of the last published notice to request a public hearing on the permit application. At the close of the 45 day public comment period, the Railroad Commission establishes a time and place for a hearing (if requested) and publishes notice of hearing at least once a week for three consecutive weeks before the hearing. If a public hearing is requested and held, the process takes approximately one year from receipt of application to permit issuance. Permits must be renewed every five years.

f. Fees

Five categories of fees are charged for coal and lignite surface mining permits:

- (1) \$500.00 if the proposed area to be mined is less than 500 acres;
- (2) \$1,000.00 if the proposed area is greater than or equal to 500 acres;

- (3) \$500.00 to revise a permit;
- (4) \$500.00 to renew a permit with the same boundaries;
and
- (5) \$1,000.00 to renew a permit with enlarged boundaries.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Railroad Commission of Texas
Surface Mining and Reclamation Division
P.O. Drawer 12967
Austin, Texas 78711
Telephone: (512) 475-0206

5. Relation to Other State and Federal Programs

On the basis of a delegation of authority under the federal Surface Mining Control and Reclamation Act of 1977 (SMCRA, P.L. 95-87), the Railroad Commission has exclusive jurisdiction over the regulation of surface coal/lignite mining and reclamation operations within the state. However, applications for permits are routinely directed to a number of state and federal agencies for review and comment. State agencies include the Department of Water Resources, the General Land Office, the Soil and Water Conservation Board, the Parks and Wildlife Department, the Department of Health, the Air Control Board, the Historical Commission, and the Bureau of Economic Geology. Federal agencies typically include the Office of Surface Mining,

the Soil Conservation Service, the U.S. Fish and Wildlife Service, and other agencies where appropriate.

PART B. Surface Mining of Uranium

1. Authorizing Statute

Texas Natural Resources Code, Chapter 131

2. Title of Regulation

"Railroad Commission of Texas Rules" 16 T.A.C. Section 11.11 et seq.

3. Summary of Permit Process

a. Applicability

Any uranium or uranium ore surface or underground mining operation. In-situ uranium mining operations are not included. Operations on state-owned lands are regulated by the General Land Office (generally in accordance with the rules of the RRC).

b. General Requirements

Same as Part A (above)

c. Submittal Requirements

Same as Part A (above).

d. Public Hearings

Same as Part A (above).

e. Time Requirements

Same as Part A (above). Permits must be renewed every ten years.

f. Fees

A filing fee of \$200.00 plus \$10.00 for each acre permitted must accompany the permit application.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Railroad Commission of Texas
Surface Mining and Reclamation Division
P.O. Drawer 12967
Austin, Texas 78711
Telephone: (512) 475-0206

5. Relation to Other State and Federal Agencies

Applications for permit to conduct a uranium surface mining operation are routinely directed to a number of state agencies (see Part A, above) for review and comment. In addition, a license must be obtained from the Texas Department of Health to mine and transport ores containing radioactive materials (see Chapter 12--Solid and Hazardous Waste Management).

PART C. Well Permits*

1. Authorizing Statute

Texas Natural Resources Code, Title 3

2. Title of Regulation

"Railroad Commission of Texas, Oil and Gas Division Rules and Regulations" 16 T.A.C. Section 3.5, Section 3.36 (if a hydrogen sulfide area), Sections 3.37 and 3.38 (spacing and density requirements), and Section 3.6 (if a request for multiple completion).

3. Summary of Permit Process

a. Applicability

Any request to drill, deepen, plug back, recomplete, reenter, or add a new completion oil or gas well. Also includes wells drilled for mineral or geothermal exploration or production.

b. General Requirements

A permit is required to drill, deepen, plug back, recomplete, reenter, or add a new completion to an oil or gas well. A statewide spacing and density rule has been adopted which prohibits the drilling of oil, gas, and geothermal wells (1) nearer than 1200 feet to a completed well in, or to the same horizon on, the same tract; and (2) near than 467 feet to any property, lease,

*Anyone engaged in any oil and gas operation in the State of Texas must file an organization report (Form P-5) with the Railroad Commission.

or subdivision lines. The Railroad Commission may adopt special field rules with different spacing and density requirements or may grant exceptions based on necessity under "Rule 37."

c. Submittal Requirements

Persons seeking a permit must file the appropriate standard forms with attachments to the Railroad Commission. To obtain a regular permit, applicant must file Form W-1 with plats or sketches attached.

d. Public Hearings

Ordinarily, no public hearing is required or requested for applications for well permits. However, public hearing may be provided if the application is protested by an offset operator or if the applicant is seeking an exception to the applicable spacing and density rule.

e. Time Requirements

When a public hearing is requested or required, the Railroad Commission mails written notice of hearing at least 10 days before the hearing to the applicant and any protestant. Ordinarily, it requires approximately one week to process an application and issue a permit.

f. Fees

There are no fees associated with application for a well permit.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Railroad Commission of Texas
Oil and Gas Division
P.O. Drawer 12967
Austin, Texas 78711
Telephone: (512) 445-1314

5. Relation to Other State and Federal Programs

The Railroad Commission coordinates regulatory activities associated with the Texas Department of Water Resources and the U.S. Environmental Protection Agency's Underground Injection Control Programs (UIC). The state is currently seeking a full delegation of authority from the federal government for the UIC program. The Railroad Commission also has regulatory responsibilities under the federal Natural Gas Policy Act.

PART D. Plugging Abandoned or Nonproducing Wells

1. Authorizing Statute

Texas Natural Resources Code, Title 3

2. Title of Regulation

"Railroad Commission of Texas, Oil and Gas Division Conservation Rules and Regulations" 16 T.A.C., Sections 3.5, 3.6, 3.14 and 3.15

3. Summary of Requirements

a. Applicability

Any dry or abandoned well or one that has ceased to produce.

b. General Requirements

A person wanting to plug a well must send a letter of intent to the Railroad Commission. Plugging operations cannot begin until five days after the district office has received the letter. Within 90 days after operations at a well site have ceased, the operator must plug the well.

c. Submittal Requirements

The letter of intent to plug a well must show the proposed plugging procedure, indicate the materials to be used, and include the complete casing record of the well.

d. Public Hearings

Ordinarily, no public hearing is required to plug a well. However, a public hearing may be required if an operator is requesting an exception to the plugging requirement.

e. Time Requirements

See General Requirements (above).

f. Fees

Generally, no fees are required to plug a well. However, operators seeking an exception to plugging requirements may be

required to file a performance bond with the Railroad Commission.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Railroad Commission of Texas
Oil and Gas Division
P.O. Drawer 12967
Austin, Texas 78711
Telephone: (512) 445-1301

5. Relation to Other State and Federal Programs

None identified.

PART E. New Oil and Gas Discoveries

1. Authorizing Statute

Texas Natural Resources Code, Title 3

2. Title of Regulations

"Railroad Commission of Texas, Oil and Gas Division Conservation Rules and Regulations" 16 T.A.C., Sections 3.41 and 3.42

3. Summary of Requirements

a. Applicability

Any oil or gas well claimed to be first in a field or reservoir.

b. General Requirements

Owner or operator must demonstrate that the characteristics of the field or reservoir are different from other known fields. Classification as a new oil or gas discovery grants the owner or operator a higher production allowable and may allow a higher price for gas under the federal Natural Gas Policy Act.

c. Submittal Requirements

Owner or operator desiring to obtain classification as a new oil or gas discovery must submit Railroad Commission Form P-7 with supporting geological and engineering data.

d. Public Hearings

Requests for status as a new oil or gas discovery are usually handled administratively. If request is denied, applicant may then request a public hearing before the Railroad Commission.

e. Time Requirements

If no public hearing is necessary, it typically takes approximately one to three days to process the application and grant or deny status as a new oil or gas discovery.

f. Fees

There are no fees associated with application for status as a new oil or gas discovery.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed in the Administrative Procedure and Texas Register Act.

4. Administering Agency

Railroad Commission of Texas
Oil and Gas Division
P.O. Drawer 12967
Austin, Texas 78711
Telephone: (512) 445-1308

5. Relation to Other State and Federal Programs

None identified.

PART F. Salt Water Disposal by Injection and Fluid Injection Operations

1. Authorizing Statute

Texas Natural Resources Code, Title 3 Texas Water Code, Chapter 27--Disposal Wells

2. Title of Regulation

"Railroad Commission of Texas, Oil and Gas Division Conservation Rules and Regulations" 16 T.A.C., Sections 3.9 (salt water injection), 3.46 (water flooding), 3.8, 3.13, and 3.14

3. Summary of Permit Process

a. Applicability

Any injection of a fluid into either a producing or a nonproducing oil, gas, or geothermal reservoir.

b. General Requirements

A permit must be obtained to dispose of salt water by injection well or to inject any fluid into a productive oil, gas, or geothermal well.

c. Submittal Requirements

Persons seeking to dispose of salt water by injection well or inject fluids into productive reservoirs must file the appropriate Railroad Commission form: Form W-14 for salt water disposal by injection well, Form H-1 for fluid injection into a productive reservoir, or Form H-7 for injection of fresh water into a productive reservoir. Notice of application is to be mailed by the applicant to all affected offset operators.

d. Public Hearings

Public hearings on application for a permit to dispose of salt water by injection well or for a permit to inject fluids into a productive reservoir are not required. However, if the application is protested by either the Railroad Commission or an offset operator a public hearing will be held.

e. Time Requirements

If no public hearing is required, it typically requires two to three weeks to process the application and issue the permit. With public hearing, the process requires approximately six months.

f. Fees

No fees are required.

g. Appeals Process

See Chapter 1-State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Railroad Commission of Texas
Oil and Gas Division
P.O. Drawer 12967
Austin, Texas 78711
Telephone: (512) 445-1153

5. Relation to Other State and Federal Programs

The Railroad Commission coordinates its responsibilities relating to salt water disposal by injection well and fluid injection operations to productive reservoirs with the Texas Department of Water Resources/EPA Underground Injection Control Program. The state is currently seeking a full delegation of authority for the UIC program.

PART G. Pipeline Permits

1. Authorizing Statute

Texas Natural Resources Code, Title 3 Texas Revised Civil Statutes,
Title 102

2. Title of Regulation

"Railroad Commission of Texas, Oil and Gas Division Conservation Rules and Regulations" 16 T.A.C., Chapter 7 (gas utilities); 16 T.A.C., Sections 3.44, 3.59, and 3.65

3. Summary of Permit Process

a. Applicability

Oil and gas pipelines and gathering systems.

b. General Requirements

A permit must be obtained from the Railroad Commission to operate an oil, gas, or geothermal resources pipeline within the State of Texas.

c. Submittal Requirements

Applicants for a permit to operate an oil, gas, or geothermal pipeline must submit Railroad Commission Form T-4 specifying the name of the owner or operator, the location of the pipeline, and the material to be transported.

d. Public Hearings

This permitting program does not provide for public hearings.

e. Time Requirements

If a completed application is submitted, a permit to operate an oil, gas, or geothermal pipeline can be issued in one day.

f. Fees

There are no fees required to obtain a pipeline operating permit.

g. Appeals Process

Not applicable.

4. Administering Agency

Railroad Commission of Texas
Oil and Gas Division
P.O. Drawer 12967
Austin, Texas 78711
Telephone: (512) 445-1316

5. Relation to Other State and Federal Programs

The Railroad Commission requires the owners and operators of pipelines to comply with U.S. Department of Transportation, Office of Pipeline Safety minimum construction and safety requirements (49 CFR 191, 192, and 195). For pipelines crossing state-owned lands, a right-of-way must be obtained from the General Land Office. Also, a U.S. Army Corps of Engineers Section 404 dredge and fill permit will be required for pipelines crossing navigable waters and for pipelines crossing wetland areas.

PART H. Petroleum Reclamation Operations

I. Authorizing Statute

Texas Natural Resources Code, Title 3

2. Title of Regulation

"Railroad Commission of Texas, Oil and Gas Division Conservation Rules and Regulations" 16 T.A.C., Section 3.57

3. Summary of Permit Process

a. Applicability

Reclamation of tank bottom wastes or any other hydrocarbon waste accumulation (does not include tanker bottoms).

b. General Requirements

Operators of proposed hydrocarbon reclamation facilities must obtain a permit from the Railroad Commission.

c. Submittal Requirements

Operators of proposed hydrocarbon reclamation facilities request a permit in a letter to the Railroad Commission. The letter is to demonstrate that waste will not occur and show the source and disposition of the waste to be reclaimed.

d. Public Hearing

Public hearings are typically held on permits to conduct reclamation operations. Applicants are required to notify other interested parties that application has been filed.

e. Time Requirements

From time of application for permit to issuance of the permit, the process requires from six months to one year. Permits for reclamation operations must be renewed annually.

f. Fees

There are no fees required.

g. Appeals Process

See Chapter 1-State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Railroad Commission of Texas
Oil and Gas Division
P.O. Drawer 12967
Austin, Texas 78711
Telephone: (512) 445-1301

5. Relation to Other State and Federal Programs

None identified.

PART I. Operation of a Carbon Black Plant

1. Authorizing Statute

Texas Natural Resources Code, Chapter 86

2. Title of Regulation

"Railroad Commission of Texas, Oil and Gas Division Conservation Rules and Regulations" 16 T.A.C., Sections 3.54 and 3.63

3. Summary of Permit Process

a. Applicability

Any carbon black plant using natural gas as its hydrocarbon source.

b. General Requirements

Carbon black plants using natural gas are required to obtain an operating permit from the Railroad Commission. Decisions on applications are made administratively.

c. Submittal Requirements

Application for a permit to operate a carbon black plant is made on Railroad Commission Form C-2. Inspections of the plant may be made by Railroad commission staff before issuing a permit.

d. Public Hearings

There is no hearing requirement specified in the rules.

e. Time Requirements

Carbon black plant operating permits must be renewed annually.

f. Fees

There are no fees required.

g. Appeals Process

Not applicable.

4. Administering Agency

Railroad Commission of Texas
Oil and Gas Division
P.O. Drawer 12967
Austin, Texas 78711
Telephone: (512) 445-1310

5. Relation to Other State and Federal Programs

None identified.

PART J. Salt Water Hauler Permits

1. Authorizing Statute

Texas Water Code, Chapter 29--Salt Water Haulers

2. Title of Regulation

"Railroad Commission of Texas, Oil and Gas Division Conservation Rules and Regulations" 16 T.A.C., Section 3.8

3. Summary of Permit Process

a. Applicability

A person may not transport produced salt or mineralized water for hire, other than by pipeline, to an off-lease location for any purpose other than use in connection with the drilling or servicing of an oil or gas well without first obtaining a salt water haulers permit from the Railroad Commission.

b. General Requirements

See Applicability (above).

c. Submittal Requirements

Application for a salt water haulers permit is made on Railroad Commission Form WH-1. Form WH-4 (vehicle identification) and Form WH-5 (evidence of authority to use an approved disposal system) must also be filed. Performance bonds are required.

d. Public Hearings

Ordinarily, a public hearing is not required but may be held on request of an affected party.

e. Time Requirements

Salt water hauler permits must be renewed annually.

f. Fees

There are no fees associated with application for a salt water haulers permit. Permittee must show evidence of financial responsibility by filing a performance bond with the Railroad Commission.

g. Appeals

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedures and Texas Register Act.

4. Administering Agency

Railroad Commission of Texas
Oil and Gas Division
P.O. Drawer 12967
Austin, Texas 78711
Telephone: (512) 445-1153

5. Relation to Other State and Federal Programs

None identified.

CHAPTER 3. METALLIFEROUS MINING

There are no permitting or other regulatory requirements specific to metalliferous mining operations in the State of Texas. However, the environmental impacts of such mining may fall within the jurisdiction of one or more of the state agencies with regulatory programs described elsewhere in this guide. For example, if a metalliferous mining operation is expected to have a significant air quality impact, then the Air Control Board may require the operation to be permitted and comply with certain emission standards (see Chapter 8--Air Quality Standards and Regulations). Similarly, if it is anticipated that a mining operation will generate waste discharges to public waters, then the Department of Water Resources will require the owner or operator to obtain a waste discharge permit (see Chapter 9--Water Quality Standards and Regulations). Additionally, leases must be obtained from the General Land Office for metalliferous mining operations to be conducted on the public lands of the state (see Chapter 5--Public Land Use).

CHAPTER 4. CONSTRUCTION MATERIALS

With the exception of operations for the removal of certain materials from the public waters of the state, the extraction of construction materials is not specifically regulated in the State of Texas. Under the statutory authority of the "Texas Parks and Wildlife Code", the Parks and Wildlife Department (TP&WD) issues permits for the removal of marl, sand, shell, or gravel from public waters. Part A (below) describes this permit process. As with metalliferous mining, operations may be required to obtain permits for specific environmental impacts (e.g., air and water quality, stream diversions, waste management, etc.). Additionally, leases may be required from the General Land Office for extraction operations to be conducted on state public lands (see Chapter 5--Public Land Use) if the operation is not being conducted under TP&WD authority.

PART A. Permits for the Removal of Marl, Sand, Shell, or Gravel

1. Authorizing Statute

Texas Parks and Wildlife Code (Sections 86.001 through 86.019)

2. Title of Regulation

"Texas Parks and Wildlife Department Rules"

Issurance of Marl, Sand, Shell, and Gravel Permits (Revenue and Non-revenue)

3. Summary of Permit Process

a. Applicability

Removal of marl, sand, shell, and gravel from the public waters of Texas. There is no permit required for materials removed from private property; materials removed and then immediately replaced; or, if materials are relocated in the water but not

removed. No permit is issued for commercial navigation projects.

b. General Requirements

A permit is required to remove marl, sand, shell, or gravel from the public waters of Texas.

c. Submittal Requirements

An application for this permit must specify dredging operation information including site information; type and amount of material to be removed; type of equipment and method of dredging; time period of operation; and, proposed use of materials. A surety bond is required in an amount sufficient to cover the cost of the maximum amount of material the applicant proposes to remove during any two-month period (\$1,000 minimum). Attachments required to be filed with the permit application include a drawing of the proposed operating area; a list of the names and addresses of all property owners on both sides of the stream and those granting easements; a narrative description of the stream bank as it currently exists; at least one color photograph of the site; an affidavit or engineering report if the material to be removed is sand or marl of commercial value; and, proof that notice of application has been published for three consecutive days in the daily newspaper having the largest circulation in the county where the proposed work is to be done.

d. Public Hearings

A public hearing on all applications for permits is required.

e. Time Requirements

If the application and all attachments are in order, the process will take approximately 30 days from the time of receipt of application to permit issuance.

f. Fees

There are no fees associated with application for this permit. However, a rate of charge of twenty cents per cubic yard for sand and gravel and twenty-five cents per cubic yard of marl, shell, and mudshell is assessed for materials removed from public waters. Nonrevenue permits are available for counties and municipalities removing materials for road construction.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Texas Parks and Wildlife Department
Resource Protection Branch, Fisheries Division
4200 Smith School Road
Austin Texas 78744
Telephone: (512) 475-4831

5. Relation to Other State and Federal Programs

Upon approval and issuance of the permit, the Department notifies the applicant in a letter of transmittal that other permit requirements may need to be satisfied prior to initiating operations. If a waste discharge from a sand and gravel operation is anticipated, the Texas

Department of Water Resources will require a waste discharge permit. Additionally, an easement may be necessary from the General Land Office if the operation requires dredging, filling or bulkheading on state-owned submerged land. Also, permits may be required from the U.S. Army Corps of Engineers for an operation in or affecting waters of the U.S. (Section 404, Federal Water Pollution Control Act of 1972, Section 10, Rivers and Harbors Act of 1899).

SECTION IV. LAND USE REGULATION

CHAPTER 5. MANAGEMENT OF ACTIVITIES OCCURRING ON STATE-OWNED LANDS

1. Authority

Article XIV of the 1876 Texas Constitution
Texas Natural Resources Code

2. Title of Regulations

"General Land Office Rules"
"School Land Board Rules"

3. Summary of Requirements Applicable to Resource Development Activities Occurring on State-Owned Lands

The General Land Office (GLO), together with the School Land Board (SLB), manages the public free school lands of Texas, which include coastal public lands. Responsibility for the management of public lands is shared by the Commissioner of the General Land Office and the School Land Board. The Commissioner serves as chairman of the School Land Board, and the General Land Office serves as the administrative staff of the Board.

Management of the state's public free school lands and coastal public lands is primarily a proprietary rather than regulatory function. However, in exercising the state's proprietary interests in public lands, the GLO and SLB often incorporate environmental and land use restrictions into permit, easement, and lease agreements and other grants of interest in public lands.

The School Land Board is authorized to grant interests in the use of most of the coastal submerged lands and all state-owned land or

islands in coastal areas. The SLB may grant: leases to certain governmental bodies for public purposes; leases (including oil and gas) for the purpose of mineral exploration and development; easements to littoral (beach-front) owners; channel easements to surface or mineral interest holders; and permits for limited use of previously unauthorized structures. This jurisdiction also extends to many activities occurring on state-owned upland areas. In addition, the SLB has authority to lease state lands for geothermal energy resource exploration and development.

The Commissioner of the General Land Office issues permits for geological, geophysical, and other investigations on state-owned coastal and upland areas. The Commissioner may also grant timber and grazing leases; mineral leases (depending on the mineral to be mined); and easements or leases for rights-of-way across state lands for pipelines and other transmission lines, and for pumping stations and tank farms. He also issues permits for mineral prospecting on state lands. In addition, the Commissioner is responsible for designation of critical dune areas, certification of critical wetlands, and for accepting nominations of estuarine sanctuaries (authorized by letter of agreement between GLO and TENRAC).

4. Administering Agency

General Land Office/School Land Board
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78711
Telephone: (512) 456-4681

5. Relation to Other State and Federal Programs

The GLO and SLB coordinate with other state and federal regulatory agencies to ensure that activities occurring on public lands are conducted in accordance with applicable environmental restrictions.

CHAPTER 6. LOCAL GOVERNMENT LAND USE AND NATURAL RESOURCES CONTROL ENABLING LAWS

Within the State of Texas, most land use controls are applied by local governments. The exercise of police powers by local governments, including the power to establish land use controls, requires state enabling legislation authorizing local governments to pass and enforce ordinances which promote their general welfare.

In Texas, the major acts which enable cities and counties to control land use and natural resource development are:

- TEX. REV. CIV. STAT. ANN., art 1011. Authorizes cities to spend money to plan for future growth.
- TEX. REV. CIV. STAT. ANN., art. 1011a, et seq., and art. 1175(2b). Authorizes cities to zone land use in accordance with a comprehensive plan.
- TEX. REV. CIV. STAT. ANN., art. 1105a. Authorizes cities to establish building lines on streets.
- TEX. REV. CIV. STAT. ANN., art. 974a. Authorizes cities to control subdivisions within their city limits.
- TEX. REV. CIV. STAT. ANN., art. 970a. Allows cities to extend subdivision regulation into the surrounding areas of extraterritorial jurisdiction (ranging from one-half mile to five miles depending on city size).
- TEX. REV. CIV. STAT. ANN., art. 2372K and 6626a. Authorizes counties to place street design, construction and drainage requirements on subdivisions.

In addition to the broad authorities for land use regulation granted to cities by state enabling laws, local governments may also regulate certain land uses and activities as public nuisances.

CHAPTER 7. FLOODPLAIN MANAGEMENT

The Texas Water Code prescribes the responsibilities of the Texas Department of Water Resources* (TDWR) relating to floodplain management. These responsibilities are twofold: review and approval of reclamation project plans; and, coordination of local, state, and federal flood insurance programs. Part A (below) discusses the review and approval function while Part B (below) describes TDWR responsibilities relating to flood insurance programs.

Land use controls applicable to floodplain areas are typically the responsibility of local governments or state-approved levee improvement districts. A discussion of local government land use enabling law is found in Chapter 6.

PART A. Approval of Reclamation Project Plan

1. Authorizing Statute

Texas Water Code Ann. (Chapter 16--Provisions Generally Applicable to Water Development)

2. Title of Regulation

"Texas Department of Water Resources Permanent Rules"
Chapter X--Levee Improvement Districts and Approval of Plans for Reclamation Projects

*TDWR is composed of the Texas Water Development Board, which is the rulemaking authority for the Department; the Executive Director and staff, who perform all executive and administrative functions; and the Texas Water Commission, which conducts all judicial functions of the Department.

3. Summary of Requirements

a. Applicability

No person, corporation, or levee improvement district may construct, alter, or maintain any projection, along or near any stream of the state that is subject to floods, freshets or overflows so as to control, regulate or otherwise change the floodwater of the stream without first obtaining approval of the plans by the Texas Water Commission.

b. General Requirements

Before beginning construction or maintenance on any flood control/reclamation project, plans must be submitted to TDWR for review and approval. In reviewing project plans, the Department considers the following criteria: (1) structural integrity; (2) compatibility with existing hydrologic conditions; (3) safety; (4) the rights of third parties to be protected; and (5) coordination with other projects within the same hydrologic influence. Construction must begin within the time period specified in the written approval.

c. Submittal Requirements

An application for approval of a reclamation project, together with a set of preliminary project plans, are to be filed in duplicate with the Executive Director. Additional information required for TDWR review includes maps, drawings, computations, and narratives which illustrate and describe the location and extent of the proposed works; the name and course of the river, stream or other watercourse; the location and ownership of all existing levees, channels, canals, dams, reservoirs or other works of a similar character; and the location, ownership, and current mailing address of the owners of all properties lying within or adjacent to the proposed protected area. Project

designs are to be based on a statistical 100-year flood as a minimum for protection against property loss and loss of life. Preliminary plans should demonstrate the effects that a proposed project will impose on existing flood conditions. All preliminary plans which are submitted with an application are to be prepared by and bear the seal and signature of a registered professional engineer. Following approval by the Water Commission of a proposed project, the applicant must submit the final plans to the Executive Director for approval prior to beginning construction.

d. Public Hearings

All applications for approval of reclamation projects are to receive a public hearing before the Water Commission.

e. Time Requirements

Within 30 days after receipt of a completed application and supporting data, the Executive Director notifies the applicant as to whether or not the project is within the Department's jurisdiction. If the project is determined to be within the Department's jurisdiction, the applicant is instructed to publish notice of submittal for reclamation project plans. Such notice is to be published at least once each week for at least two consecutive weeks in a newspaper of general circulation in each county where the project is to be located or where the project would have potential impact. The second publication must occur at least 20 days before the date of the hearing on the application. After hearing, the Water Commission either approves or disapproves the reclamation project plans.

f. Fees

There are no fees associated with an application for approval of reclamation project plans.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Texas Department of Water Resources
Project Engineering Section
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78711
Telephone: (512) 475-1190

5. Relation to Other State and Federal Programs

Reclamation projects affecting waters of the U.S. may be required to obtain a U.S. Army Corps of Engineers Section 404 dredge and fill permit.

PART B. Coordination of Local, State, and Federal Flood Insurance Programs

Section 16.311, et seq., of the Texas Water Code prescribes the responsibilities of the Texas Department of Water Resources relating to the coordination of local, state, and federal flood insurance programs. The Department cooperates with the Federal Emergency Management Agency (FEMA) in the planning and administration of state participation in the National Flood Insurance Program and advises and coordinates the efforts of local political subdivisions seeking to qualify for

participation in the program. The National Flood Insurance Program was established in 1968 to minimize future flood losses and to shift the burden of flood losses away from the federal government and onto those who have property in flood-prone areas. The heart of the program, as it currently functions, is the requirement that a city or county adopt a floodplain ordinance restricting development in floodplains in order for flood insurance to be available. The responsibility for qualifying for the program rests with the individual political subdivisions.

SECTION V. ENVIRONMENTAL QUALITY MANAGEMENT

CHAPTER 8. AIR QUALITY STANDARDS AND REGULATIONS

The "Texas Clean Air Act" was enacted in 1967 for the purpose of protecting the quality of the State's air resources. The "Texas Air Control Board Rules" were adopted by the Board to implement the Texas Act.

The Texas Air Control Board Rules contain two basic approaches to the control of air contaminants: (1) a construction and operating permit process and (2) air emission standards. The construction and operating permit process is discussed in Part A (below), while the emission standards are discussed in Part B (below).

PART A. Construction and Operating Permit Process

1. Authorizing Statute

Texas Clean Air Act (Tex. Rev. Civ. Stat. Ann., Art. 4477-5, Sec 3.27 and 3.28).

2. Title of Regulation

"Texas Air Control Board Rules"
Regulation VI--Control of Air Pollution by Permits for New Construction or Modification

3. Summary of Permit Process

a. Applicability

Construction and operation of a new facility or modification of an existing facility from which contaminants may be emitted to the atmosphere. TACB may exempt certain facilities which will not make a significant contribution of air contaminants to the atmosphere.

b. General Requirements

A construction permit must be obtained before beginning construction on any new facility or modification to an existing facility from which contaminants may be emitted to the atmosphere. Following construction and initiation of operations the owner or operator must obtain an operating permit.

c. Submittal Requirements

An application for a construction permit must specify the name and location of the facility, the type of operation involved, contaminant emitted and amount, and estimated costs and performance of control equipment. Additional information may be required by the Board or the Executive Director to support a thorough review of all emissions, the impact of emissions, and the acceptability of emissions control measures. After construction has been completed and operation of a facility has begun, the owner or the operator must apply for an operating permit within 60 calendar days. Upon request, the 60 day period may be extended by the agency.

d. Public Hearings

May be required by the Board or Executive Director if either decides to examine an application for permit prior to rendering a final decision on an application. Hearings are mandatory when any affected person appeals the action of the Executive Director on an application.

e. Time Requirements

After receipt of the completed application by TACB, the applicant must publish within 30 days a notice of intent to construct, which includes the Executive Director's preliminary

determination to issue or not issue a permit, in a general circulation newspaper in the county in which the proposed facility is to be located. The public then has 30 days in which to submit comments on the application to TACB. Following closure of the public comment/hearing period, the Executive Director either approves the application and issues a permit or does not issue a permit.

f. Fees

Permit fees are authorized by Sec. 3.29 of the Texas Clean Air Act. However, regulations implementing permit fees have not been adopted by the Board at this time.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

PART B. Air Emission Standards

1. Authorizing Statute

Texas Clean Air Act (Tex. Rev. Civ. Stat. Ann., Art. 4477-5, Sec. 3.09 and 3.10).

2. Title of Regulations

"Texas Air Control Board Rules" Regulations I-V, VII, and IX

3. General Standards

a. Applicability

All sources emitting air pollutants.

b. General Standards and Requirements

Emission standards and regulations have been adopted for six contaminant types (e.g., particulate matter, sulfur compounds, and volatile organic compounds). In some cases, emission standards are source-specific, while others are general to all stationary sources. All major stationary sources (those permitted in accordance with Part A, above) are required to monitor emissions. New or modified stationary sources must meet the requirements of any applicable standards of performance promulgated by the U.S. Environmental Protection Agency.

c. Submittal Requirements

Results of performance testing and continuous monitoring must be submitted to the TACB. Notification of (1) physical and operational changes, (2) major upset, (3) excess emissions and (4) potential emissions increases must also be submitted for NSPS and NESHAPS sources.

d. Time Requirements

Written report of excess emissions must be filed with TACB every calendar quarter. Records of all tests and monitoring must be retained by the operator for at least two years.

4. Administering Agency

Permits

Texas Air Control Board

Deputy Director, Control and Prevention Program

6330 Hwy. 290 East

Austin, Texas 78723

Telephone: (512) 451-5711

Standards

Texas Air Control Board

Deputy Director, Standards and Regulations Program

6330 Hwy. 290 East

Austin, Texas 78723

Telephone: (512) 451-5711

5. Relation to Other State and Federal Programs

Permits for facilities proposing to locate in National Ambient Air Quality Standards attainment or unclassified areas must obtain a Prevention of Significant Deterioration (PSD) permit from the U.S. Environmental Protection Agency, Region VI (Dallas). TACB provides technical review of federal PSD permits.

CHAPTER 9. WATER QUALITY STANDARDS AND REGULATIONS

The Texas Department of Water Resources (TDWR) is the lead state agency responsible for protecting the quality of the state's surface and ground water resources. The Department is organized into three distinct entities corresponding to function. The Texas Water Development Board performs the legislative (rulemaking) functions of the Department; executive functions are performed by the Executive Director and staff; and judicial functions are performed by the Texas Water Commission. Public drinking water quality issues are within the jurisdiction of the Department of Health and are discussed in Chapter 10.

The Department of Water Resources administers Chapters 26 and 27 of the Texas Water Code relating to the discharge of wastes into or adjacent to the waters of the state and the injection of wastes into subsurface strata. Additionally, the Department of Water Resources and the Department of Health share responsibility for the review and approval of plans and specifications for wastewater treatment facilities. Part A (below) describes the permits process for waste discharges to surface waters and for underground waste injection. The review and approval of sewerage system plans and specifications is briefly discussed in Part B (below). Regulations establishing permitting requirements for the land application of wastewater effluents are currently pending.

PART A. Waste Discharge Permits

1. Authorizing Statute

Texas Water Code Ann. (Chapter 26--Water Quality Control and Chapter 27--Disposal Wells)

2. Title of Regulation

"Texas Department of Water Resources Permanent Rules"
Chapter XXV--Waste Discharge Permits

3. Summary of Permit Process

a. Applicability

With specified exception, no person may dispose of any defined waste by discharge into or adjacent to the state's water or by injection into a disposal well unless the disposal is authorized by and conducted in accordance with a waste discharge permit.

b. General Requirements

A waste discharge permit authorizes the disposal of a defined waste into or adjacent to state waters or the injection of a defined waste into a disposal well. Defined waste includes sewage, industrial waste, municipal waste, recreational waste, and agricultural waste, other than salt water or other waste generated by or incidental to the drilling for or the production of oil and gas (see Chapter 4, Part D--Salt Water Disposal). Through its rulemaking authority, the Water Development Board may incorporate in waste discharge permits any condition, restriction, limitation, or provision, on a statewide or area-wide basis. Additionally, the Board has adopted rules governing particular waste disposal activities otherwise subject to authorization under a waste discharge permit. In issuing water discharge permits, the Water Commission may specify any terms, restrictions, or conditions to be incorporated into a particular permit.

c. Submittal Requirements

An application for a waste disposal permit must be accompanied by an application map and, if necessary, a supplemental map. The maps are to show the approximate boundaries of the tract of land on which the disposal activity is to be conducted; the location of each outfall, disposal well, or place of deposit; the

location of known geographic features; the general character of land use of the area adjacent to the disposal area; and, the location of any other waste disposal activities conducted on the tract. Additionally, the application or supplemental map is to show the ownership of the tracts of land within a reasonable distance of the proposed point(s) of discharge. The Executive Director may request that a supplementary technical report be submitted with an application and may request additional information as may be reasonably required for an adequate evaluation of an application.

d. Public Hearings

Public hearings are not required unless requested by an affected party.

e. Time Requirements

Following permit application submittal and preliminary technical review, the Executive Director will recommend a proposed permit with restrictions. At this time, notice of application for a waste discharge permit is to be provided by the applicant at least once in a newspaper of general circulation in each county where persons reside that may be affected by the proposed disposal activity. Additionally, notice of application must be personally served or mailed to affected landowners, municipal and county authorities, and appropriate state agencies. From the time of notice, affected persons are given 45 days in which to request a public hearing. If an affected party requests hearing on the application, the Executive Director establishes a hearing date and location and forwards the application to the Water Commission with recommendations, agenda items, and notices of hearing. The applicant is responsible for providing notice of public hearing at least once not less than 20 days before hearing date in a general circulation newspaper and

personally to affected persons. If an application is not contested, no public hearing is required and the application, with the Executive Director's recommendations, is forwarded to the Water Commission for final consideration. Permit issuance usually takes approximately three weeks.

f. Fees

There are no fees associated with application for a regular waste discharge permit. However, application for a disposal well permit must be accompanied by a fee of \$25.00 for each disposal well included in the application.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Texas Department of Water Resources
Assistant General Counsel, Water Quality Section
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78711
Telephone: (512) 475-7851

5. Relation to Other State and Federal Programs

It is the stated policy of the Texas Department of Water Resources to coordinate its activities relating to the administration of waste discharge permits with other state and local agencies exercising jurisdiction in the natural resource and environmental quality fields. In this respect, permit applicants are expected to notify municipal and

county authorities and appropriate state agencies and officials of pending action on a waste discharge permit application. Additionally, application for a disposal well permit must be accompanied by a letter from the Texas Railroad Commission stating that the drilling and injection operation will not endanger any known oil or gas formation. Where an application for a waste discharge permit involves the disposal of a waste containing radioactive materials, the application must be accompanied by a letter from the Texas Department of Health verifying that the applicant or person handling the waste has a license governing the disposal of radioactive wastes or that such a license is not necessary.

Under Section 401 of the Federal Water Pollution Control Act Amendments of 1972, the Department of Water Resources reviews applications for NPDES permits and coordinates state permitting with the federal NPDES permit process. Also, the Department is seeking a delegation of authority for the Underground Injection Control (UIC) Program under the federal Safe Drinking Water Act; administers the water quality provisions of the federal Resource Conservation and Recovery Act; and, issues Section 401 water quality certifications for U.S. Army Corps of Engineers Section 404 dredge and fill permits.

PART B. Review and Approval of Plans and Specifications for Wastewater Treatment and Disposal Systems

The Civil Statutes of Texas prescribe the duties of the Texas Department of Water Resources and the Texas Department of Health relating to the review and approval of plans and specifications for the construction or improvement of sewerage systems. These responsibilities and duties extend to public, commercial, and industrial sewerage collection, treatment, and disposal systems as well as industrial waste collection, treatment, and disposal systems. The Department of Water Resources reviews and approves the plans and specifications for all industrial waste systems and for public sewerage systems receiving financial assistance under the Texas Water Quality Enhancement Fund or the federal Construction Grants Program. The Department of Health reviews and approves

the plans and specifications of public sewerage systems not eligible for state or federal financial assistance, and for all projects that are funded exclusively by the Farmers Home Administration, the Economic Development Administration, and the Department of Housing and Urban Development. The Departments of Water Resources and Health have jointly adopted "Design Criteria for Sewerage Systems," which are currently undergoing revision. The current design criteria for sewerage systems address design criteria and engineering considerations for collection systems, sewage treatment systems, disinfection, and worker safety.

The general requirements governing the submittal of plans and specifications are as follows:

- Plans will not be considered for review unless they show the seal of the Registered Professional Engineer responsible for the preparation of such plans.
- For existing facilities the waste discharge permit number which has been issued for the discharge of an effluent must be provided and an application must be filed for an amendment to the existing permit.
- For new facilities, an application for a waste discharge permit must be filed.
- A preliminary engineering report or facilities plan must be submitted prior to submittal of completed plans and specifications.

Administering Agencies

Texas Department of Water Resources
Construction Grants and Water Quality Planning Division
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78711
Telephone: (512) 475-3926

Texas Department of Health
Water Hygiene Division
Bureau of Environmental Health
1100 west 49th Street
Austin, Texas 78756
Telephone: (512) 458-7111

CHAPTER 10. PUBLIC DRINKING WATER SUPPLY

The Texas Sanitation and Health Protection Act prescribes the responsibilities of the Texas Department of Health relating to the regulation and control of public drinking water supply systems in the state. These responsibilities are twofold: 1) authority to review the completed plans and specifications of all new and modified public drinking water systems; and 2) designation of minimum acceptable operating practices necessary to protect the public health. The rules and regulations and review process governing the design of system facilities is discussed in Part A (below). Minimum operating criteria are briefly discussed in Part B (below).

PART A. Review of Plans and Specifications of Public Drinking Water Systems

1. Authorizing Statute

Texas Sanitation and Health Protection Act (Tex. Rev. Civ. Ann., Art. 4477-1 Sec. 11, 12 and 13, as amended 1977)

2. Title of Regulation

Texas Department of Health
"Rules and Regulations for Public Water Systems"

3. Summary of Facility Design Review Process

a. Applicability

New public drinking water supply systems (at least 15 service connections or regularly serving an average of 25 individuals daily for 60 days out of the year). Also applicable to changes in existing systems or supplies.

b. General Requirements

Prior to the initiation of construction on a new public drinking water supply system, the Department of Health reviews the completed plans and specifications of the system to ensure conformity with minimum standardized public health design criteria and good public health engineering practices. The regulations stipulate siting restrictions, design criteria, water quantity requirements, and treatment requirements. These regulations and criteria vary depending upon whether the water is from a ground (subsurface) or surface source. Notification of any material or major changes in an existing system is required before making such changes.

c. Submittal Requirements

Material to be submitted to the Department of Health for review is to be of sufficient detail as to allow a comprehensive review.

In general, the planning material submitted for review is to include a detailed engineering report; all plans and drawings; and, construction specifications for the facilities. Plans and specifications will not be considered unless they have been prepared by an authorized person under the direction of a registered professional engineer. Where changes or alterations are planned for an existing system, notification to the Department of Health shall include sufficient information to allow thorough evaluation of the public health significance of such changes.

d. Public Hearing

There is no public hearing requirement associated with the review and certification of plans and specifications for public drinking water systems.

e. Time Requirements

If all required information is in order, the plan review and certification process will take approximately two weeks from the time of submittal.

f. Fees

There are no fees required.

g. Appeals Process

Not applicable.

4. Administering Agency

Texas Department of Health
Bureau of Environmental Health
1100 West 49th Street
Austin, Texas 78756
Telephone: (512) 458-7111

5. Relation to Other State and Federal Programs

The Department of Health has primary responsibility for state administration of the drinking water portions of the federal Safe Drinking Water Act (P.L. 93-523). Pursuant to the Act, the Department has adopted "Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems."

As part of its responsibility for protecting the quality of drinking water supplies, the Department of Health reviews construction plans for water impoundments permitted by the Department of Water Resources and the U.S. Army Corps of Engineers. Review is limited to drinking water quality considerations.

PART B. Minimum Operating Criteria

1. Authorizing Statute

Same as Part A (above).

2. Title of Regulation

Same as Part A (above).

3. Summary of Minimum Operating Criteria

a. Applicability

All public drinking water supply systems.

b. General Requirements

All public drinking water supply systems are to be maintained and operated in conformance with minimum acceptable standards. These minimum standards include daily or monthly bacteriological sampling; periodic chemical sampling; operation by certified personnel; chlorination; disinfection of new or repaired facilities; adoption of an adequate plumbing ordinance or regulation; recordkeeping; and, general housekeeping and maintenance. Operation of a public drinking water supply system must at all times be conducted under the supervision of a competent water works engineer licensed by the Department of Health.

c. Submittal Requirements

Monthly submittal of water samples for bacteriological analysis. Submittal of water samples for chemical analysis as directed during sanitary surveys. Monthly operating reports specifying

the results of analysis of raw and treated water (bacteriological and chemical tests); amounts of chemicals used; pumpages to distribution systems; and, dates of main flushing operations and reservoir cleaning.

4. Administering Agency

Same as Part A (above)

5. Relation to Other State and Federal Programs

None identified.

CHAPTER II. WATER RESOURCES MANAGEMENT

The Texas Department of Water Resources* (TDWR) is responsible for the management of the state's water resources. In addition to water quality concerns (see Chapter 9), TDWR administers and adjudicates surface water rights; issues permits for the appropriation of public water; regulates all activities relating to weather modification and control; and promulgates and enforces rules for the safe construction, operation, maintenance, and removal of dams, reservoirs and reclamation projects. Permits for surface water diversion and storage (appropriation) are discussed in Part A (below). Part B (below) describes the Department's responsibilities relating to the construction, operation, and maintenance of dams and reservoirs. Approval of reclamation project plans is discussed in Chapter 7.

PART A. Permits for Surface Water Diversion and Storage

1. Authorizing Statute

Texas Water Code Ann. (Chapter II--Water Rights)

2. Title of Regulation

"Texas Department of Water Resources Permanent Rules"
Chapter II--Appropriation of Water

3. Summary of Permit Process

*TDWR is composed of the Texas Water Development Board, which is the rulemaking authority for the Department; the Executive Director and staff, who perform all executive and administrative functions; and the Texas Water Commission, which conducts all judicial functions of the Department.

a. Applicability

A person may not appropriate any state water or begin the construction of any project designed for the storage, diversion, or taking of state water without first obtaining a permit from the Water Commission authorizing the appropriation. Permits are not required to construct a dam or reservoir to impound not more than 200 acre-feet of water on an individual's private property for domestic or livestock purposes.

b. General Requirements

The Water Commission issues eight classes and four types of water rights permits. Classes of water rights permits include regular, seasonal, and temporary permits; term permits; contractual permits; storage permits; and emergency appropriation permits. The four types of water rights permits are: direct diversion from a watercourse; diversion from an existing reservoir; construction of a dam on a watercourse; and, construction of an off-channel reservoir. In issuing permits appropriating state water, the Water Commission must give preference to the following uses in the order listed:

- (1) domestic and municipal uses, including water for sustaining human life and the life of domestic livestock animals;
- (2) industrial uses, meaning processes designed to convert material of a lower order of value into forms having greater usability and commercial value, including the development of power other than hydroelectric;
- (3) irrigation;

- (4) mining and recovery of minerals;
- (5) hydroelectric power;
- (6) navigation;
- (7) recreation and pleasure; and
- (8) other beneficial uses.

Under the appropriative rights doctrine, a right to use state water under permit is limited not only to the amount specifically appropriated but also to the amount which is being or can be beneficially used for the purposes specified in the appropriation permit. Between permitted appropriators of water, the "first in time is the first in right," based on priority date of permits. Use preferences are considered when processing competing applications.

c. Submittal Requirements

An application for a permit to divert or store state surface water must be submitted to the Executive Director for review and transmittal to the Water Commission. General information requirements for all permit applications include the name of the source of supply to be diverted; the amount of supply and purpose of use; the rate and method of diversion; the location of the diversion point, reservoir and dam; and, a description of the location at which return water or surplus water will be returned to the water course. Specific information requirements vary according to class and type of permit.

d. Public Hearings

A public hearing before the Water Commission is required for all applications for appropriation permits except for emergency permits, which may be granted for a period of not more than 30 days to alleviate an emergency situation, and for temporary permits involving an appropriation of less than ten acre-feet for a term not greater than one year. Amendments to an appropriation permit may be issued without hearing if they: 1) do not contemplate an additional use of water or an increased rate or period of diversion, and 2) have no potential for harming existing water rights.

e. Time Requirements

Applicants must publish notice of hearing on the application at least once a week for two consecutive weeks not less than 20 days before the date set for the hearing. (Notice must also be personally served or mailed to each claimant or appropriator of water from the source of water supply.) Applicants for a §11.143 permit (use of a §11.142 reservoir for a non-exempt purpose) requires publication of notice only once. During the hearing, any affected person may present objection to or support for the issuance of a permit, either in person or by affidavit. Although an affidavit or written objection will be accepted, actual presence at the hearing is required in order for a person to be admitted as a party. After the hearing, the Water Commission will make written decision granting or denying the application, in whole or in part. On approval of an application, the Water Commission will issue a permit to the applicant. The applicant's right to take and use water is limited to the extent and purposes stated in the permit. The entire process typically takes from three to nine months.

f. Fees

Applications for a permit to divert or store state water must be accompanied by a filing fee of \$25.00 for each application and a recording fee of \$1.00 per page. All costs of mailing notice to parties in the affected river basin are to be paid by the applicant. The use of state water under a temporary permit is assessed a use fee of \$1.00 per acre-foot no to exceed \$500. Use fees for all applications except applications for temporary water permits are to be paid on a one-time basis to the Department. The charges are:

- (1) \$.50 per acre to be irrigated for the use of state water for irrigation;
- (2) \$1.00 per indicated horsepower for the use of state water for a hydroelectric or steam power plant;
- (3) \$.50 per acre-foot for impounding state water; and
- (4) \$1.00 per acre-foot for all other uses of state water.

The maximum fee for one use of state water under a permit is \$5,000. The fee for each additional use of state water under a permit for which the maximum fee is paid will not exceed \$1,000.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Texas Department of Water Resources
General Counsel's Office, Water Rights Section
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78711
Telephone: (512) 475-6943

5. Relation to Other State and Federal Programs

None identified.

PART B. Construction, Maintenance, Operation, and Removal of Dams
and Reservoirs

1. Authorizing Statute

Texas Water Code Ann. (Chapter 12--Provisions Generally Applicable
to Water Rights)

2. Title of Regulation

"Texas Department of Water Resources Permanent Rules"
Chapter V--Requirements for Construction, Maintenance, Operation,
and Removal of Dams and Reservoirs

3. Summary of Requirements

a. Applicability

Plans for construction, maintenance, operation and removal of
dams and reservoirs in the state must be approved by the Water
Commission.

b. General Requirements

The Water Development Board has promulgated rules establishing inspection and construction requirements for dams and reservoirs and for the maintenance, operation, and removal of dams and reservoirs. Construction of a dam or the enlargement, repair, alteration or removal of an existing dam cannot commence prior to the Water Commission's written approval of final construction plans and specifications.

c. Submittal Requirements

Construction plans to be submitted for approval are to include a topographic map of the dam site; a profile of the dam site; a cross-section of the dam; detailed plans showing sections of outlet conduits, control works, and spillways; and, the location of all permanent instrumentation. Construction specifications to be submitted for approval are to include the requirements for various types of materials to be used in the construction; the specified time of completion; and, a provision to the effect that plans and specifications will not be substantially or materially altered without prior written approval of the Water Commission. Engineering reports and additional information are required and may be submitted to the Executive Director for review before the final plans are prepared. Construction progress reports are required monthly and all pertinent records are to be maintained by the owner's engineer. Inspections by TDWR staff are to be made periodically. Once in operation, TDWR staff may make periodic inspections of dams and reservoirs for the purpose of determining their safety and may require owners to perform work as may be required to disclose information sufficient to determine the safety conditions of dams and reservoirs.

d. Public Hearings

There are no public hearing provisions relating to the review and approval of construction plans and specifications for dams and reservoirs.

e. Time Requirements

The owner of any dam or reservoir subject to an order of the Water Commission regarding the construction, maintenance, operation, or removal of a dam or reservoir has 30 days in which to comply with the Commission's order. Within ten days after beginning construction of an approved project, the Executive Director is to be notified in writing of the date work began. Monthly progress reports are to be forwarded to the Executive Director by the tenth day of each month during project construction.

f. Fees

No fees are required relating to the approval of construction plans and specifications for dams and reservoirs.

g. Appeals Process

Same as in Part A (above).

4. Administering Agency

Texas Department of Water Resources
Dam Safety
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78711
Telephone: (512) 475-2786

5. Relation to Other State and Federal Programs

The Water Commission, after considering all evidence submitted by a federal agency and received at public hearings, adopts an order either approving or disapproving the feasibility of a federal impoundment or reclamation project. In addition, the Water Commission may designate any political subdivision of the state as a cooperating local sponsor(s) for any project proposed for planning or development by the state or a federal agency.

CHAPTER 12 SOLID AND HAZARDOUS WASTE MANAGEMENT

The Texas "Solid Waste Disposal Act" designates the Texas Department of Health (TDH) as the solid waste agency with respect to the collection, handling, storage, and disposal of municipal solid waste, including municipal waste streams containing hazardous wastes. Disposal of industrial solid and hazardous wastes (except radioactive material) is regulated by the Texas Department of Water Resources* (TDWR). Where both municipal and industrial waste is involved, the Department of Health is delegated jurisdiction. Considerable interagency liaison takes place between TDH and TDWR to ensure comprehensive regulatory coverage of waste management issues. In addition to having regulatory responsibility for management of municipal and mixed municipal/industrial solid waste, the Department of Health also regulates the use, handling, and transportation of radioactive materials (excluding fissionable nuclear materials). Part A (below) describes the Department of Health's permit requirements relating to municipal wastes while Part B (below) describes the Department of Water Resources permitting programs relating to industrial waste management. Licensing requirements for sources and users of radioactive materials are discussed in Part C. The Underground Injection Control Program is discussed in the context of water quality standards and regulations in Chapter 9.

The Texas regulations governing hazardous wastes are substantially equivalent to the federal hazardous waste regulations promulgated under the Resource Conservation and Recovery Act (RCRA, P.L. 94-580). Under RCRA, the State of Texas is authorized to issue interim status operating permits for hazardous waste management facilities.

*TDWR is composed of the Texas Water Development Board, which is the rulemaking authority for the Department; the Executive Director and staff, who perform all executive and administrative functions; and the Texas Water Commission, which conducts all judicial functions of the Department.

PART A. Municipal Solid Waste Management

1. Authorizing Statute

Texas Solid Waste Disposal Act (Tex. Rev. Civ. Stat. Ann., Art. 4477-7)

2. Title of Regulation

"Texas Department of Health Rules"
Municipal Solid Waste Management Regulations

3. Summary of Permit Process

a. Applicability

Operation and maintenance of municipal solid waste processing, storage or disposal facilities, including those receiving municipal waste streams containing hazardous wastes. TDH regulates seven classes of municipal solid waste operations:

Type I --Sanitary landfill serving 5,000 or more population.

Type II --Landfill serving less than 5,000 population.

Type III --Interim classification landfill serving less than 1,500 population, pending upgrading to a Type I or II site.

Type IV --Brush-demolition waste disposal site.

Type V --Municipal solid waste processing site, including transfer stations, incinerators, composting plants, grinders, shredders, balers, salvage operations, and others.

Type VI --Experimental operations.

Type VII --Land application of solid waste to land used for the production of food-chain crops.

b. General Requirements

An operating permit must be obtained from TDH for each facility receiving, storing, processing or disposing of municipal solid waste. No permit is presently required for land application of domestic sewage sludge or domestic septic tank pumping unless these wastes have been determined to be hazardous. Facilities must be constructed, operated, and maintained in accordance with design criteria and operational standards set forth in the regulations. Municipal solid waste management facilities receiving hazardous waste for treatment, storage, or disposal must also obtain an operating permit. TDH regulations governing hazardous wastes are substantially equivalent to federal requirements under the Resource Conservation and Recovery Act (PL 94-580, RCRA).

The primary concern of the Department is that the use of any land for a municipal solid waste site does not adversely impact on public health. However, the impact of the site upon a city, community, group of property owners or individuals will be considered in terms of compatibility of land use, zoning in the vicinity, community growth patterns, and other factors associated with the public interest.

c. Submittal Requirements

An application for a permit to operate a municipal solid waste facility must be completed and filed with the Department of Health. Information requirements include general site information and technical/engineering information. Supporting technical

and engineering information requirements vary according to facility classification and other information may be required by the Department. Regulations of the appropriate county should be consulted before preparation of an application for a permit.

d. Public Hearing

A public hearing must be held before a solid waste permit can be issued. Upon completion and staff evaluation of a permit application, the Department will make arrangements with the applicant regarding the time and place for the public hearing. The applicant is responsible for ensuring that a notice of the public hearing is published 30 days before the hearing in a general circulation newspaper in the county in which the facility is to be located.

e. Time Requirements

Normally in unopposed cases, a final decision or permit issuance is made within 60 days after the closing of the hearing record. In opposed cases, a Proposal for Decision will be provided to all affected parties with a specified time period to file exceptions and briefs. The Commissioner will issue a final decision based on responses to the Proposal for Decision.

f. Fees

There are no fees associated with application for a permit to operate a municipal solid waste management facility.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Texas Department of Health
Bureau of Environmental Health
1100 West 49th Street
Austin, Texas 78756
Telephone: (512) 458-7111

5. Relation to Other State and Federal Programs

As noted previously, the Departments of Health and Water Resources share responsibility for solid and hazardous waste management. As such, representatives of each department maintain close liaison to avoid unnecessary regulatory overlap and to ensure comprehensive regulatory coverage of waste management issues and concerns. In addition, the Department of Health provides copies of permit applications to those agencies which have or may have a jurisdictional interest in the case and requests their comments or recommendations. The agencies include:

- a. Texas Department of Water Resources (a separate permit may be required);
- b. Texas Air Control Board (a separate permit may be required);
- c. State Department of Highways and Public Transportation;
- d. Federal Aviation Administration;
- e. U.S. Army Corps of Engineers (a separate permit may be required);
- f. Mayor of the city in whose territorial or extraterritorial jurisdiction the site is located;

- g. Health authority of the city in whose territorial or extraterritorial jurisdiction the site is located;
- h. County Judge of the county in which the site is located;
- i. Health authority of the county in which the site is located; and
- j. Others as determined appropriate by the Department of Health.

The Phase I authorization under RCRA also requires coordination with the U.S. Environmental Protection Agency on matters relating to hazardous waste management.

PART B. Industrial Solid Waste Management

1. Authorizing Statute

Texas Solid Waste Disposal Act (Tex. Rev. Civ. Stat. Ann., Art. 4477-7)

2. Title of Regulation

"Texas Department of Water Resources Permanent Rules"
Chapter XXII--Industrial Solid Waste Management

3. Summary of Permit Process

a. Applicability

Operation and maintenance of industrial solid waste handling or disposal facilities, including those receiving industrial waste streams containing hazardous wastes. No permit is required for the onsite storage, processing, or disposal of industrial solid waste unless the waste is hazardous industrial waste. TDWR regulates four classes of industrial waste:

Hazardous Waste--Wastes listed by EPA as hazardous in 40 CFR Part 261, Subparts C and D.

Class I--Industrial waste which may pose substantial present or potential danger to human health or the environment such as toxic, corrosive, or flammable materials.

Class II--Industrial solid waste which cannot be described as Class I or Class III.

Class III--Inert and essentially insoluble industrial solid wastes.

Wastes resulting from or incidental to the exploration, drilling, or production of oil and gas are regulated by the Railroad Commission of Texas (see Chapter 2.-Energy Resources, Part J. Salt Water Hauling and Injection Well Disposal).

b. General Requirements

An operating permit must be obtained from TDWR for each facility receiving, storing, processing, or disposing of industrial solid waste (except for the onsite disposal of non-hazardous industrial solid waste). Facilities must be constructed, operated, maintained, and closed in accordance with design criteria and operational standards established by the Department. TDWR regulations governing hazardous wastes are substantially equivalent to federal requirements under the Resource Conservation and Recovery Act (PL 94-580, RCRA).

c. Submittal Requirements

Applicants for a permit or an amendment to a permit to construct and operate an industrial solid waste management facility must be filed with the Executive Director of TDWR. Applications must include plans and specifications for

construction, operation, staffing, and closing of the industrial solid waste management facility. Engineering plans and specifications are to be prepared and sealed by a registered professional engineer. A surety bond or other financial assurance acceptable to the Executive Director, in amount specified in the permit, is required. Regulations specify the shipping and reporting procedures to be followed by hazardous waste generators and carriers and at Class I waste permitted disposal facilities. On-site storage, processing, or disposal of non-hazardous industrial solid waste require formal written notification to the Executive Director prior to engaging in such activities.

d. Public Hearing

Except for on-site activities, a public hearing must be held before a solid waste permit can be issued. The Department will make arrangements with the applicant regarding the time and place of the public hearing. The applicant is responsible for ensuring that a notice of the public hearing is published in a general circulation newspaper in the county in which the facility is to be located. Publication of the public notice shall not be less than 20 days before the date of hearing. Permits for on-site activities require same notice as for waste discharge permits (see Chapter 9--Water Quality Standards and Regulations).

e. Time Requirements

After the record is closed and TDWR has completed the engineering and legal evaluation of all data, including comments received from the various agencies involved in review, the Water Commission reviews the findings and recommendations and either approves or denies the issuance of a permit. Normally, in unopposed cases, the final decision will be made within 60 days after the closing of the hearing record. In opposed cases, a Proposal for Decision will be provided to all affected parties

with a specified time period to file exceptions and briefs. The Water Commission will issue a final decision based on responses to the Proposal for Decision.

f. Fees

There are no fees associated with application for a permit to operate an industrial solid waste management facility.

g. Appeals Process

See Chapter 1--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Texas Department of Water Resources
Permits Division, Solid Waste Section
Stephen F. Austin Building
1700 North Congress Avenue
Austin, Texas 78711
Telephone: (512) 475-2041

5. Relation to Other State and Federal Programs

The Phase I authorization under RCRA requires coordination with the U.S. Environmental Protection Agency on matters relating to hazardous waste management.

PART C. Licensing Requirements for Sources and Users of Radioactive Materials

1. Authorizing Statute

Texas Radiation Control Act (Tex. Rev. Civ. Stat. Ann., Art. 4590f)

2. Title of Regulation

"Texas Department of Health Rules:
Texas Regulations for Control of Radiation"

3. Summary of Licensing Requirements

a. Applicability

A license from the Texas Department of Health is required to receive, possess, use, transfer, own, or acquire radioactive material (except for critical mass nuclear materials). Source material and quantity exemptions are specified in the regulations.

b. General Requirements

A general or specific license must be obtained prior to using or transferring specified sources and quantities of radioactive material. Licenses are required to mine and transport ores containing radioactive materials.

c. Submittal Requirements

General licenses have no submittal requirements. Specific licenses require submittal of an application to the Department of Health.

d. Public Hearings

There are no public hearing requirements.

e. Time Requirements

Licenses are issued upon receipt of a completed application.

f. Fees

There are no fees associated with application for a license to use or transfer radioactive materials.

g. Appeals Process

Not applicable.

4. Administering Agency

Texas Department of Health
Bureau of Environmental Health
Division of Occupational Health and Radiation Control
1100 West 49th Street
Austin, Texas 78756
Telephone: (512) 458-7111

5. Relation to Other State and Federal Programs

None identified.

CHAPTER 13. NOISE REGULATION

There are no ambient noise regulations or standards in force in the State of Texas. However, local governments may regulate noise levels within their jurisdiction through the application of public nuisance law. In addition, the Division of Occupational Health and Radiation Control of the Texas Department of Health has established standards for certain industries and regulates noise levels in those facilities to protect worker health.

SECTION VI. SOCIAL/ECOLOGICAL PRESERVATION

CHAPTER 14. RARE AND ENDANGERED SPECIES

PART A. Scientific and Zoological Permits

1. Authorizing Statute

Texas Parks and Wildlife Code (Sections 43.021 through 43.030, Section 43.061, Sections 67.001 through 67.005, and Sections 68.001 through 68.021)

2. Title of Regulation

"Texas Parks and Wildlife Department Rules"

Rules for Scientific and Zoological Permits

Regulations for Taking, Possessing, and Transporting Protected Non-game Species

Regulations for Taking, Possessing, Transporting, Exporting, Processing, Selling or Offering for Sale, or Shipping Endangered Species

3. Summary of Permit Process

a. Applicability

Taking, possessing, and transporting protected nongame species as designated in Rule 127.70.12.003. Taking, possessing, transporting, exporting, processing, selling or offering for sale, or shipping endangered species as designated in Rule 127.30.09.003.

b. General Requirements

A scientific permit is required to take, possess, transport, process, or ship any protected nongame or endangered species. Scientific permits will not be issued to persons lacking adequate

training in one or more areas of biological science, or to students below graduate school status.

c. Submittal Requirements

An application for this permit must specify the applicant's profession and biological training; specify any assistants to be named on the permit; list the specimens and numbers to be handled; and state the research objective, justification, procedures, disposal method, and completion date of the investigation. Additionally, letters of recommendation from two individuals who are recognized in the biological sciences are required to attest to the applicant's training or ability to care for and handle wildlife. A completed report form must be submitted to the Department no later than January 10 following the permit year.

d. Public Hearings

No public hearings are required.

e. Time Requirements

If the application, letters, and attachments are in order, the process will take approximately two weeks from the time of receipt of application to permit issuance. All permits expire and must be renewed at the end of the calendar year of issuance. Scientific permits may be renewed by written request and by submittal of the completed report form.

f. Fees

There are no fees associated with application for this permit.

g. Appeals Process

Not applicable.

4. Administering Agency

Texas Parks and Wildlife Department
Resource Protection Branch, Fisheries Division
4200 Smith School Board
Austin, Texas 78744
Telephone: (512) 475-4831

5. Relation to Other State and Federal Programs

In addition to all of the protected species referred to in Rule 127.30.22.002, the Texas Parks and Wildlife Code, Section 68.002 provides for the protection of species which appear on:

- (a) the current United States List of Endangered Foreign Fish and Wildlife;
- (b) the current United States List of Endangered Native Fish and Wildlife; or
- (c) the list of fish and wildlife threatened with statewide extinction as filed by the Executive Director of the Parks and Wildlife Department in the Secretary of State's Office as Rules 127.30.09-001-.006.

CHAPTER 15. ARCHAEOLOGICAL AND HISTORICAL PRESERVATION

The Antiquities Code of Texas establishes the Texas Antiquities Committee and its responsibilities for protecting the State's archaeological and historical resources. The Antiquities Committee is specifically empowered to promulgate rules and regulations for designating state archaeological landmarks and for controlling the salvage and study of such landmarks.

PART A. Permits To Conduct Archaeological Investigations

1. Authorizing Statute

Antiquities Code of Texas (Texas Natural Resource Code, Title 9, Chapter 191)

2. Title of Regulations

"Texas Antiquities Committee, Office of the State Archaeologist"
General Rules of Practice and Procedures

3. Summary of Permit Process

a. Applicability

All sites, objects, buildings, pre-twentieth century shipwrecks and locations of historical, archaeological, educational, or scientific interest in, on, or under any of the lands of the State of Texas, including the tidelands, submerged lands, and the bed of the sea within the jurisdiction of the State of Texas. Permits are not required for surveys or reconnaissance work on private property.

b. General Requirements

Permits to conduct archaeological investigations of any nature on state archaeological landmarks are required prior to initiating a project which may damage a State Archaeological Landmark. Eight categories of permits are issued by the Antiquities Committee. These are: reconnaissance or survey; testing, excavation; preservation of rock art; underwater survey; underwater test excavations; underwater excavations; and destruction. The Antiquities Committee may require a cultural resources reconnaissance and/or survey prior to the initiation of construction on land or offshore activities.

c. Submittal Requirements

Application for permit to conduct investigations on state archaeological landmarks should include all information necessary to allow complete evaluation, including: 1) a statement of the purpose of the investigation; 2) an outline of the proposed work and research design; 3) beginning date and length of time devoted to fieldwork; 4) proposed date of submittal of report on the results of the investigation; 5) name and address of principal investigator; 6) an accurate sketch plan of the particular site or area and a locational map; 7) the name of the facility where specimens, material, and data will be kept; and 8) evidence of adequate funds, personnel, equipment, and facilities to complete the proposed investigation. Eligibility restrictions are specified in the rules. Upon completion of an investigation, the permittee is required to furnish the Antiquities Committee with ten copies of a report presenting the analysis of the results of the investigation.

d. Public Hearings

Applications for permit are typically reviewed and approved by the staff. However, if in the staff's judgment significant controversy or problems exist with a particular application, it is customary for the full committee to consider the permit application.

e. Time Requirements

Applications for permits should be filed with the Antiquities Committee at least two months before the proposed beginning date of the project. If the application and all attachments are in order, it ordinarily requires about one week to process the application and issue the permit. Ordinarily permits are granted for a period not to exceed one year. Extensions may be granted upon application showing good cause.

f. Fees

There are no fees associated with application for this permit.

g. Appeals Process

See Chapter I--State Policy and Procedures--for a discussion of the appeals process prescribed by the Administrative Procedure and Texas Register Act.

4. Administering Agency

Texas Antiquities Committee
c/o Texas Historical Commission
P. O. Box 12276
Austin, Texas 78711
Telephone: (512) 475-3057

5. Relation to Other State and Federal Programs

The staff of the Antiquities Committee reviews proposed projects and actions that are to occur on state-owned lands to insure that such projects do not conflict with the Antiquities Code of Texas or regulations adopted pursuant to the Code. This review extends to some proposed state leasing actions taken by the School Land Board and/or the General Land Office. The Committee may recommend developmental restrictions to be applied to each designated tract.

The staff also evaluates activities proposed to be conducted in Texas' submerged lands, and may comment on applications for permits submitted to the U.S. Army Corps of Engineers. The staff also routinely reviews applicable portions of documents submitted in compliance with federal NEPA requirements.

CHAPTER 16. WETLANDS

The Coastal Wetlands Acquisition Act, Texas Revised Civil Statutes, Article 5415e-3 authorizes the Commissioner of the General Land Office to certify to the Texas Parks and Wildlife Department those coastal wetlands which are most essential to the public interest; to assign priorities for acquisition of interests in such coastal wetlands; and to revoke such certification if it is in the public interest to do so. However, rules implementing this authority have not been adopted at the time of this writing.

Chapter 26 of the Texas Water Code, governing waste discharges, applies to wetland areas. In addition, activities occurring in wetland areas may require a U.S. Army Corps of Engineers Section 404 dredge and fill permit.

CHAPTER 17. COASTAL REGULATIONS*

There are no statutory authorities specific to the regulation of resource development activities occurring in coastal areas. However, existing state law regulates the following uses and activities occurring in the state's coastal areas:

- Water appropriation and supply
- Waste discharges into water
- Sewerage facilities
- Groundwater extraction
- Floodplain construction
- Erosion control
- Industrial and municipal solid waste
- Hazardous substances and oil spills
- Air emissions
- Oil, gas and geothermal resource activities
- Pollution in oil and gas operations
- Geophysical and other surveys and investigations
- Mineral leasing
- Surface mining
- Removal of commercial marl, sand, gravel, shell, and mudshell
- Sand and gravel washing
- Dredge disposal
- Discharge of dredge and fill material
- Easements on state-owned lands
- Wetlands acquisition
- Construction and activities on coastal public lands
- Consturction of mobile homes
- Cultural resources

*Although Texas was working toward development of a federally-approved coastal zone management plan, such efforts have been discontinued.

- Activities in the Gulf Intracoastal Waterway
- Commercial and sport fishing
- Beach access and recreation
- Mobile beach businesses
- Beach cleaning and maintenance
- Dune protection
- Activities in state-owned dune areas

Although not a regulatory agency, the Texas Energy and Natural Resources Advisory Council (TENRAC) plays a major role in the continued development of Texas' coastal management activities. TENRAC provides coordination and recommends direction for the regulatory activities of the other state agencies involved in the management of coastal resources. Within TENRAC, the Natural Resources Division is responsible for providing coordination, planning, and direction of the state's numerous coastal resource management activities. A principal objective of the Natural Resources Division is to improve the effectiveness and efficiency of the use of public funds and public facilities within the designated boundaries of the coastal area; and to coordinate all state natural resource policies, programs, and activities in the coastal area, refine state permitting processes, and require the state to balance the economic, social, and environmental consequences of its natural resources decisions in the coastal area.

FOR FURTHER INFORMATION CONTACT:

Texas Energy and Natural Resources Advisory Council
Natural Resources Division
200 East 18th Street, Suite 500
Austin, Texas 78711
Telephone: (512) 475-0773