SUBCHAPTER A OIL AND GAS WASTE MANAGEMENT

DIVISION 1 GENERAL

§4.101. Prevention of Pollution

(a) No person conducting activities subject to regulation by the Railroad Commission of Texas may cause or allow pollution of surface or subsurface water in the state.

(b) This subchapter establishes, for the purpose of protecting public health, public safety, and the environment within the scope of the Commission's statutory authority, the minimum permitting, operating, monitoring, and closure standards and requirements for the management of oil and gas wastes under the jurisdiction of the Commission.

(c) Used oil as defined in §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) shall be managed in accordance with the provisions of 40 Code of Federal Regulations (CFR), Part 279.

§4.102. Responsibility for Oil and Gas Wastes

(a) The generator of oil and gas waste is responsible for characterizing the waste.

(1) The generator may use process knowledge to categorize the waste material in accordance with the categories listed in the definition of oil and gas waste in §4.110 of this title (relating to Definitions).

(2) Laboratory analysis of waste may be required for waste generated at a commercial facility, as that term is defined in §4.110 of this title, or when waste is transferred from one commercial facility to another.

(3) The generator of an oil and gas waste that is not exempt from regulation under Subtitle C of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 USC §6901, et seq. as described in 40 CFR §261.4(b), shall determine if such waste is a hazardous oil and gas waste by applying process knowledge of the hazard characteristics of the waste in light of the materials or processes used or by testing the waste.

(b) No person, operator, generator, receiver, or carrier may knowingly utilize the services of a carrier to transport oil and gas wastes if the carrier is required to have a permit to transport such wastes but does not have a valid permit.

(c) No person, operator, generator, or carrier may knowingly utilize the services of a receiver to manage oil and gas wastes if the receiver is required to have a permit to manage such wastes but does not have such a permit.

(d) No receiver may knowingly utilize the services of a second receiver to manage oil and gas wastes if the second receiver is required to have a permit to manage such wastes but does not have a valid permit.

(e) Any person who plans to utilize the services of a carrier or receiver is under a duty to determine that the carrier or receiver holds the appropriate authority from the Commission to manage or transport oil and gas wastes.

(f) No generator, carrier, receiver, or any other person may improperly dispose of oil and gas wastes or cause or allow the improper disposal of oil and gas wastes. A generator causes or allows the improper disposal of oil and gas wastes if:

(1) the generator utilizes the services of a carrier or receiver who improperly disposes of the wastes; and

(2) the generator knew or reasonably should have known that the carrier or receiver was likely to improperly dispose of the wastes and failed to take reasonable steps to prevent the improper disposal.

(g) No person may manage oil and gas wastes in a manner that is inconsistent with Commission rules.

(h) Pursuant to Texas Natural Resources Code §91.142(h), any person, operator, permittee, or entity conducting activities under the jurisdiction of the Commission shall notify the Commission if it files for bankruptcy.

§4.103. Prohibited Waste Management Methods

(a) Unless authorized by this subchapter, no person may manage oil and gas wastes without obtaining a permit to manage such wastes, except for the following methods:

(1) as authorized by §4.111 of this title (relating to Authorized Disposal Methods for Certain Wastes);

(2) as authorized by §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste); or

(3) by underground injection for disposal permitted pursuant to §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

(b) The discharge of oil and gas wastes, geothermal resource waters, or other mineralized waters into any surface water is prohibited unless such discharge is authorized by and conducted in accordance with a Texas Pollutant Discharge Elimination System (TPDES) permit or authority issued by the Texas Commission on Environmental Quality (TCEQ).

(c) No person may maintain or use any pit for storage of oil, oil products, or oil by-products.

(d) Except as authorized by this subchapter, no person may maintain or use any pit for storage of oil field fluids, oil field solids, or for storage or disposal of oil and gas wastes, without obtaining a permit to maintain or use the pit.

(e) Except as expressly provided by §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)), no person may dispose of oil and gas wastes at a facility not under the jurisdiction of the Commission unless the Director expressly authorizes such disposal in writing.

(f) Except for those recycling methods authorized for certain wastes by §4.112 of this title (relating to Authorized Recycling), no person may recycle any oil and gas wastes by any method without obtaining a permit.

§4.104. Coordination Between the Commission and Other Regulatory Agencies

(a) The Commission and TCEQ have adopted by rule a Memorandum of Understanding stating how the agencies will implement the division of jurisdiction over wastes. The MOU is adopted in §3.30 of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)).

(b) Activities authorized or permitted by this subchapter may be subject to rules and regulations promulgated by the United States Environmental Protection Agency under the federal Clean Air Act or the TCEQ under the Texas Clean Air Act. The applicant shall obtain any required authority from other regulatory agencies prior to the receipt of waste authorized under this subchapter.

§4.105. Federal Regulations Adopted by Reference

The Commission adopts by reference the following provisions, effective [insert effective date of rulemaking]: 40 Code of Federal Regulations (CFR) Parts 279 and 280 as those provisions apply to underground tanks otherwise classified by the Commission as pits. The Commission has not been granted primacy over these programs. The federal regulations adopted by reference can be reviewed by submitting a request to the Technical Permitting Section.

§4.106. Fees

Applications submitted under this subchapter may be subject to a fee and surcharge pursuant to §3.78 of this title (relating to Fees and Financial Security Requirements).

§4.107. Penalties

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code §81.0531 and §91.101, which provide the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3; Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. This rule does not contemplate automatic enforcement. Violations can be corrected by operators before being referred to legal enforcement.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The guideline minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; including Nat. Res. Code §91.101, which provides the Commission with the authority to adopt rules, enforce rules, and issue permits relating to the prevention of pollution; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health or safety of the public; and

(4) the demonstrated good faith of the person charged.

(e) Typical penalties. Regardless of the method by which the guideline typical penalty amount is calculated, the total penalty amount will be within the statutory limit. A guideline of typical penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.

[Table 1 to be included at proposal]

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the guideline penalty amount. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.

[Table 2 to be included at proposal]

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

[Table 3 to be included at proposal]

[Table 4 to be included at proposal]

(h) Penalty reduction for accelerated settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to an accelerated settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the guideline minimum penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.

[Table 5 to be included at proposal]

§4.108. Electronic Filing Requirements.

(a) A person shall file electronically any form or application for which the Commission has provided an electronic version or an electronic filing system. The person shall comply with all requirements, including but not limited to fees and security procedures, for electronic filing.

(b) The Commission deems a person that files electronically or on whose behalf is filed electronically any form, as of the time of filing, to have knowledge of and to be responsible for the information filed.

(c) All electronic filings that a person submits or that are submitted on behalf of a person shall be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities.

(d) The Commission may provide notice electronically to a person of, and may provide a person the ability to confirm electronically, the Commission's receipt of a filing submitted electronically by or on behalf of that person.

(e) The Commission deems that the signature of a person’s authorized representative appears on each filing submitted electronically by or on behalf of the person, as if this signature actually appears, as of the time the filing is submitted electronically to the Commission.

(f) The Commission holds each person responsible, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that a person files or that are filed on the person’s behalf. The Commission charges each person with the obligation to review and correct, if necessary, all forms, information, or data that a person files or that are filed on the person’s behalf.

§4.109. Exceptions.

(a) An applicant or permittee may request an exception to the provisions of this subchapter by submitting to the Director a written request and demonstrating that the requested alternative is at least equivalent in the protection of public health and safety, and the environment, as the provision of this subchapter to which the exception is requested. The following provisions are ineligible for exceptions:

(1) the requirements related to financial security found in §§4.122, 4.140, 4.150, and 4.171 of this title;

(2) the notice requirements found in §§4.122, 4.123, 4.125 and 4.141 of this title; and

(3) the requirements related to sampling and analysis found in §§4.124, 4.129, 4.131, 4.132, 4.163, and 4.164 of this title.

(b) Each application for an exception to a rule in this subchapter shall be accompanied by the exception fee and surcharge required by §3.78(b)(4) and (n) of this title (relating to Fees and Financial Security Requirements).

(c) Notwithstanding subsections (a) and (b) above, until [insert one year after effective date of rulemaking] the director may grant special exceptions solely for the purpose of issuing permits for facilities and waste management units that were authorized pursuant to §3.8 of this title (relating to Water Protection) prior to [insert the effective date of rulemaking] but that are no longer authorized pursuant to this subchapter.

(d) The Director shall review each written request for an exception on a case-by-case basis.

(e) If the Director denies a request for an exception, the applicant or permittee may request a hearing consistent with the hearing provisions of this subchapter relating to hearings requests but shall not use the requested alternative until the alternative is approved by the Commission.

DIVISION 2 DEFINITIONS

§4.110. Definitions

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) 25-year, 24-hour rainfall event--The maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service and published by the National Oceanic and Atmospheric Administration or other source approved by Technical Permitting.

(2) 100-year flood--A flood that has a 1.0% or greater chance of occurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

(3) 100-year flood plain--The lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood, as determined from maps or other data from the Federal Emergency Management Agency (FEMA), or, if not mapped by FEMA, from the United States Department of Agriculture (USDA) soil maps.

(4) Action leakage rate--The fluid flow rate into a leak detection system that constitutes a primary liner failure.

(5) Active cell--A waste management unit that has received oil and gas waste and has not completed closure.

(6) Active life--The period of time beginning when a waste management unit first receives waste and ending when closure of the waste management unit is complete.

(7) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, injection wells, disposal wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including activities associated with:

(i) the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Commission to regulate the production of oil or gas or geothermal resources;

(iii) the drilling of seismic holes and core holes subject to the jurisdiction of the Commission to regulate the exploration, development, and production of oil or gas or geothermal resources;

(iv) gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(v) any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code §91.173;

(vi) any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code §91.201; and

(vii) the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the Commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, handling, storage, treatment, transportation, non-commercial recycling, reclamation, and disposal of oil and gas waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the federal Solid Waste Disposal Act, as amended (42 USC §6901, et seq.).

(8) Affected person--A person who, as a result of the activity sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public or a competitor.

(9) Alluvium and Quaternary sand and gravel--Unconsolidated sediments consisting of gravel, sand, and/or silt, which typically exhibit high porosity and high permeability.

(10) Aquifer--A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of groundwater to wells or springs.

(11) ASTM--ASTM International (successor to the American Society for Testing and Materials).

(12) Authorized pit--A reserve pit, mud circulation pit, completion/workover pit, fresh makeup water pit, fresh mining water pit, water condensate pit, non-commercial fluid recycling pit, or small sump, described and operated in accordance with Division 3 of this subchapter (relating to Operations Authorized by Rule).

(13) Basic sediment--A mixture of crude oil or lease condensate, water, sediment, and other substances or hydrocarbon-bearing materials that are concentrated at the bottom of tanks and pipeline storage tanks (formerly known as tank bottoms).

(14) Brine pit--A pit used for storage of brine in connection with the solution mining of brine, the operation of an underground hydrocarbon storage facility, or other activities associated with oil and gas exploration, development, storage or production that involve the creation or use of a salt cavern.

(15) Buffer zone--The minimum distance allowed between a waste management unit and another feature, such as a property boundary, surface water, or water well.

(16) Carrier--A person who transports oil and gas wastes. A carrier of another person's oil and gas wastes may be a generator of its own oil and gas wastes. A waste hauler is a carrier.

(17) Coastal Management Program (CMP) rules--The enforceable rules of the Texas Coastal Management Program codified at 31 Texas Administrative Code Chapters 26 through 29.

(18) Coastal Natural Resource Area (CNRA)--One of the following areas defined in Texas Natural Resources Code §33.203: coastal barriers, coastal historic areas, coastal preserves, coastal shore areas, coastal wetlands, critical dune areas, critical erosion areas, gulf beaches, hard substrate reefs, oyster reefs, submerged land, special hazard areas, submerged aquatic vegetation, tidal sand or mud flats, water in the open Gulf of Mexico, and water under tidal influence.

(19) Coastal waters--Waters along the coast under the jurisdiction of the State of Texas, including tidal influence and waters of the open Gulf of Mexico.

(20) Coastal zone--The area within the boundary established in 31 Texas Administrative Code §27.1 (relating to Coastal Management Program Boundary).

(21) Commercial facility--A facility permitted under this chapter, whose operator receives compensation from third parties for the management of oil and gas wastes, whose primary business purpose is to provide such services for compensation, and receives oil and gas wastes by truck. In this paragraph, a third party does not include an entity that wholly owns the operator of the facility permitted under this chapter.

(22) Commission--The Railroad Commission of Texas.

(23) Completion/workover pit--A pit used for storage or disposal of spent completion fluids and solids, workover fluids and solids, and drilling fluids and solids, silt, debris, water, brine, oil scum, paraffin, or other materials which have been cleaned out of the wellbore of a well being completed, worked over, or plugged.

(24) Contact stormwater--Stormwater that has come into contact with oil and gas wastes or areas that are permitted to contain oil and gas wastes, regardless of whether oil and gas waste is currently being contained in the area. See also “Non-contact stormwater” and “Stormwater.”

(25) Container--A pit, sump, tank, vessel, truck, barge, or other receptacle used to store or transport oil and gas waste.

(26) Critical area--A coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat as defined in Texas Natural Resources Code §33.203.

(27) Dewater--To remove free liquids.

(28) Director--The Director of the Oil and Gas Division or the Director's delegate.

(29) Discharge--To allow a liquid, gas, or other substance to flow out from where it has been confined.

(30) Disposal--The act of conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, dumping, placing, abandoning, landfarming, allowing seepage, or causing or allowing any such act of disposal of any oil field fluid, oil and gas waste, or other substance or material subject to regulation by the Commission.

(31) Disposal pit--A pit used for the permanent interment of oil and gas waste.

(32) Disposal system--A permitted facility that receives oil and gas waste for treatment, recycling, reclamation, or disposal. Excludes non-commercial fluid recycling facilities.

(33) Distilled water--Water that has been purified by being heated to a vapor form and then condensed into another container as liquid water that is essentially free of all solutes.

(34) District Director--The Director of the Commission district where the management, disposal, or recycling of oil and gas wastes is located or the District Director's delegate.

(35) District Office--The Commission District Office in the Commission district where the waste management, disposal, and/or recycling is located.

(36) Electrical conductivity--A numerical expression of the ability of a material to carry a current, normally expressed in millimhos/centimeter (the reciprocal of resistivity). It is frequently used to estimate salinity in terms of total dissolved solids. In soil analysis, electrical conductivity may be used as one measure to evaluate a soil's ability to sustain plant growth.

(37) Environmental Protection Agency (EPA)--The United States Environmental Protection Agency.

(38) Facility--A site where oil field fluids or oil and gas wastes are managed. A facility may include multiple permitted activities or waste management units. This term includes both commercial facilities and non-commercial facilities. A facility may be a generator of oil and gas waste.

(39) Freeboard--The vertical distance between the top of a pit or berm and the highest point of the contents of the pit or berm.

(40) Fresh makeup water pit--A pit used in conjunction with a drilling rig, completion operations, or a workover for storage of fresh water used to make up drilling fluid or completion fluid.

(41) Fresh mining water pit--A pit used in conjunction with a brine mining injection well for storage of water used for solution mining of brine.

(42) Generator--A person that generates oil and gas wastes.

(43) Geomembrane--means an impermeable polymeric sheet material that is impervious to liquid and gas if it maintains its integrity and is used as an integral part of an engineered structure designed to limit the movement of liquid or gas in a system.

(44) Geotextile--means a sheet material that is less impervious to liquid than a geomembrane but more resistant to penetration damage, and is used as part of an engineered structure or system to serve as a filter to prevent the movement of soil fines into a drainage system, to provide planar flow for drainage, to serve as a cushion to protect geomembranes, or to provide structural support.

(45) Groundwater--Subsurface water in a zone of saturation.

(46) Hydrocarbon condensate--Hydrocarbon liquids that condense from a natural gas stream.

(47) Inert oil and gas waste--Nonreactive, nontoxic, and essentially insoluble oil and gas wastes, including, but not limited to, concrete, glass, wood, metal, wire, plastic, synthetic liners, fiberglass, soil, dirt, clay, sand, gravel, brick, and trash. The term excludes asbestos or asbestos-containing waste, and oil and gas naturally occurring radioactive material (NORM) waste.

(48) Karst terrain--An area where karst topography, with its characteristic surface and/or subterranean features, is developed principally as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terrains include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

(49) Land application--An authorized or permitted waste management practice in which oil and gas waste is placed directly on the ground surface.

(50) Landfarming--A land application waste management practice in which oil and gas waste is mixed with or applied to land in such a manner that the waste will not migrate from the authorized or permitted landfarming cell.

(51) Landfarming cell--The area into which oil and gas waste is landfarmed. Previously referred to as a landfarming and/or landtreatment cell.

(52) Leak detection system--A system used to detect leaks below the liner of pits. A leak detection system may be installed in a location other than below the liner of pits.

(53) Liner--A continuous layer of impervious materials, synthetic or natural, beneath and on the sides of a pit that restricts or prevents the downward or lateral release or migration of oilfield fluids or oil and gas wastes.

(54) Manage or management of oil and gas waste--The receiving, handling, storage, treatment, processing, transportation, reclamation, recycling, and/or disposal of oil and gas wastes.

(55) Manifest--An electronic or paper document used to track shipments of oil and gas waste that is authenticated by all parties (the generator, carrier, and receiver) in the transfer of oil and gas waste, and contains information on the waste type, source, quantity, and instructions for handling.

(56) Mined brine--Brine produced from a brine mining injection well by solution of subsurface salt formations. The term does not include saltwater produced incidentally to the exploration, development, and production of oil or gas or geothermal resources.

(57) Mud circulation pit--A pit used in conjunction with drilling rig for storage of drilling fluid currently being used in drilling operations.

(58) Natural gas or natural gas liquids processing plant--A plant whose primary function is the extraction of natural gas liquids from field gas, the fractionation of natural gas liquids, and the production of pipeline-quality gas for transportation by a natural gas transmission pipeline. The term does not include a separately located natural gas treating plant for which the primary function is the removal of carbon dioxide, hydrogen sulfide, or other impurities from the natural gas stream. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment shall be considered a component of a natural gas or natural gas liquids processing plant only if it is located at a plant the primary function of which is the extraction of natural gas liquids from field gas or fractionation of natural gas liquids.

(59) Non-commercial facility--A facility authorized or permitted under this chapter that is not a commercial facility as defined in §4.110(21) of this title.

(60) Non-commercial fluid recycling--The recycling of fluid produced from an oil or gas well, such as produced formation fluid, workover fluid, and completion fluid (including fluids produced from the hydraulic fracturing process):

(A) that occurs:

(i) on an existing Commission-designated lease or drilling unit associated with a Commission-issued drilling permit; or

(ii) upon land leased or owned by the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title (relating to Disposal Wells) or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs); and

(B) where the operator of the lease, or drilling unit, or leased or owned land treats or contracts with a person or a wholly owned subsidiary of the operator for the treatment of the fluid, and may accept such fluid from other leases and or operators.

(61) Non-commercial fluid recycling pit--A pit used in conjunction with one or more oil or gas leases or units that is constructed, maintained, and operated by the operator of record of the lease or unit for the storage of fluid for the purpose of non-commercial fluid recycling or for the storage of treated fluid that occurs:

(A) on an existing Commission-designated lease or drilling unit associated with a Commission-issued drilling permit, or

(B) upon land leased or owned by the operator or a wholly owned subsidiary of the operator for the purposes of operation of a non-commercial disposal well operated pursuant to a permit issued under §3.9 of this title or a non-commercial injection well operated pursuant to a permit issued under §3.46 of this title.

(62) Non-contact stormwater--Stormwater that, by design or direction, has not come into contact with areas containing oil or gas wastes or areas permitted to contain oil and gas wastes. See also "Contact stormwater" and "Stormwater."

(63) NORM--Naturally occurring radioactive material.

(64) Oil and gas NORM waste--Any solid, liquid, or gaseous material or combination of materials (excluding source material, special nuclear material, and by-product material) that in its natural physical state spontaneously emits radiation, is discarded or unwanted, constitutes, is contained in, or has contaminated oil and gas waste, and prior to treatment or processing that reduces the radioactivity concentration, exceeds exemption criteria specified in 25 Texas Administrative Code §289.259(d) (relating to Licensing of Naturally Occurring Radioactive Material (NORM)).

(65) Oil and gas wastes--As defined in Texas Natural Resources Code §91.1011, the term:

(A) means waste that arises out of or incidental to the drilling for or producing of oil or gas, including waste arising out of or incidental to:

(i) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the Commission;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Texas Natural Resources Code §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Texas Natural Resources Code §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel; and

(B) includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material, but does not include waste arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

(66) Oil field fluids--Fluid used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, fluids to be used or reused in connection with activities associated with the solution mining of brine, and mined brine. The term “oil field fluids” includes, but is not limited to, drilling fluids, completion fluids, surfactants, and other chemicals used in association with oil and gas activities. Oil field fluids no longer used or reused in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, and oil field fluids that have been abandoned, are considered an oil and gas waste.

(67) Operator--A person, acting for itself or as an agent for others, designated to the Railroad Commission of Texas as the person with responsibility for complying with the rules and regulations regarding the permitting, physical operation, closure, and post-closure activities of a facility regulated under this chapter, or such person's authorized representative.

(68) Partially treated waste--Oil and gas waste that has been treated or processed with the intent of being recycled, but which has not been determined to meet the environmental and engineering standards for a recyclable product established by the Commission in this subchapter or in a permit issued pursuant to this subchapter.

(69) Person--A natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(70) Pit--A container for which earthen materials provide structure, shape, and foundation support; a container that includes a concrete floor or sidewall; or a buried or partially buried tank.

(71) Pollution--The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any surface or subsurface water that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(72) Public water system--A source of potable water for the public's use that has at least 15 service connections or serves at least 25 individuals for at least 60 days out of the year. This includes people that live in houses served by a system, but can also include employees, customers, or students.

(73) Pressure maintenance plant or repressurizing plant--A plant for processing natural gas for reinjection for reservoir pressure maintenance or repressurizing in a natural gas recycling project. These terms do not include a compressor station along a natural gas pipeline system or a pump station along a crude oil pipeline system.

(74) Receiver--A person who manages oil and gas waste that is received from a generator or carrier. A receiver of another operator's oil and gas wastes may be a generator of its own oil and gas wastes.

(75) Recyclable product-- A reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized or permitted by a Commission permit and that meets the environmental and engineering standards established by the permit or authorization for the intended use, and is used as a legitimate commercial product. A recyclable product is not a waste but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit or authorization.

(76) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use. This term also includes the actual use or re-use of oil and gas wastes. For the purpose of this chapter, the term "recycle" does not include injection pursuant to a permit issued under §3.46 of this title.

(77) Reserve pit--A pit used in conjunction with drilling rig for collecting spent drilling fluids; cuttings, sands, and silts; and wash water used for cleaning drill pipe and other equipment at the well site. Reserve pits are sometimes referred to as slush pits or mud pits.

(78) Secondary containment--Measures put into place to contain spills and prevent them from contaminating the surrounding area, and typically include structures such as containers, dikes, berms, or other barriers.

(79) Sensitive area--An area defined by the presence of factors, whether one or more, that make it vulnerable to pollution from oil and gas surface waste management activities. Factors that are characteristic of sensitive areas include the presence of shallow groundwater or pathways for communication with deeper groundwater; proximity to surface water, including lakes, rivers, streams, dry or flowing creeks, irrigation canals, stock tanks, and wetlands; proximity to natural wildlife refuges or parks; or proximity to commercial or residential areas.

(80) Small sump--A subsurface pit that is lined with concrete, corrosion resistant metal, or pre molded synthetic material, and that has a working capacity of 500 gallons or less while maintaining a freeboard of one foot.

(81) Solid oil and gas waste-- Oil and gas waste that is determined not to contain “free liquids” as defined by EPA Method 9095B (Paint Filter Liquids Test), as described in “Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods” (EPA Publication Number SW-846).

(82) Storage or storing--The keeping, holding, accumulating, or aggregating of oil and gas waste for a temporary or indeterminate period.

(83) Stormwater--Precipitation that falls onto and flows over the ground surface and does not infiltrate into the soil. See also “Contact stormwater” and “Non-contact stormwater.”

(84) Surface and subsurface water--Groundwater, percolating, perched or otherwise, and lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, wetlands, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh, saline, or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(85) Tank--A rigid, non-concrete, non-earthen container that provides its own structure and shape.

(86) TCEQ--The Texas Commission on Environmental Quality or its successor agencies.

(87) Technical Permitting Section--The Technical Permitting Section within the Oil and Gas Division of the Railroad Commission of Texas, located in Austin, Texas.

(88) Treated fluid--Fluid oil and gas waste that has been treated to remove impurities such that the fluid can be reused or recycled. Treated fluid that is abandoned or disposed of is classified as a waste. Treated fluid that is reused or recycled is not classified as a waste.

(89) Unified Soil Classification System--The standardized system devised by the United States Army Corps of Engineers for classifying soil types.

(90) Washout pit--A pit used that receives or stores the rinsate from trucks, mobile tanks, or other vessels used to store oil and gas wastes or oil field fluids. Such rinsate is an oil and gas waste.

(91) Waste management unit--A container, structure, pit, pad, cell, or area in or on which oil and gas wastes are managed.

(92) Water condensate pit--A pit used for storage or disposal of water condensed from natural gas.

(93) Wetland--An area including a swamp, marsh, bog, prairie pothole, or similar area having a predominance of hydric soils that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support and that under normal circumstances supports the growth and regeneration of hydrophytic vegetation. The term “hydric soil” means soil that, in its undrained condition, is saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation. The term “hydrophytic vegetation” means a plant growing in water or a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content. The term “wetland” does not include irrigated acreage used as farmland; a man-made wetland of less than one acre; or a man-made wetland for which construction or creation commenced on or after August 28, 1989, and which was not constructed with wetland creation as a stated objective, including but not limited to an impoundment made for the purpose of soil and water conservation which has been approved or requested by soil and water conservation districts (Texas Water Code §11.502.).

DIVISION 3 OPERATIONS AUTHORIZED BY RULE

§4.111. Authorized Disposal Methods for Certain Wastes

(a) Water condensate. A person may, without a permit, dispose of by land application water which has been condensed from natural gas and collected at gas pipeline drip stations or gas compressor stations. The disposal is authorized provided:

(1) the disposal is not a discharge to surface water and the waste will not reach surface water;

(2) prior to each land application event, representative samples are collected and analyzed for the list of parameters in the Figure in this subsection;

(3) analytical methods used are documented and all parameters are in mg/liter unless otherwise specified;

(4) analyte concentrations do not exceed the concentration limits listed in the Figure in this subsection;

(5) the water condensate is applied to the ground surface in such a manner that it will not leave the boundaries of the property; or, if it is applied such that it will leave the property and enter an adjoining property, the operator has obtained written permission from the surface owner of the adjoining property; and

(6) the area where the water condensate will be land applied is at least 500 feet from a public water system well or intake, and 300 feet from any surface water or residential or irrigation water supply well.

Figure: 16 TAC §4.111(a)

(b) Inert oil and gas wastes. A person may, without a permit, dispose of inert oil and gas wastes on the property on which the waste was generated provided disposal is by a method other than disposal into surface water.

(c) Low chloride water-based drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by landfarming: water-based drilling fluids with a chloride concentration of 3,000 mg/liter or less; drill cuttings, sands, and silts obtained while using water-based drilling fluids with a chloride concentration of 3,000 mg/liter or less; and wash water used for cleaning drill pipe and other equipment at the well site. The disposal is authorized in accordance with the following:

(1) the waste is landfarmed on the same lease or unit, easement, or right-of-way where it was generated;

(2) the person has obtained written permission to landfarm the waste from the surface owner of the area to be landfarmed;

(3) the slope of the area to be landfarmed is three percent or less, or any greater slope is approved in writing by the District Director;

(4) the area where the waste will be landfarmed is at least 500 feet from a public water system well or intake, 300 feet from any surface water or other types of wells, and in an area with subsurface water at depths of more than 100 feet below land surface;

(5) any accumulation of hydrocarbons on top of the waste to be landfarmed is removed from the waste prior to spreading;

(6) the waste to be landfarmed has a pH of not less than 6 nor more than 9 standard units;

(7) the waste is spread evenly and in a manner that will not result in a depth of greater than 6 inches;

(8) the waste is spread in a manner that will not result in pooling, ponding, or runoff of the waste and the waste is then disked into the soil as necessary to distribute solids present in the waste within the soil;

(9) immediately after landfarming the waste, the waste-soil mixture has an electrical conductivity that does not exceed the background level for undisturbed soil established before landfarm activities commenced or four millimhos/centimeter, whichever is greater; and

(10) immediately after landfarming the waste, the waste-soil mixture has a total petroleum hydrocarbon content of one percent or less by weight.

(d) Other drilling fluid. A person may, without a permit, dispose of the following oil and gas wastes by burial in an authorized pit specified in §4.113 of this title (relating to Authorized Pits): water-based drilling fluid which had a chloride concentration in excess of 3,000 mg/liter but which has been dewatered; drill cuttings, sands, and silts obtained while using oil-based drilling fluids or water-based drilling fluids with a chloride concentration in excess of 3,000 mg/liter; and those drilling fluids and wastes allowed to be landfarmed without a permit. The disposal is authorized provided:

(1) the wastes are disposed of at the same well site where they are generated:

(2) the wastes are dewatered; and

(3) the burial complies with the closure requirements for authorized pits pursuant to §4.114 of this title (relating to Requirements Applicable to All Authorized Pits).

(e) Completion/workover pit wastes. A person may, without a permit, dispose of in an authorized pit specified in §4.113 of this title the following materials: solids from spent completion fluids, workover fluids, drilling fluid, silt, debris, water, brine, paraffin, and the materials cleaned out of the well bore of a well being completed, worked over, or plugged, and reservoir fluids removed during wellbore cleanup. The disposal is authorized provided:

(1) the wastes are disposed of at the same well site where they were generated;

(2) the wastes have been dewatered;

(3) the burial complies with the closure requirements for authorized pits in §4.114(e) of this title; and

(4) the operator maintains documentation demonstrating closure requirements have been met. The operator shall maintain these records for at least three years from the date of closure and provide copies of these records to the Commission upon request.

(f) Contents of non-commercial recycling pits. A person may, without a permit, dispose of the synthetic liners and solids from a non-commercial recycling pit by burial in the pit, provided:

(1) the pit has been dewatered and the fluids are recycled or disposed of in accordance with Commission rules;

(2) the residual solid (sediment) material meets the requirements for burial in subsection (d) of this section; and

(3) the pit is closed pursuant to §4.114(e) of this title.

(g) Hydrostatic test water from a new pipeline. A person may, without a permit, apply to the ground surface hydrostatic test water from a new pipeline provided:

(1) the pipe is new;

(2) the source of the test water is a good quality water source, such as a drinking water source, an irrigation well in the immediate area, or a surface water source in the immediate area;

(3) the volume of the test water to be applied to the ground surface is 50,000 gallons or less;

(4) the test water is applied to the ground surface in such a manner that it will not leave the boundaries of the pipeline right of way or, if it is applied to the ground surface such that it will leave the right of way and enter an adjoining property, the person has obtained written permission from the surface owner of the adjoining property;

(5) the test water is applied to the ground surface in such a manner that the water will not reach surface water;

(6) the area where the hydrostatic test water will be applied to the ground surface is at least 500 feet from a public water system well or intake, and 300 feet from any surface water or residential or irrigation water supply well;

(7) during land application, the test water is filtered through hay bales, filter bag, or equivalent filter media and discharged in such a manner as to prevent significant erosion and runoff; and

(8) any test water that is not covered by the oil and gas exemption in Subtitle C of the Resource Conservation and Recovery Act (RCRA) is determined to be nonhazardous.

§4.112. Authorized Recycling

(a) Non-commercial fluid recycling is authorized and no permit is required if:

(1) treated fluid is recycled for use in drilling operations, completion operations, hydraulic fracturing operations, or as another type of oilfield fluid to be used in the wellbore of an oil, gas, geothermal, or service well;

(2) non-commercial fluid recycling pits are operated in accordance with §§4.113-4.115 of this title (relating to Authorized Pits, Requirements Applicable to All Authorized Pits, and Specific Requirements Applicable to Authorized Pits, respectively); and

(3) non-commercial fluid recycling is limited to oil and gas waste; commingling of treated oil and gas waste with other treated fluid from sources outside of the Commission's jurisdiction may be authorized at the Director’s discretion.

(b) Treated fluid may be reused in any other manner without a permit from the Commission provided the reuse occurs pursuant to a permit issued by another state or federal agency.

(c) If treatment of the fluid results in distilled water, no permit is required to use the resulting distilled water in any manner other than discharge to surface water. The operator shall document by sampling and analysis that the fluid is distilled water and does not contain other substances. The operator shall retain such documentation for three years and provide to the Commission upon request.

(d) Fluid that meets the requirements of subsection (a), (b), or (c) of this section is a recyclable product.

§4.113. Authorized Pits

(a) An operator may, without a permit, maintain or use a reserve pit, mud circulation pit, completion/workover pit, fresh makeup water pit, fresh mining water pit, water condensate pit, non-commercial fluid recycling pit, or small sump. Authorized pits are required to comply with the applicable requirements of §4.114 of this title (relating to Requirements Applicable to All Authorized Pits), and §4.115 of this title (relating to Specific Requirements Applicable to Authorized Pits). Authorized pits may be subject to certain additional containment guidelines at the Director's discretion based on factors such as the characteristics of the pit location.

(b) An authorized pit that was constructed pursuant to and compliant with §3.8 of this title (relating to Water Protection) as that rule existed prior to [insert effective date of this rulemaking], is authorized to continue to operate subject to the following:

(1) Authorized pits that cause pollution shall be brought into compliance or closed according to this division.

(2) By [insert one year after the effective date of this rulemaking], basic sediment pits, flare pits, water condensate pits, and other unpermitted pits not authorized by this section shall be:

(A) permitted according to this subchapter; or

(B) closed according to this division.

(3) At the time of closure, authorized pits shall be closed according to this division.

(c) In the event of an unauthorized release of oil and gas waste, treated fluid, or other substances from any pit authorized by this section, the operator shall take any measures necessary to stop or control the release and report the release to the District Office within 24 hours of discovery of the release.

§4.114. Requirements Applicable to All Authorized Pits

(a) General requirements for authorized pits.

(1) No authorized pit shall be constructed, operated, used, maintained, or closed in a manner that will cause, create, or contribute to pollution or in a manner that is inconsistent with this subchapter.

(2) Unless otherwise specified, the requirements outlined in this section apply to all authorized pits.

(3) The operator responsible for the authorized pit shall be the operator of record or a wholly owned subsidiary of the operator of record of the oil lease, gas well, unit, drilling permit, disposal well, injection well, or other property under the Commission's jurisdiction where the authorized pit is located.

(4) The operator shall maintain documentation demonstrating compliance with §4.113 of this title (relating to Authorized Pits), this section, and §4.115 of this title (relating to Specific Requirements Applicable to Authorized Pits) for at least three years from the date of closure of the authorized pit. The operator shall provide copies of these records to the Commission upon request.

(5) The operator of an authorized pit shall register the pit with the Commission once the Director has established a registration system for authorized pits.

(A) New pits shall be registered prior to construction of the pit.

(B) Pits existing at the time the registration system is established shall be registered or closed within one year.

(C) Authorized pit registration shall include:

(i) the type of the pit;

(ii) the location of the pit including the lease name and number, drilling permit number or other Commission-issued identifier, and the latitude and longitude coordinates using the North American Datum (NAD) 83;

(iii) the authorized pit dimensions and capacity; and

(iv) the depth to groundwater based on the assessment criteria in in subsection (h)(1) of this section.

(6) An authorized pit may be designated as more than one type of pit provided it meets the requirements in this section for each type of pit. An authorized pit of one type may be redesignated as an authorized pit of another type (for example, a reserve pit may be redesignated as a completion pit) provided the pit was constructed to meet the more stringent design and construction requirements, and the operator notifies the District Director of the redesignation pursuant to the procedure described in paragraph (5) of this subsection.

(b) General location requirements for authorized pits. Unless the District Director approves a

written request for an exception, no authorized pit shall be located:

(1) on a barrier island or a beach;

(2) within 300 feet of surface water;

(3) within 500 feet of any public water system well or intake;

(4) within 300 feet of or any domestic water well or irrigation water well, other than a well that supplies water for drilling or workover operations for which the pit is authorized; or

(5) within a 100-year flood plain.

(c) General design and construction requirements for authorized pits. All authorized pits shall comply with the following requirements.

(1) The operator shall design and construct an authorized pit to ensure the confinement of liquids to prevent releases.

(2) An authorized pit shall be large enough to ensure adequate storage capacity to maintain two feet of freeboard and to contain:

(A) the volume of material to be managed; and

(B) the volume of precipitation from a 25-year, 24-hour rainfall event.

(3) Except for small sumps, the bottom of an authorized pit shall be at least 20 feet above the top of subsurface water.

(4) Except for small sumps used to collect stormwater, an authorized pit shall be designed and constructed to prevent stormwater runoff from entering the pit. A berm, ditch, proper sloping, or other diversion shall surround an authorized pit to prevent run-on of surface water.

(5) An authorized pit shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner’s rupture or tear. The operator shall construct an authorized pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V). The District Director may approve an alternative to the slope requirement if the operator demonstrates that it can construct and operate the authorized pit in a safe manner to prevent contamination of fresh water and protect public health, public safety, and the environment.

(6) Authorized pits shall be lined.

(A) The liner shall be constructed of materials that have sufficient chemical and physical properties, including thickness, to prevent failure during the expected life of the authorized pit due to pressure gradients (including static head and external hydrogeologic forces), physical contact with material in the pit or other materials to which the liner may be expected to be exposed, climatic conditions, stress of installation, and use.

(B) All of the pit shall be lined, including the dike or berm, and the liner shall be properly anchored or keyed into the native substrate to prevent erosion or washout of the dike, berm, or liner.

(C) A liner may be constructed of either natural or synthetic materials.

(D) A liner constructed of natural materials shall meet the following requirements:

(i) A natural liner shall only be used for an authorized pit with an active life of less than one year.

(ii) A natural liner shall be constructed of a minimum of two feet of compacted fat clay, placed in six-inch lifts compacted to a 95% standard proctor as defined in ASTM D698 and having a hydraulic conductivity of 1.0×10^{-7} cm/sec or less. Where natural liner materials are used, the operator shall perform appropriate testing to ensure compliance with these requirements and shall maintain copies of the test results for the life of the pit.

(iii) An authorized pit with a natural liner shall not be used for waste disposal pursuant to §4.111 of this title (relating to Authorized Disposal Methods for Certain Wastes) unless the pit also has a synthetic liner.

(E) A synthetic liner shall meet the following requirements:

(i) A synthetic liner shall be placed upon a firm, unyielding foundation or base capable of providing support to the liner, smooth and free of rocks, debris, sharp edges, or irregularities to prevent the liner's rupture or tear.

(ii) A synthetic liner shall be underlain by a geotextile where needed to reduce localized stress, strain, or protuberances that may otherwise compromise the liner's integrity.

(iii) A synthetic liner shall be made of an impermeable geomembrane capable of resisting pressure gradients above and below the liner to prevent failure of the liner.

(iv) A synthetic liner shall have a breaking strength of 40 pounds per inch using test method ASTM D882.

(v) A synthetic liner shall have a puncture resistance of at least 15 pounds force using test method ASTM D4833.

(vi) The length of synthetic liner seams shall be minimized, and the seams shall be oriented up and down, not across, a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall field weld and test liner seams. A synthetic liner shall have a seam strength, if applicable, of at least

15 pounds per inch using test method ASTM D751 or ASTM D6392.

(d) General operating requirements for authorized pits. All authorized pits shall be operated in accordance with the following requirements.

(1) A freeboard of at least two feet shall be always maintained in authorized pits, except for small sumps which shall maintain a minimum of one foot.

(2) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.

(3) Authorized pits shall be inspected periodically by the operator for compliance with the applicable provisions of this section taking into consideration the nature of the pit and frequency of use.

(e) General closure requirements for authorized pits. All authorized pits shall comply with the following closure requirements.

(1) Closure activities for authorized pits shall:

(A) ensure permanent disposition of oil and gas waste;

(B) confirm that oil and gas waste has been removed from the pit unless the waste is disposed of by burial in an authorized pit pursuant to §4.111 of this title (relating to Authorized Disposal Methods for Certain Wastes);

(C) verify that authorized disposal of oil and gas waste by burial pursuant to §4.111 of this title will not result in migration from the physical boundaries of the authorized pit; and

(D) ensure remediation of waste or waste constituents that have migrated from the physical boundaries of the authorized pit.

(2) Prior to closure of the pit, the operator shall remove free oil and dewater the pit.

(3) Prior to closure of the pit, all waste shall be removed from the pit unless the requirements of subsection (g) of this section are met.

(f) Closure requirements for pits if all waste is removed for disposal.

(1) The contents of the pit, including synthetic liners, if applicable, shall be removed for disposal at an authorized or permitted waste facility.

(2) The operator shall verify whether oil and gas waste has migrated beyond the pit floor and sidewalls.

(3) The operator shall collect one five-point composite soil sample for each acre of pit surface area. The five-point composite sample shall be collected from the native soil on the pit floor and sidewalls. A fraction of an acre of pit surface area will require a composite sample.

(A) The samples shall be analyzed for the constituents and using the methods

identified in the Figure in this subsection to determine whether the constituent concentrations exceed the limit in the Figure or background concentrations.

(B) If the operator intends to use background soil concentrations as a closure standard, then constituent concentrations in background soil shall be determined before or during pit construction. To establish background concentrations, the operator shall:

(i) sample soil in the pit floor and sidewall locations before or during pit construction;

(ii) collect one five-point composite soil sample for each acre of pit surface area. The five-point composite sample shall be collected from the native soil on the pit floor and sidewalls. A fraction of an acre of pit surface area will require a composite sample; and

(iii) analyze the soil samples for the parameters listed in the Figure in this subsection.

(C) If the concentration of the constituents exceeds the limits in the Figure in this subsection or the concentrations determined from background sampling and analysis, the operator shall notify the District Director within 24 hours of discovery of the concentration.

(i) The operator may then conduct additional sampling and analysis to document the magnitude and extent of the release.

(ii) The operator shall excavate additional soil in 1-foot increments from the pit floor and sidewalls if the results of the native soil sampling and analysis indicate that the limits in the Figure in this subsection are exceeded.

(iii) All excavated soil must be disposed at a facility permitted for disposal by the Commission.

(iv) The operator may seek additional direction from the District Director on a case-by-case basis.

(v) The operator shall provide to the District Director a summary of the analytical data and additional soil volumes excavated for disposal within 60 days of pit closure.

(D) If the concentration of the constituents does not exceed the limits in the Figure in this subsection or background concentrations, the operator shall proceed with closure.

(i) The operator shall backfill the pit with non-waste containing, uncontaminated, earthen material.

(ii) The backfill shall be compacted in a manner that minimizes future consolidation, desiccation, and subsidence.

(iii) The operator shall mound or slope the former pit site to encourage

runoff and discourage ponding.

(iv) The operator shall, where necessary to ensure ground stability and prevent significant erosion, vegetate the former pit site in a manner consistent with natural vegetation in undisturbed soil in the vicinity of the pit.

(E) The operator shall notify the District Director a minimum of seven days prior to closure of the authorized pit and shall maintain documentation for a period of three years to demonstrate that the requirements of this section have been met.

Figure: 16 TAC §4.114(f)

(g) Closure requirements for pits if waste will be buried in place pursuant to §4.111 of this title.

(1) The operator shall ensure that any oil and gas waste, including synthetic liners, that will be disposed of in the pit as authorized by §4.111 of this title is buried in a manner such that the waste will remain below the natural ground surface and be confined to the original dimensions of the pit.

(2) The operator shall stabilize or solidify the remaining authorized pit contents to a physical state sufficient to support the final cover of the authorized pit. The operator shall not mix the remaining pit contents with soil or other material at a mixing ratio of greater than 3:1, soil or other material to remaining pit contents. The resulting waste mixture must pass the paint filter liquids test (EPA SW-846, Method 9095).

(3) The operator shall determine the suitability of the waste material or mixture for disposal in the authorized pit.

(A) The operator shall collect one five-point composite waste material or mixture sample for each acre of pit surface area. A fraction of an acre of pit surface area will require a composite sample.

(B) The samples shall be analyzed for the constituents and using the methods identified in the Figure in this subsection to determine whether the constituent concentrations are below the limit in the Figure or background concentrations.

(C) If the operator intends to use background soil concentrations as a closure standard, then constituent concentrations in background soil shall be determined before or during pit construction. To establish background concentrations, the operator shall:

(i) sample soil in the pit floor and sidewall locations before or during pit construction;

(ii) collect one five-point composite soil sample for each acre of pit surface area. The five-point composite sample shall be collected from the native soil on the pit floor and sidewalls. A fraction of an acre of pit surface area will require a composite sample; and

(iii) analyze the soil samples for the parameters listed in the Figure in this subsection.

(4) Waste material that meets the constituent limits in the Figure in subsection (f) of this section or background concentrations may be buried in the pit without additional disposal considerations.

(5) Untreated waste material that does not meet the constituent limits in the Figure in subsection (f) of this section:

(A) may be buried by containment in a pit that:

(i) has a double liner with a leak detection system; or

(ii) has a single liner for which the operator demonstrates the liner is intact and maintains the liner intact; and

(B) the waste material is covered with a geonet to support the overburden fill material; and

(C) the pit is backfilled, sufficiently compacted, and contoured to prevent water infiltration into the waste zone.

(6) Treated waste material that meets the constituent limits in the Figure in this subsection based on the distance from the bottom of the pit to the shallowest groundwater may be buried in the pit. Liners in the pit may be removed from the pit or disposed of in the pit upon closure.

(7) The operator shall proceed with closure as follows:

(A) The operator shall backfill the pit with non-waste containing, uncontaminated, earthen material.

(B) The backfill shall be compacted in a manner that minimizes future consolidation, desiccation, and subsidence.

(C) The operator shall mound or slope the burial pit site to encourage runoff and discourage ponding.

(D) The operator shall, where necessary to ensure ground stability and prevent significant erosion, vegetate the former pit site in a manner consistent with natural vegetation in undisturbed soil in the vicinity of the pit.

(8) The operator shall notify the District Director a minimum of seven days prior to closure of the authorized pit and shall maintain documentation for a period of three years to demonstrate that the requirements of this section have been met.

(9) The Commission may require the operator to close an authorized pit in a manner other than the manner described in this section if it determines that oil and gas wastes or oil field fluids are likely to escape from the pit, that oil and gas wastes or oil field fluids may cause or are causing pollution,

and/or that the pit is being used in a manner inconsistent with Commission rules.

Figure: 16 TAC §4.114(g)

(h) Groundwater monitoring requirements for authorized pits.

(1) For all authorized pits except small sumps, the operator shall evaluate whether groundwater is likely to be present within 100 feet of the ground surface. The operator shall review readily available public information to evaluate whether groundwater is likely to be present within 100 feet of the ground surface. The presence of a water well within a one-mile radius of the authorized pit that produced or produces water from a depth of 100 feet or less indicates groundwater is likely to be present within 100 feet of the ground surface. If the operator cannot determine whether groundwater is likely to be present within 100 feet of the ground surface based on a review of readily available public information, the operator shall obtain location-specific subsurface information to establish the presence or absence of groundwater within 100 feet of the ground surface.

(2) Operators of authorized pits located in areas where groundwater is not likely to be present within 100 feet of the ground surface are not required to perform groundwater monitoring.

(3) Operators of authorized pits located in areas where groundwater is likely to be present within 100 feet of the ground surface are required to perform groundwater monitoring in accordance with paragraph (4) of this subsection unless:

(A) the authorized pit has a double synthetic liner with an operational leak detection system; or

(B) the authorized pit has a liner and an active life of less than one year.

(4) When groundwater monitoring is required under this subsection, the operator shall install at least three groundwater monitoring wells, at least two of which are installed in a hydrologic downgradient location relative to the pit and at least one of which is installed in an upgradient location relative to the pit.

(5) The following is required for each soil boring or groundwater monitoring well drilled.

(A) The drilling method shall allow for periodic or continuous collection of soil samples for field screening and soil characterization in order to adequately characterize site stratigraphy and groundwater bearing zones.

(B) The groundwater monitoring wells shall be completed by a certified water well driller in accordance with 16 TAC Part 4, Chapter 76 (Water Well Drillers and Water Well Pump Installers).

(C) The groundwater monitoring wells shall be completed to penetrate the shallowest groundwater zone, and the completion shall isolate that zone from any deeper groundwater

zone.

(D) The screened interval of the groundwater monitoring wells shall be designed to intercept at least 5 feet of groundwater.

(E) The groundwater monitoring well screen shall extend above the static water level.

(F) The sand pack size shall be compatible with the well screen slot size, as well as the local lithology.

(G) The groundwater monitoring well heads shall be protected from damage by vehicles and heavy equipment.

(H) The groundwater monitoring wells shall be maintained in good condition with a lockable watertight expansion cap.

(I) The groundwater monitoring wells shall be able to provide a sample that is representative of the groundwater underlying the site for the duration of pit operations.

(J) The operator shall retain the following information for three years after the monitoring wells are plugged:

(i) a soil boring lithological log for the well, with the soils described using the Unified Soil Classification System (USCS) (equivalent to ASTM D 2487 and ASTM D 2488); the method of drilling; well specifications; slotted screen type and slot size; riser and screen length; bentonite and cement intervals; total depth; and the depth of the first encountered groundwater or saturated soils;

(ii) a well installation diagram, detailing construction specifications for each well;

(iii) a survey elevation for each well head reference point to the top of the casing relative to a real or arbitrary on-site benchmark or relative to mean sea level;

(iv) a table with recorded depth to water, depth to top of casing, and adjusted depth to water data;

(v) an updated Site Plan and a potentiometric surface map showing static water levels, the calculated gradient, and the estimated direction of groundwater flow; and

(vi) the laboratory analytical reports and the corresponding chain of custody from each groundwater sampling event.

(6) The operator shall sample the wells after installation of the wells is complete and shall then sample the wells on a quarterly schedule.

(7) The wells shall be monitored and/or sampled for the following parameters: the static water level, pH, and concentrations of benzene, total petroleum hydrocarbons, total dissolved solids, soluble cations (calcium, magnesium, potassium, and sodium), and soluble anions (bromides, carbonates, chlorides, nitrates, and sulfates).

(8) If any of the parameters identified in paragraph (7) of this subsection indicate potential pollution:

(A) the operator shall notify the District Director by phone or email within 24 hours of receiving the analytical results; and

(B) the District Director will determine whether additional remediation, monitoring, or other actions are required.

§4.115. Specific Requirements Applicable to Authorized Pits

(a) Additional requirements. In addition to the general requirements described in §4.114 of this title (relating to Requirements Applicable to All Authorized Pits), an operator of any authorized pit shall comply with the following requirements, as applicable.

(b) Reserve pits and mud circulation pits.

(1) Authorized pit contents. A person shall not deposit or cause to be deposited into a reserve pit or mud circulation pit any oil field fluids or oil and gas wastes, other than the following:

(A) drilling fluids, whether freshwater-based, saltwater-based, or oil-based;

(B) drill cuttings, sands, and silts separated from the circulating drilling fluids;

(C) wash water used for cleaning drill pipe and other equipment at the well site;

(D) drill stem test fluids;

(E) blowout preventer test fluids; or

(F) treated fluids authorized by a permit in §4.184 of this title (relating to Permitted Recycling).

(2) Construction and operation.

(A) A reserve pit or mud circulation pit shall be lined if:

(i) the operator has a reasonable expectation that the contents of the pit will have a chloride concentration of greater than 3,000 milligrams per liter (mg/liter);

(ii) the pit contains oil-based mud;

(iii) the pit is constructed in alluvium or Quaternary sand and gravel; or

(iv) the operator intends to convert the pit to a future use that requires a liner.

(B) The operator shall routinely monitor the integrity of the liner of the reserve pit or mud circulation pit. If liner failure is discovered at any time, as a result of inspection, groundwater monitoring results, or other information, the pit shall be emptied, and the liner repaired prior to placing the pit back in service.

(C) The operator of the pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to the Commission upon request.

(D) Reserve pits and mud circulation pits that contain drilling fluid and cuttings generated only during the drilling of pipeline boreholes, cathodic protection wells, and/or seismic shot holes to which no chemicals have been added are exempt from these construction requirements.

(3) Closure.

(A) Lined reserve pits and mud circulation pits shall be closed pursuant to §4.114(e) of this title within one year of cessation of drilling operations.

(B) Unlined reserve pits and mud circulation pits shall be dewatered within 30 days and closed pursuant to §4.114(e) of this title within 90 days of cessation of drilling operations.

(c) Completion pits and workover pits.

(1) Authorized pit contents. A person shall not deposit or cause to be deposited into a completion pit or workover pit any oil field fluids or oil and gas wastes other than spent completion fluids, workover fluid, and the materials cleaned out of the wellbore of a well being completed or worked over.

(2) Construction and operation. A completion or workover pit shall be lined.

(3) Closure. All completion pits and workover pits shall be dewatered within 30 days and closed pursuant to §4.114(e) of this title within 120 days of well completion or completion of the workover operations.

(d) Fresh makeup water pits and fresh mining water pits.

(1) Authorized pit contents.

(A) A person shall not deposit or cause to be deposited into a fresh makeup water pit any oil and gas wastes or any oil field fluids other than fresh water used to make up drilling fluid or hydraulic fracturing fluid.

(B) A person shall not deposit or cause to be deposited into a fresh mining water pit any oil and gas wastes or any oil field fluids other than fresh water used for solution mining of brine.

(2) Construction and operation.

(A) Fresh makeup water pits and fresh mining water pits shall be used only to store fresh water and shall not be used for mixing fluids for makeup or brine mining purposes.

(B) Fresh makeup water pits and fresh mining water pits containing water with a chloride concentration less than 3,000 mg/liter do not require a liner.

(C) Fresh makeup water pits and fresh mining water pits with a chloride concentration more than 3,000 mg/liter require a synthetic liner.

(3) Closure. Fresh water makeup pits and fresh mining water pits shall be closed pursuant to §4.114(e) of this title within 180 days of final cessation of use of the pit.

(e) Water condensate pits.

(1) Authorized pit contents. A person shall not deposit or cause to be deposited into a water condensate pit any oil field fluids or oil and gas wastes other than fresh water condensed from natural gas and collected at gas pipeline drips or gas compressor stations.

(2) Construction and operation.

(A) A water condensate pit shall be lined.

(B) Any water condensate pit in use on the effective date of this provision shall be lined within 180 days of the effective date of this provision. If the pit is not lined within 180 days, the pit shall be closed.

(C) Water condensate pits shall be emptied and inspected annually.

(3) Closure. Water condensate pits shall be closed pursuant to §4.114(e) of this title within 365 days of final cessation of use of the pit.

(f) Small sump.

(1) Authorized pit contents. A person shall not deposit or cause to be deposited into a small sump pit any oil field fluids or oil and gas wastes other than the following:

(A) oil field fluids or oil and gas wastes collected in a pit and in a manner meeting the requirements of 40 Code of Federal Regulations (CFR) Part 279 or Part 280 or oil field fluids or oil and gas wastes collected in a pit that is excluded from the definition of underground storage tank under 40 CFR Part 280 because it is a pipeline facility regulated under the Natural Gas Pipeline Safety Act of 1968, the Hazardous Liquid Pipeline Safety Act of 1979, or comparable state law; or

(B) oil field fluids or oil and gas wastes collected in a small sump as defined in this subchapter, provided the contents of the sump are removed for proper disposal at regular intervals to avoid overfilling the small sump.

(2) Construction and operation.

(A) Small sumps shall be constructed of concrete, corrosion-resistant metal, or pre-molded synthetic material.

(B) Small sumps shall maintain an operational capacity of 500 gallons while

maintaining a freeboard of one foot.

(C) Small sumps shall be emptied and inspected annually.

(3) Closure. Small sumps shall be closed pursuant to §4.114(e) of this title within 120 days of final cessation of use of the pit.

(g) Non-commercial fluid recycling authorized under §4.112(a) of this title (relating to Authorized Recycling).

(1) Authorized pit contents. A person shall not deposit or cause to be deposited into a non-commercial fluid recycling pit any oil field fluids or oil and gas wastes other than those fluids described in §4.110(58) of this title (relating to Definitions) and any fluids authorized by the Director pursuant to §4.112(a)(4) of this title.

(2) Construction and operation.

(A) All non-commercial fluid recycling pits shall be designed to prevent stormwater runoff from entering the pit. If a non-commercial fluid recycling pit is constructed with a dike or berm, the height, slope, and construction material of such dike or berm shall be such that it is structurally sound and does not allow seepage.

(B) The operator shall routinely monitor the integrity of the liner of a non-commercial fluid recycling pit. If liner failure is discovered at any time, as a result of inspection, groundwater monitoring results, or other information, the pit shall be emptied and the liner repaired prior to placing the pit back in service. Acceptable monitoring procedures include an annual visual inspection of the pit liner or the installation of a double liner and leak detection system. Alternative monitoring procedures may be approved by the Director if the operator demonstrates that the alternative is at least equivalent in the protection of surface and subsurface water as the provisions of this section.

(C) The liner of a non-commercial fluid recycling pit with a single liner shall be inspected annually to ensure that the liner has not failed. This inspection shall be completed by emptying the pit and visually inspecting the liner.

(D) If the operator does not propose to empty the non-commercial fluid recycling pit and inspect the pit liner on at least an annual basis, the operator shall install a double liner and leak detection system. A leak detection system shall be installed between a primary and secondary liner. The leak detection system shall be monitored on a monthly basis to determine if the primary liner has failed. The primary liner has failed if the volume of water passing through the primary liner exceeds the action leakage rate, as calculated using accepted procedures, or 1,000 gallons per acre per day, whichever is larger.

(E) The operator of a non-commercial fluid recycling pit shall keep records to demonstrate compliance with the pit liner integrity requirements and shall make the records available to the Commission upon request.

(3) Closure. Non-commercial fluid recycling pits shall be closed pursuant to §4.114(e) of this title within 120 days of final cessation of use of the pit.

DIVISION 4 REQUIREMENTS FOR ALL PERMITTED WASTE MANAGEMENT OPERATIONS

§4.120. General Requirements for All Permitted Operations.

(a) A waste management activity that is not authorized by this subchapter shall require a permit.

(b) The Commission may issue a permit to manage oil and gas wastes only if the Commission determines that the activity will not result in the endangerment of human health or the environment, the waste of oil, gas, or geothermal resources, or pollution.

(c) This division establishes the permit requirements applicable to all permitted waste management operations. Any person engaged in waste management authorized by permit shall comply with the requirements in this division.

(d) A person applying for or acting under a Commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, Commission rules, and the permit to operate the site.

(e) In addition to the requirements in this division, any person engaged in the following waste management operations shall comply with the requirements of the following, as applicable.

(1) Requirements applicable to commercial facilities are found in Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities).

(2) Requirements applicable to permitted pits are found in Division 6 of this subchapter (relating to Additional Requirements for Permitted Pits).

(3) Requirements applicable to landfarming are found in Division 7 of this subchapter (relating to Additional Requirements for Landfarming).

(4) Requirements for reclamation operations are found in Division 8 of this subchapter (relating to Additional Requirements for Reclamation Plants).

(5) Miscellaneous permit requirements applicable to emergency permits, minor permits, and all other activities not otherwise authorized or addressed in this subchapter are found in Division 9 of this subchapter (relating to Miscellaneous Permits).

(6) Requirements applicable to oil and gas waste characterization, documentation, manifests, and transportation are found in Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(f) With regard to permits issued pursuant to Divisions 4 through 9 of this subchapter, the Director may impose additional permit conditions necessary to protect human health and the environment, to prevent the waste of oil, gas, or geothermal resources, or to prevent pollution.

§4.121. Permit Term

(a) Unless otherwise provided, a permit issued pursuant to Divisions 4 through 9 of this subchapter shall be valid for a term of not more than five years.

(b) Any permit issued by the Commission under §3.8 of this title (relating to Water Protection) prior to [insert the effective date of this rulemaking] shall remain in effect until it expires on its own terms, is renewed pursuant to the requirements of this subchapter, or is modified, suspended, or terminated by the Commission pursuant to §4.123 of this title (relating to Permit Modification, Suspension, and Termination).

§4.122. Permit Renewals, Transfers, and Amendments.

(a) Compliance with rules in effect at the time of permit renewals, transfers, or amendments. To ensure compliance with the rules in effect at the time of a request to renew, transfer, or amend a permit, the Commission may review and revise permit conditions when it receives the request.

(b) Permit renewal. Permits issued pursuant to this subchapter may be renewed in accordance with the following requirements.

(1) The permittee shall file an application for a renewal permit at least 60 days before the expiration date specified in the permit.

(2) For any permit required to file financial security in accordance with §3.78 of this title (relating to Fees and Financial Security Requirements), the permittee shall file an updated closure cost estimate. The cost closure estimate shall include an estimate of the cost to conduct a NORM survey upon closure of the facility, as well as the cost to remove and dispose of NORM contaminated waste and the decontamination of associated tanks and equipment pursuant to Subchapter F of this chapter (relating to

Oil and Gas NORM). The permittee shall conduct a NORM survey before the renewal is approved if a NORM survey has not been conducted within the last five years.

(3) If the initial application for the permit type required notice, notice of the renewal shall be made in the same manner as in the initial application.

(4) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the renewal.

(5) The permit shall not be renewed unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(c) Permit transfer. Permits issued pursuant to this subchapter may be transferred in accordance with the following requirements.

(1) A permittee may request to transfer a permit to a new operator by notifying the Director in writing at least 60 days before the transfer takes place.

(2) For any permit required to file financial security in accordance with §3.78 of this title, the transferee shall file a new closure cost estimate. The cost closure estimate shall include an estimate of the cost to conduct a NORM survey upon closure of the facility, as well as the cost to remove and dispose of NORM contaminated waste and the decontamination of associated tanks and equipment pursuant to Subchapter F of this chapter. The transferee shall conduct a NORM survey before the transfer is approved if a NORM survey has not been conducted within the last five years. The transferee shall file the required financial security in the approved amount with the Commission before the permit is transferred.

(3) If the proposed transferee operator does not own the surface property, the transferee operator shall provide evidence of the proposed transferee's authority to operate the facility in accordance with §4.126(b) of this title (relating to Location and Real Property Information).

(4) A request to transfer a commercial permit associated with a Form P-4 (Certificate of Compliance and Transportation Authority) shall be submitted on Form P-4. A request to transfer a commercial permit not associated with a Form P-4 shall be submitted in writing to the Director.

(5) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the transfer.

(6) The permit shall not be transferred unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

(d) Permit amendment. Permits issued pursuant to this subchapter may be amended in accordance with the following requirements.

(1) A permit amendment is required before a permittee may conduct any activities other than those activities specifically authorized by the permit.

(2) The permittee shall file an application for amendment at least 90 days before the proposed new operations are scheduled to commence. The application shall include the following information as applicable.

(A) For pit permit amendments that change the pit construction, dimensions, or capacity, the permittee shall submit appropriate diagrams, cross-sections, and other supporting information.

(B) For any permit required to file financial security in accordance with §3.78 of this title, if the amendments to the permit would increase the cost of closure, the permittee shall submit an updated closure cost estimate.

(C) Depending on the materiality of the proposed permit amendments, the Director may require notice to surface owners, adjacent landowners, notice by publication, and/or notice to any persons the Director determines may be affected by the proposed amendment.

(D) The Director may request any additional information reasonably necessary to prevent pollution.

(3) The Director may require additional information specific to the type of facility, facility location, and management operations occurring at the facility before approving the amendment.

(4) The permit amendment shall not be approved unless the facility is compliant with Commission rules and permit conditions, as verified by a facility and records inspection.

§4.123. Permit Modification, Suspension and Termination.

(a) A permit issued pursuant to this subchapter, or a permit issued pursuant to §3.8 of this title (relating to Water Protection) before [insert effective date of rulemaking], may be modified, suspended, or terminated by the Commission for good cause after notice and opportunity for hearing.

(b) A finding of any of the following facts shall constitute good cause:

(1) pollution of surface or subsurface water is occurring or is likely to occur as a result of the permitted operations;

(2) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations;

(3) continued operation of the facility presents an imminent danger to human health or property;

(4) the permittee has violated the terms and conditions of the permit or Commission rules;

(5) the permittee misrepresented any material fact during the permit issuance process;

(6) a material change of conditions has occurred in the permitted operations;

(7) the information provided in the application has changed materially; or

(8) the permittee failed to give the notice required by the Commission during the permit issuance, amendment, or renewal process.

§4.124. Requirements Applicable to All Permit Applications and Reports.

(a) Unless otherwise specified by rule, a permit application shall be filed with the Technical Permitting Section. The application shall be filed by mail, hand delivery, or by an electronic process approved by the Director. A permit application shall be considered filed with the Commission on the day it is date-stamped by the Technical Permitting Section.

(b) The permit application shall contain information addressing each applicable application requirement and all information necessary to initiate the final review by the Technical Permitting Section, including all information required by Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations) and the applicable provisions of Divisions 5-10 of this subchapter, as described in §4.120 of this title (relating to General Requirements for All Permitted Operations).

(c) When a Commission prescribed application form exists, either in paper or electronic form, an applicant shall apply on the prescribed form according to the form instructions. When a Commission prescribed application form does not exist, the permit application shall contain a signature, printed name, contact telephone number or email address, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(d) The permit application shall contain the following information for the applicant:

(1) the applicant's organization name;

(2) the applicant's organization report (P-5) number;

(3) the applicant's physical address, and mailing address if different;

(4) the name, telephone number, and email address of a contact person for the application, which can be someone within the applicant's organization or an agent;

(5) the identifying name of the proposed facility; and

(6) a general narrative description of the proposed management of oil and gas wastes at the facility.

(e) The technical data in the permit application shall comply with the following requirements.

(1) All geographic coordinates submitted to the Technical Permitting Section shall use the North American Datum (NAD) 83, in decimal degrees to six decimal places of longitude and latitude.

(2) All maps, plans, and diagrams submitted to the Technical Permitting Section shall be drawn to scale and include a scale, north arrow, title block, and legend. Maps shall be of material suitable for a permanent record and shall be on sheets 8-1/2 inches by 11 inches or, alternatively, 8-1/2 inches by 14 inches or 11 inches by 17 inches folded to standard letter size.

(3) All chemical laboratory analyses submitted to the Technical Permitting Section are required to be performed in accordance with the following.

(A) All chemical laboratory analyses shall be conducted using appropriate EPA methods or standard methods by an independent National Environmental Laboratory Accreditation Program certified laboratory neither owned nor operated by the permittee. Any sample collected for chemical laboratory analysis shall be collected and preserved in a manner appropriate for that analytical method as specified in 40 Code of Federal Regulations (CFR) Part 136. All geotechnical testing shall be performed by a laboratory certified to conduct geotechnical testing according to the standards specified by ASTM and certified by a professional engineer licensed in Texas.

(B) All chemical laboratory analytical results shall include the full laboratory analytical report and the corresponding chain of custody.

(4) All NORM screening surveys submitted to the Technical Permitting Section shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. The manufacturer's specifications and relevant calibration records shall be submitted to the Technical Permitting Section for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the circumference of the pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

(A) the date of the survey;

(B) the instrument used and the last calibration date;

(C) a background reading;

(D) a site diagram showing where all readings, including the background, were taken; and

(E) the readings (in microroentgens per hour).

§4.125. Notice Applicable to All Permitted Activities

(a) Direct notice. Unless otherwise specified by rule, the applicant is required to provide direct notice to certain persons in accordance with the following.

(1) The applicant shall give notice of the permit application by registered or certified mail to the following persons on or before the date the application is filed with the Commission:

(A) the surface owners of the tract upon which the facility will be located;

(B) the city clerk or other appropriate official if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village; and

(C) any other class of persons, such as offset operators, adjacent surface owners, or an appropriate authority, that the Director determines should receive notice of an application.

(2) The notice of the permit application shall consist of a complete copy of the application, including all attachments, and a letter that includes:

(A) the name of the applicant;

(B) the name of the surface owners of the property on which the proposed facility will be located;

(C) the legal description of the property including latitude/longitude of the proposed facility, county, original survey, abstract number, and the direction and distance from the nearest municipality or community;

(D) the date the application will be filed with the Commission;

(E) the types of fluid or waste to be managed at the facility;

(F) a statement that any protest to the application must be filed with the Commission within 15 calendar days of the date the application is filed with the Commission or within 15 calendar days of the last date of publication, whichever is later;

(G) a statement that a protest shall include the protestant's name, mailing address, telephone number, and email address;

(H) the address to which protests may be mailed or the location and instructions for electronic submittal of a protest if the Commission implements an electronic means for filing protests;

(I) the definition of "affected person" pursuant to §4.110 of this title (relating to Definitions); and

(J) the signature of the operator, or representative of the operator, and the date the letter was signed.

(3) The Commission will consider the applicant to have made diligent efforts to ascertain the names and addresses of surface owners required by this section to be notified if the applicant has

examined the current county tax rolls and investigated other reliable and readily available sources of information.

(4) If the Director determines that the applicant, after diligent efforts, has been unable to ascertain the name and address of one or more persons required by this subsection to be notified, then the Director may authorize the applicant to notify such persons by publishing notice of the application in accordance with subsection (b) of this section.

(5) The applicant shall submit to the Commission proof of delivery of notice to surface owners within 15 calendar days of the date the application is filed. Proof of delivery of notice shall consist of:

(A) a copy of the signed and dated letters required by paragraph (2) of this subsection;

(B) the registered or certified mail receipts; and

(C) a map showing the property boundaries, surface owner names, and parcel numbers of all notified parties if offset operators or adjacent surface owners are required to be notified by the Commission.

(b) Published notice. Unless otherwise provided, a permit applicant for a commercial facility, and any applicant required by the Director or the Commission to publish notice, shall publish notice and file proof of publication in accordance with the following:

(1) The permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks, with the first publication occurring not earlier than the date the application is filed with the Commission and not later than the 30th day after date on which the application is filed with the Commission.

(2) The published notice shall:

(A) be entitled "Notice of Application for Commercial Oil and Gas Waste Facility" if the proposed facility is a commercial facility, or be entitled "Notice of Application for a Non-Commercial Oil and Gas Waste Facility" if the proposed facility is a non-commercial facility;

(B) provide the date the applicant filed the application with the Commission;

(C) identify the name of the applicant;

(D) state the legal description of the property including latitude and longitude of the proposed facility and its location in relation to the nearest municipality or community;

(E) identify the owner or owners of the property on which the proposed facility will be located;

(F) state that affected persons may protest the application by filing a protest with the Commission within 15 calendar days of the last date of publication;

(G) include the definition of "affected person" pursuant to §4.110 of this title; and

(H) provide the address to which protests shall be mailed. If the Commission implements an electronic means for filing protests, then the location to instructions for electronic submittal shall be included.

(3) The applicant shall submit to the Commission proof that notice was published as required by this section. Proof of publication shall consist of:

(A) an affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation; and

(B) the tear sheets for each published notice.

§4.126. Location and Real Property Information

(a) The permit application shall contain the following information for the facility:

(1) the location of the proposed facility, including the physical address and geographic coordinates of the center of the facility; and

(2) a description of the property on which the facility is located, including:

(A) for each surface owner of the property, the application shall include the name, mailing address, and telephone number of each surface owner, or if any owner is not an individual, the name, mailing address, and telephone number of the contact person for that owner; and

(B) a legal description of the property, including the survey name, abstract number, and size in acres.

(b) A permit application shall include a statement regarding the authority by which the operator has the right to permit and operate the facility. Proper authority may include, but is not limited to:

(1) ownership of the property where the proposed facility is located;

(2) a leasehold interest in the oil and gas estate;

(3) written consent of the surface owner; or

(4) any other authority the Director determines is appropriate.

(c) The application shall include a general location map which shows the facility including the items listed in paragraphs (1)-(7) of this subsection and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) the location of each regulated feature in decimal degrees to six decimal places of longitude and latitude;

(3) a clear outline of the proposed facility's boundaries;

(4) the distance to the nearest property line or public road;

(5) the tracts of land adjacent to the facility requiring notice as prescribed by the Commission;

(6) the name of the surface owners of such adjacent tracts; and

(7) other information requested by the Director reasonably related to the prevention of pollution.

(d) The application shall include a United States Geological Survey (USGS) topographic map or an equivalent topographic map which shows the facility including the items listed in paragraphs (1)-(11) of this subsection and any other pertinent information regarding the regulated facility and associated activities. Maps shall be on a scale of not less than one inch equals 2,000 feet. The map shall show the following:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) a clear outline of the proposed facility's boundaries;

(3) the location of any pipelines within 500 feet of the facility;

(4) the distance from the facility's outermost perimeter boundary to public and private water wells, residences, schools, churches, and hospitals that are within 500 feet of the boundary;

(5) for disposal only, the location of all residential and commercial buildings within a one-mile radius of the facility boundary;

(6) all water wells within a one-mile radius of the facility boundary;

(7) the location of the 100-year flood plain and the source of the flood plain information;

(8) surface water bodies within the map area;

(9) the location of any major and minor aquifers within the map area;

(10) the boundaries of any prohibited areas defined under §4.153 of this title (relating to Commercial Disposal Pits); and

(11) any other information requested by the Director reasonably related to the prevention of pollution.

§4.127. Engineering and Geologic Information

(a) A permit application shall include descriptions of the following elements and specify the sources of information:

(1) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, permeability, and other pertinent characteristics;

(2) the subsurface geology, including an assessment of the presence and characteristics of permeable and impermeable strata;

(3) the subsurface hydrogeology, including the depth to the shallowest groundwater, an assessment of groundwater quality, the direction of groundwater flow, groundwater use in the area, and any major and minor aquifers in the facility area; and

(4) any engineering, geological, or other information which the Director deems necessary to show that issuance of the permit will not result in the endangerment of human health and the environment, the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) If information is not available to address subsection (a) of this section, a site investigation including soil boring, sampling, and analysis is required.

(c) If otherwise required under Texas Occupations Code, Chapter 1001, relating to Texas Engineering Practice Act, or Chapter 1002, relating to Texas Geoscientists Practice Act, respectively, a professional engineer or geoscientist licensed in Texas shall conduct the geologic and hydrologic evaluations required under this section and shall affix the appropriate seal on the resulting reports of such evaluations.

(d) Prior to commencement of operations, the permittee shall provide the Director with drawings documenting the as-built condition of the permitted waste management units at the facility.

§4.128. Design and Construction

(a) Application. The following information shall be submitted with each permit application:

(1) a facility diagram clearly showing the items listed in subparagraphs (A)-(G) of this paragraph and any other pertinent information regarding the facility and associated activities. Diagrams shall be on a scale that shows the entire facility and activities within the Commission's jurisdiction on a single page. The diagram shall show the following:

(A) a clear outline of the proposed facility, areas where oil and gas waste will be managed, and property boundaries;

(B) all wells, pits, areas where oil and gas waste will be managed, and any other activity under the jurisdiction of the Commission that may occur at the proposed facility;

(C) the location of all tanks and equipment;

(D) all berms, dikes, or secondary containment;

(E) all fences, roads, and paved areas;

(F) the shortest distance between the facility and waste management unit boundary to the nearest property line or public road; and

(G) the location of any pipelines within the facility boundaries;

(2) a description of the type and thickness of liners (e.g., fiberglass, steel, concrete), if any, for all tanks, silos, pits, and storage areas or cells;

(3) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(4) a map view and two perpendicular cross-sectional views of pits and/or storage areas or cells to be constructed, showing the bottom, sides, and dikes and the dimensions of each;

(5) a plan to control and manage stormwater runoff and to retain wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect stormwater during a 25-year, 24-hour rainfall event, and all calculations made to determine the required capacity and design; and

(6) information to address each of the operating requirements detailed in subsection (b) of this section.

(b) Design and construction requirements. All permittees shall comply with the following requirements.

(1) The permittee shall post signs at each entrance to the facility. The sign shall be readily visible and show the operator's name, facility name, and permit number in letters and numerals at least six inches in height.

(2) Dikes or containment structures shall be constructed around all areas managing oil and gas wastes. All earthen dikes surrounding pits and constructed as perimeter berms shall be compacted or constructed of material that meets 95% Standard Proctor (ASTM D698) or 90-92% Modified Proctor (ASTM D1557) density and meets a permeability of 1 x 10-7 cm/sec or less when compacted. During construction, successive lifts shall not exceed nine inches in thickness, and the surface between lifts shall be scarified to achieve a good seal. These structures shall be used to divert non-contact stormwater around the waste management unit and contain and isolate contact stormwater within the bermed area.

(3) All above-ground storage tanks shall be contained within dikes. Secondary containment of 120% total storage capacity is recommended. A firewall that will contain the largest tank's maximum capacity plus freeboard to contain a 25-year, 24-hour rainfall event volume for the corresponding county is acceptable.

(4) Contact stormwater shall be collected within 24 hours of accessibility and disposed of in an authorized manner.

(5) The facility shall maintain security to prevent unauthorized access. Access shall be secured by a 24-hour attendant or a six-foot-high security fence and locked gate when unattended to prevent vehicle or livestock access. Fencing shall be required unless terrain or vegetation prevents vehicle or livestock access except through entrances with lockable gates.

(6) All liner systems shall be installed and maintained in a manner that will prevent pollution and/or the escape of the contents of the pit.

§4.129. Operation

(a) Application. All permit applications shall include the following operating information:

(1) a description of the sources and types of wastes to be received;

(2) a description of plans for waste sampling and analysis;

(3) a description of all waste management operations including receipt, handling, storage, treatment, recycling, reclamation, and disposal, and the location of each operation;

(4) a description of how wastes will be transferred between waste management units within the facility;

(5) a description of any operational limitations, including the maximum amount of oil field fluids or oil and gas wastes that will be stored in any area at one time less the volume required to maintain the required freeboard and storm event design criteria;

(6) a description of plans to control unauthorized access;

(7) a list of all chemicals to be used and their associated safety data sheets;

(8) plans for routine inspections, maintenance, and monitoring;

(9) a description of plans to prevent, report, and control spills and leaks;

(10) plans for controlling contact and non-contact stormwater runoff;

(11) plans for managing incoming wastes during wet weather; and

(12) a description of plans for recordkeeping, including records of waste receipts and dispositions;

(b) Operating requirements. Each facility shall be operated in accordance with the following requirements.

(1) The permittee shall only accept waste it is permitted to receive. The permittee shall only accept waste transported and delivered by a Commission-permitted waste hauler permitted pursuant to Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(2) No waste, treated or untreated, shall be placed directly on the ground.

(3) All storage tanks, equipment, and on-site containment shall be maintained in a leak-free condition. If inspection of a tank, on-site containment, or storage vessel reveals deterioration or leaks, the tank, on-site containment, or storage vessels shall be repaired or replaced before resuming use.

(4) Any spill of waste, chemical, or any other material shall be collected and containerized within 24 hours and processed through the treatment system or disposed of in an authorized manner.

(5) Any chemical used in the treatment process shall be stored in vessels designed for the safe storage of the particular chemical and these vessels shall be maintained in a leak-free condition.

(6) Safety data sheets shall be submitted to the Technical Permitting Section for any chemical or component proposed to be used in the treatment of waste at the facility. Use of the chemical or component is contingent upon Director approval. All chemicals and components shall be stored according to the manufacturer's specifications.

(7) Any soil additives, stabilizers, bio-accelerators, or treatment chemicals shall be approved by the Director prior to use at the facility.

§4.130. Reporting

(a) If waste is received from a third party, the permittee shall maintain records of each load of waste received at the facility or pit. The record of receipt shall include the following information:

(1) the date the waste is received;

(2) a description of the site where the waste was generated, including:

(A) the generator's name;

(B) the lease name and number or latitude and longitude coordinates in decimal degrees if the waste was not generated on a lease;

(C) the well number, gas ID number, or American Petroleum Institute (API) well number; and

(D) the county name;

(3) name and Commission permit number of the transporter or waste hauler;

(4) volume of waste material; and

(5) a detailed description of the type of waste.

(b) The permittee shall maintain records of each load of waste removed from the facility or pit. The record of removal shall be maintained for at least three years, and shall include the following information:

(1) the date the waste is removed and hauled from the facility or pit;

(2) the name and Commission permit number of the transporter;

(3) the volume of each shipment of waste hauled to a disposal facility;

(4) the type of waste (basic sediment, water, water-based mud, etc.); and

(5) the name and permit number of the disposal facility and/or facility where the waste was received.

(c) The permittee shall make all records required by this section available for review and/or copying upon request.

(d) If a permit requires submittal of monthly, quarterly, semi-annual, or annual reports, the report shall be submitted on a form prescribed by the Commission, if available. When a Commission prescribed report form does not exist, the report shall contain a signature, printed name, contact telephone number or email address, the date of signing, and the following certification: "I certify that I am authorized to make this report, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

(e) If a permit requires submittal of monthly, quarterly, semi-annual, or annual reports, the report shall be submitted in accordance with the following requirements.

(1) Reports shall be filed with the Commission electronically in a digital format acceptable to the Commission no later than one year after the date the Commission has the technological capability to receive the electronic filing.

(2) If a permit requires quarterly reports, the quarterly reporting periods shall be January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31 of each year.

(3) If a permit requires quarterly, semi-annual, or annual reports, reports shall be submitted to the Technical Permitting Section and the appropriate Commission District Office no later than the 30th day of the month following each reporting period.

(4) If a permit requires monthly reports, the report shall be submitted to Technical Permitting Section and the appropriate Commission District Office no later than the 15th day of the month following each reporting period.

§4.131. Monitoring

(a) Application. The following information shall be submitted with each permit application:

(1) a plan and schedule for conducting periodic inspections, including plans to inspect pits, equipment, processing, and storage areas; and

(2) a potentiometric contour map showing static water levels and the estimated direction of groundwater flow and the calculated gradient.

(b) Groundwater monitoring requirements.

(1) If shallow groundwater is present within 100 feet below ground surface, groundwater monitoring wells may be required for some facilities, including but not limited to: brine pits, disposal pits, reclamation plants, commercial waste separation facilities, commercial recycling facilities, and commercial landfarming facilities. Factors that the Commission will consider in assessing whether groundwater monitoring is required include:

(A) the volume and characteristics of the oil and gas waste to be managed at the facility;

(B) depth to and quality of groundwater within 100 feet below ground surface; and

(C) presence or absence of natural clay layers in subsurface soils.

(2) If the Director requires the operator to install groundwater monitoring wells, the operator shall comply with the following.

(A) The operator shall submit a plan for the installation, sampling, and analysis of monitoring wells at the facility. The plan shall include information on the monitor well drilling method. A mud rotary drilling method shall not be used unless the depth to water has been established.

(B) The monitor wells shall be able to provide representative samples of groundwater underlying the site for the duration of facility operations. If a monitor well is not capable of providing a representative sample, the operator shall notify the Technical Permitting Section.

(C) If groundwater is not observed during drilling of the monitor wells, the soil boring shall be advanced to 100 feet. Borings shall be left open for a minimum of 24 hours to determine if groundwater is present.

(D) If shallow groundwater is present within 100 feet below ground surface at the site, a minimum of three groundwater monitoring wells shall be installed. Wells shall be spaced around the facility or pit, close to the facility operational area, with at least two wells on the estimated down-gradient side of the operational area. Additional wells may be required for larger facilities.

(E) The monitor wells shall be completed by a certified water well driller in accordance with 16 Texas Administrative Code, Part 4, Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

(F) The monitor wells shall be completed to penetrate the shallowest groundwater zone, and the completion shall isolate that zone from any deeper groundwater zone.

(G) The screened interval of the groundwater monitoring wells shall be designed to intercept at least 5 feet of groundwater.

(H) The groundwater monitoring well screen shall extend above the static water level.

(I) The sand pack size shall be compatible with the well screen slot size, as well as the local lithology.

(J) The groundwater monitoring well heads shall be protected from damage by vehicles and heavy equipment.

(K) The groundwater monitoring wells shall be maintained in good condition with a lockable watertight expansion cap.

(L) After installation of the wells is complete, the applicant shall submit the following information:

(i) a soil boring lithologic log for each well, with the soils described using the Unified Soil Classification System (equivalent to ASTM D 2487 and 2488). The log shall also include the method of drilling, well specifications, slot size, riser and screen length, bentonite and cement intervals, total depth, and the top of the first encountered water or saturated soils; and

(ii) a survey elevation for each well head reference point (top of casing) relative to a real or arbitrary on-site benchmark and relative to mean sea level.

(3) The applicant shall submit any other information necessary to address each of the operating requirements detailed in paragraph (4) of this subsection.

(4) If the Director requires the permittee to install groundwater monitoring wells, the permittee shall comply with the following requirements.

(A) The facility shall not manage oil and gas wastes at the facility until the groundwater monitoring wells are installed, the permittee submits the initial sample results to Technical Permitting Section, and Technical Permitting Section informs the permittee, in writing, that it may commence active operations.

(B) The permittee shall sample the wells after installation of the wells is complete and shall thereafter sample the wells in accordance with the schedule approved by the Technical Permitting Section, or as otherwise required by the Director.

(C) The following measurements and analyses shall be reported to Technical Permitting Section after any sampling event no later than 15 days after the permittee receives the laboratory analysis results: the static water level, pH, and concentrations of benzene, total petroleum hydrocarbons, total dissolved solids, soluble cations (calcium, magnesium, potassium, and sodium), and soluble anions (bromides, carbonates, chlorides, nitrates, and sulfates).

(D) If any of the parameters identified in subparagraph (C) of this paragraph indicate potential pollution, or the potential failure of the liner system, the Commission may require additional monitoring events and/or may require analysis of additional parameters.

§4.132. Closure

(a) Application. A permit application shall include a detailed plan for closure when operations at the facility or pit terminate. The closure plan shall include a general plan to:

(1) remove all wastes;

(2) demolish and/or remove any liners;

(3) remove dikes;

(4) backfill any excavations and contour and reseed disturbed areas;

(5) sample and analyze soil and, if applicable, groundwater throughout the facility; and

(6) if applicable, plug groundwater monitoring wells.

(b) Closure requirements. The permittee shall close the facility or pit in accordance with the following requirements.

(1) The permittee shall notify the Technical Permitting Section and the appropriate District Office in writing at least 45 days prior to commencement of any closure operations.

(2) The permittee shall submit a detailed closure plan to the Technical Permitting Section at least 30 days prior to commencement of any closure activity. The Technical Permitting Section must approve the detailed closure plan before the permittee may initiate closure operations. The permittee shall comply with the closure plan approved by the Technical Permitting Section. The closure plan shall include the following information:

(A) the processing and removal of all wastes, chemicals, and waste-related materials from the facility for authorized reuse or disposal in an authorized manner;

(B) the removal and salvage of all equipment, if possible, or disposal of all equipment in an authorized manner;

(C) unless otherwise authorized, the cleaning and demolishment of all equipment and storage areas, including concrete pads, at the facility; all rubble, wash-water, and rinsate shall be disposed of in an authorized manner;

(D) the excavation, removal, and disposal of all contaminated soils from beneath the liners and concrete pads;

(E) a soil sampling plan; and

(F) if required by the Director, a post-closure monitoring plan.

(3) Once the permittee has removed all waste, equipment, concrete pads, contaminated soil, and any other material in accordance with the closure plan, the permittee shall conduct soil sampling in accordance with the approved soil sampling plan. Soil samples shall be analyzed for the parameters in the permit and/or soil sampling plan and submitted to the Technical Permitting Section no later than 30 days after the permittee receives the laboratory results. The Technical Permitting Section may require the permittee to conduct additional closure operations if the soil sample results exceed the authorized limits and/or the Technical Permitting Section determines that additional remediation is required to prevent pollution caused or contributed to by operations at the facility.

(4) The permittee shall grade the pits, on site storage tanks, on site storage areas, and any other facility location to prevent rainfall from collecting at these locations.

(5) If the Director required a post-closure plan, the permittee shall conduct post-closure monitoring in accordance with the post-closure monitoring plan approved by Technical Permitting Section.

§4.133. Protests

(a) The Technical Permitting Section shall notify the applicant if an affected person files a written protest with the Commission within 15 calendar days of the date the application is date-stamped at the Commission or the date notice was last published, whichever is later.

(b) The applicant shall have 30 days from the date of the Technical Permitting Section's notice of receipt of protest to respond, in writing, by either requesting a hearing or withdrawing the application. If the applicant fails to timely file a written response, the Technical Permitting Section shall consider the application to have been withdrawn.

(c) If the Director has reason to believe that a person entitled to notice of an application has not received notice as required by this subchapter, then the Technical Permitting Section shall not take action

on the application until notice is provided to such person in accordance with §4.125 of this title (relating to Notice Applicable to All Permitted Activities).

(d) The Technical Permitting Section shall refer all protested applications to the Hearings Division in accordance with §4.135 of this title (relating to Hearings).

(e) The Commission shall provide notice of any hearing convened under subsection (d) of this section to all affected persons and persons who have requested notice of the hearing.

§4.134. Application Review and Administrative Decision

(a) The Technical Permitting Section reviews applications submitted under this subchapter in accordance with §1.201 of this title (relating to Time Periods for Processing Applications and Issuing Permits Administratively).

(b) If the Director determines that an application is incomplete, the Director shall notify the applicant in writing and shall describe the specific information required to complete the application.

(c) The Technical Permitting Section may require an applicant for a permit under this section to provide additional information such as: geotechnical sampling, geologic cross-sections, stormwater and drainage modeling, slope stability analyses, and other information deemed necessary at the Director's discretion, to demonstrate that waste will be confined if it is located in an area where conditions exist that may increase the risk of a release. Such factors may include, but are not limited to, current and historical hydrological conditions such as flood risks, groundwater elevation, and proximity to surface water and/or critical areas; geological conditions such as soil suitability, surface relief, confining layers, or karst terrain; and specific facility design and operation.

(d) The Technical Permitting Section shall not administratively approve an application unless the Director has determined that the application is administratively complete.

(e) If the applicant failed to complete an application after it was provided no less than two notices and opportunity to provide supplemental information, the Technical Permitting Section shall deny the application.

(f) The Technical Permitting Section may administratively deny the application if it does not meet the requirements of this subchapter or other laws, rules, or orders of the Commission. The Technical Permitting Section shall provide the applicant written notice of the basis for administrative denial.

(g) If the Commission does not receive a protest to an application submitted under this subchapter, the Technical Permitting Section may administratively approve the application if the application otherwise complies with the requirements of this subchapter.

(h) If a protest has not been filed, the Technical Permitting Section may refer an application to a hearing if the Director determines that a hearing is in the public interest. In determining whether a hearing is in the public interest, the Director will consider the characteristics and volume of oil and gas waste to be managed at the facility; the potential risk posed to surface and subsurface water; and any other factor identified in this subchapter relating to siting, construction, and operation of the facility.

§4.135. Hearings

(a) The applicant may request a hearing upon receipt of notice that:

(1) the application has been denied by the Director;

(2) the Director has determined the application to be administratively complete but a timely protest to the application has been received; or

(3) the Director has determined that additional permit conditions are required to prevent pollution and the applicant disagrees with the Director's determination.

(b) A request for hearing shall be made to the Technical Permitting Section within 30 days of the date of the notice of administrative denial or notice of a timely protest. If the Director receives a request for a hearing, the Director shall refer the matter to the Hearings Division for assignment of a hearings examiner who shall conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and Procedure).

DIVISION 5 ADDITIONAL REQUIREMENTS FOR COMMERCIAL FACILITIES

§4.140. Additional Requirements for Commercial Facilities

(a) In addition to the requirements of this division, all applicants for commercial facilities and permittees of commercial facility permits shall comply with Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations) and any other sections of this subchapter applicable to the applicant's or permittee's management of oil and gas wastes.

(b) A facility authorized or permitted as a non-commercial facility prior to [insert the effective date of this rulemaking] but that meets the definition of a commercial facility in §4.110 of this title (relating to Definitions) as of [insert the effective date of this rulemaking] shall comply with the requirements of this division or request an exception on or before [insert 1 year from the effective date of the rulemaking].

(c) A facility that meets the definition of a commercial facility in §4.110 of this title is considered a commercial facility under §3.78 of this title (relating to Fees and Financial Security Requirements), and

therefore, an applicant for a commercial facility permit shall submit the financial security required by Texas Natural Resources Code §91.109 and §3.78 of this title.

(d) A commercial facility shall not manage oil and gas waste or otherwise begin active operation until the required financial security is approved and accepted by the Commission.

(e) Pursuant to §3.78 of this title, the amount of the financial security shall be the maximum dollar amount necessary to close the facility.

(f) To determine the maximum dollar amount necessary to close the facility, a professional engineer licensed in Texas shall prepare or supervise the preparation of a closure-cost estimate (CCE).

(1) In addition to the assumptions and calculations specified in §3.78 of this title, the professional engineer shall make the following assumptions when determining the dollar amount necessary to close the facility.

(A) The facility is in compliance with permit conditions.

(B) The facility will be closed according to the permit or approved closure plan, including the sampling and analysis of soils to confirm compliance.

(C) None of the operator's other equipment or facilities (e.g., disposal wells, pits, trucks, bulldozers, and employees) are available at the time of closure.

(D) The facility is at maximum capacity. All tanks and pits are full of waste. Disposal pits are fully constructed.

(E) Storage tanks and pits contain basic sediment and water in normal operating proportions, with a minimum volume of at least 10% basic sediment.

(2) The CCE shall not include a salvage value for any material or equipment at the site.

(3) The CCE shall include costs for sampling and analysis of soil for the areas around each waste management unit, including tank batteries, pads, and former pits.

(4) The CCE shall show unit costs for all material, equipment, services, and labor needed to close the facility. Units and fees used shall be appropriate for the type of waste material to be disposed of. For example, disposal units for saltwater shall be reported in oil barrels rather than gallons. Solids held within permitted containments shall be reported in cubic yards. The CCE shall be specific and shall state the source or basis for the specific unit cost, including the following:

(A) the permitted waste hauler to be used and the hauler's mileage rate;

(B) the distance that waste will be transported for disposal;

(C) the name of each facility where waste will be taken and the disposal costs for that facility;

(D) the source of any material being brought to the facility, such as clean fill material;

(E) calculations for earth-moving equipment time and cost needed to move the fill dirt if fill dirt will be taken from the property;

(F) the total labor costs, including the titles and billing rates for personnel; and

(G) the quantity of each unit cost item and how the total quantity was determined (for example, cubic yards of material divided by size of load equals total number of loads).

(5) The CCE shall include maps and illustrations such as facility plans and photographs that show the current condition of the facility, and/or the condition of the facility upon reaching maximum permit conditions.

(6) For facilities with groundwater monitoring wells, the CCE shall include costs to plug and abandon the monitoring wells.

(7) For facilities that will require post-closure monitoring, the CCE shall include costs for a minimum of five years of well maintenance and monitoring. The length of monitoring shall be determined by the Director.

(8) The CCE shall show all calculations used to arrive at total maximum closure costs.

(9) For all estimates submitted for existing facilities, a NORM screening survey of the facility shall be submitted. NORM screening surveys shall be performed using a properly calibrated scintillation meter with a sodium iodide detector (or equivalent), with the results reported in microroentgens per hour. Manufacturer's specifications and relevant calibration records shall be submitted to Technical Permitting Section in Austin for all devices used for NORM detection. All equipment, including piping, pumps, and vessels shall be surveyed. Readings shall be taken around the circumference of the pits and to the extent possible, over the pits. The ground surrounding the equipment and pits shall be surveyed in a systematic grid pattern. At a minimum, the following information shall be reported:

(A) the date of the survey;

(B) the instrument used and the last calibration date;

(C) a background reading;

(D) a site diagram showing where all readings, including the background, were taken; and

(E) the readings (in microroentgens per hour).

(10) If fill dirt will be excavated from the property to achieve closure, a restrictive covenant shall be submitted with the CCE. If the restrictive covenant requirements are not provided, the

CCE shall assume that fill dirt is purchased from a commercial supplier. For a restrictive covenant, the following requirements shall be met whether the operator owns or leases the property:

(A) The operator shall provide a letter from the property owner specifically stating that the owner agrees that the material, which is described with specificity as to location, type and amount consistent with what is in the closure plan, will be available for closure whether the operator or the state performs closure, and agreeing to a restrictive covenant that reserves use of the material for closure.

(B) The operator shall submit an unsigned draft restrictive covenant on the form provided by the Commission. Once the Commission approves the closure cost and closure plan, the operator will be notified to submit a signed original of the restrictive covenant. The Commission will sign its portion of the restrictive covenant and return it to the operator for filing in the real property records of the county where the property is located. Once filed in the real property records, the operator shall provide the Commission with a certified copy.

(C) If the facility operator leases the property, the operator shall provide to the Commission a copy of an amendment or addendum to the lease between the operator and the surface owner with a clause that specifically reserves use of material and states that the reservation shall inure to the Commission (as third-party beneficiary of this provision) if the Commission must initiate actions to close the facility.

(D) The operator shall submit supporting documentation showing that the dimensions of the restrictive covenant area can realistically store a stockpile in the amount needed. If soil will be excavated from the restrictive covenant area rather than stockpiled, the depth of the excavation is limited to what can be graded to prevent stormwater from ponding in the excavated area.

(11) After the CCE has been calculated, an additional 10% of that amount shall be added to the total amount of the CCE to cover contingencies.

(g) A permit application for a stationary commercial fluid recycling facility shall include a detailed plan for closure of the facility when operations terminate and include the required elements of §4.132 of this title (relating to Closure). The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all pits, treatment equipment, and associated piping and other storage or waste processing equipment;

(3) remove dikes and equipment;

(4) contour and reseed disturbed areas;

(5) sample and analyze soil and groundwater throughout the facility; and

(6) plug groundwater monitoring wells.

§4.141. Notice.

In addition to the notice requirements detailed in §4.125 of this title (relating to Notice Applicable to All Permitted Activities), an applicant for a commercial facility permit shall also provide notice to:

(1) all surface owners of tracts adjacent to the tract on which the proposed facility will be located, unless the boundary with the adjacent tract is a distance of 1/2-mile or greater from the fence line or edge of the facility;

(2) owners of tracts that adjoin only at a corner point;

(3) all surface owners within 500 feet of the fence line or edge of the facility; and

(4) any affected person or class of persons that the Director determines should receive notice of the application.

§4.142. Operating Requirements Applicable to Commercial Facilities

(a) An application for commercial facility shall include a detailed waste acceptance plan to ensure that the waste received at the facility has been fully and correctly documented by the generator and carrier, and characterized by the generator, including supporting laboratory analysis if necessary, and to ensure that prohibited oil field fluids, prohibited oil and gas wastes, and/or non-jurisdictional wastes are not received at the facility.

(b) The operator shall develop and maintain a site-specific spill control plan that details the processes in place to control and contain oil and gas waste in the event of a spill or release. The spill control plan shall be maintained on-site and made available to the Commission upon request.

(c) The operator shall develop and maintain a stormwater management plan to prevent stormwater from running onto the facility, the unauthorized discharge of stormwater, or deleterious impacts of stormwater from the facility to adjoining properties. The stormwater management plan shall be maintained on-site and made available to the Commission upon request.

§4.143 Design and Construction

Prior to commencement of operations at a commercial facility, the permittee shall provide the Director with drawings documenting the as-built condition of the facility, including all equipment and waste management units.

DIVISION 6 ADDITIONAL REQUIREMENTS FOR PERMITTED PITS

§4.150. Additional Requirements Applicable to Pits Authorized by Permit

(a) In addition to the requirements of this division, all permitted pits are required to comply with Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations). Commercial pits are also required to comply with Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities).

(b) If at any time a pit no longer meets the requirements for authorized pits under §4.113 of this title (relating to Authorized Pits), the operator of the pit shall apply for a pit permit pursuant to the requirements of this division.

(c) No person may use a pit without the express permission of the permittee. A person who uses a pit without the express permission of the permittee may be subject to legal enforcement action regardless of whether the person maintains an active Organization Report pursuant to §3.1 of this title (relating to Organization Report; Retention of Records; Notice Requirements.)

(d) Any person using or maintaining a pit without the required permit shall be immediately required to cease usage and close the pit in accordance with §4.154 of this title (relating to Closure of Pits Authorized by Permit). Any person using or maintaining a pit without the required permit may be subject to enforcement action regardless of whether the person maintains an active Organization Report pursuant to §3.1 of this title.

(e) Permitted pits are subject to containment requirements to prevent pollution of surface or subsurface water and will be included as permit conditions at the sole discretion of the Commission.

(f) In the event of an unauthorized release of oil and gas waste, treated fluid, or other substances from any pit permitted by this subchapter, the operator shall take any measures necessary to stop or control the release and report the release to the District Office within 24 hours.

(g) Unless the Director approves a written request for an exception, no pit shall be located:

(1) on a barrier island or a beach;

(2) within 300 feet of surface water, including wetlands;

(3) within 500 feet of any public water system well or intake;

(4) within 300 feet of or any domestic water well or irrigation water well, other than a well that supplies water for drilling or workover operations for which the pit is authorized; or

(5) within a 100-year flood plain.

(h) A minimum 50-foot buffer zone shall be maintained between the boundaries of the property and the outer edge or toe of the pit walls or berms.

§4.151. Design and Construction of Pits Authorized by Permit

(a) Application.

(1) Unless otherwise provided by permit, all permitted pits shall comply with the general construction requirements applicable to authorized pits in Division 3 of this subchapter (relating to Operations Authorized by Rule).

(2) In addition to the information required by §4.128 of this title (relating to Design and Construction), the facility diagram submitted with the application shall include the following information:

(A) the maximum length, width, and depth of the pit in feet;

(B) the maximum depth of the pit below grade in feet;

(C) the maximum and minimum height of walls or dikes above grade in feet;

(D) the dimensions of the dikes including the width at the base, height, and slope;

(E) the maximum volume of the pit in barrels and cubic yards;

(F) the maximum volume of the pit minus the volume to maintain the required freeboard in barrels and cubic yards;

(G) the volume of the pit below natural grade in barrels and cubic yards;

(H) information on the pit liner type and thickness, installation methods, and manufacturer's specification sheets;

(I) a plan view drawing of each pit, including all dimensions, and any trenches or structures used to separate and convey contact and non-contact stormwater;

(J) two perpendicular, sectional views of each pit showing the bottom, sides, dikes, and natural grade, including all dimensions; and

(K) the surface area and action leakage rate calculation for any pit with a leakage detection system, that is prepared and sealed by a professional engineer licensed in Texas. The action leakage rate calculations shall include:

(i) all assumptions and dimensions used;

(ii) the size of the pump and pipes that will be used in the leakage detection system; and

(iii) calculations demonstrating that the system is designed to sufficiently withdraw and manage the expected leakage rate.

(3) The permittee shall provide any other information necessary to address the operating requirements detailed in subsection (b) of this section.

(b) Operating requirements.

(1) Signage. The permittee shall post a sign at each permitted pit. The sign shall show permit number in letters and numerals at least three inches in height.

(2) Freeboard. Unless otherwise required by permit or rule, the permittee shall maintain all pits such that each pit maintains a freeboard of at least two feet.

(3) Liners.

(A) Equipment, machinery, waste, or other materials that could reasonably be expected to puncture, tear, or otherwise compromise the integrity of the liner shall not be used or placed in lined pits.

(B) Unless the permit specifically provides otherwise, the liner for any permitted pit required to be lined shall comply with the general requirements for lining in Division 3 of this subchapter (relating to Operations Authorized by Rule), except that the thickness of a high-density polyethylene liner in a permitted pit shall be a minimum of 60 mil and, for any other type of synthetic liner, a minimum of 30 mil.

(C) A brine pit permitted under this subchapter shall be constructed with a primary and secondary liner and a leakage detection system.

(4) Additional requirements as determined by Director. Any pit permits issued pursuant to this subchapter may contain additional requirements concerning design and construction including requirements relating to construction materials, dike or berm design, liner material, liner thickness, procedures for installing liners, overflow warning devices, leak detection devices, monitor wells, and fences that the Director determines are necessary to prevent pollution.

§4.152. Monitoring of Pits Authorized by Permit

(a) A pit permit application shall include a monitoring plan that establishes a procedure for the permittee to routinely monitor the integrity of the liner of a pit. The permittee shall comply with this section by implementing one of the following monitoring methods.

(1) The permittee shall empty the pit and conduct a visual inspection on an annual basis. The permittee shall photograph the interior of the pit and otherwise record each inspection. The permittee shall maintain the photographs and records from each inspection for the life of the pit.

(2) The permittee shall install a double liner and leak detection system between the primary and secondary liner. The leak detection system shall be monitored on a daily or weekly basis as specified in the permit to determine if the primary liner has failed.

(3) The permittee may implement an alternative monitoring procedure if the permittee demonstrates that the alternative monitoring is at least as protective of surface and subsurface waters as

the procedures outlined in paragraphs (1) and (2) of this subsection and if the alternative monitoring procedure is approved by the Director.

(b) The permittee shall monitor all pits for liner failure in accordance with the monitoring plan approved by the Commission pursuant to subsection (a) of this section. The permittee shall consider the following when implementing the monitoring plan.

(1) Failure of the primary liner in a double liner and leak detection system occurs if:

(A) a volume of fluid is withdrawn from the leak detection system that is greater than the calculated action leakage rate, the standard action leakage rate of 1,000 gallons per acre per day (GPAD) for pits that manage fluid waste, or 100 gallons per acre per day (GPAD) for pits that manage solid oil and gas wastes;

(B) any failure in the leak detection and return system or any component of the system occurs;

(C) any detected damage to or leakage from the secondary liner occurs; or

(D) the volume of fluid withdrawn from a pit with a leakage detection system exceeds the volume stated in the permit for 15 consecutive days or the weekly reported volume exceeds the volume stated in permit at least once a month for three consecutive months, in which case the operator shall notify the appropriate District Office and the Technical Permitting Section.

(2) The failure of a liner system may be indicated through results of groundwater monitoring.

(3) If liner failure is discovered at any time, the permittee shall:

(A) notify the Director and the District Director by phone or email within 24 hours of the failure; and

(B) empty the pit as soon as possible, ensuring that all waste stored or contained in the pit is properly managed. Once the pit is emptied, the permittee shall repair the liner and notify the District Director once the repair is complete. The District Director shall inspect the repair before the permittee may place the pit back in active operation.

§4.153. Commercial Disposal Pits

(a) Siting.

(1) An application for a pit at a commercial disposal facility shall include documentation of a good faith investigation of the 10-year flooding history of the property to determine whether the facility is located in a flood-prone area.

(2) In addition to the requirements of §4.150 of this title (relating to Additional Requirements Applicable to Pits Authorized by Permit), a commercial disposal pit shall not be located in:

(A) an area in which the disposal pit is not sufficiently isolated to prevent pollution of surface or subsurface waters;

(B) a prohibited location defined in Division 11 of this subchapter (relating to Requirements for Surface Water Protection); or

(C) any other location where there is an increased risk to surface or subsurface waters.

(3) An application for a commercial disposal pit shall include information to demonstrate that the pit will not be located in an area prohibited under paragraph (2) of this subsection.

(b) Design and construction. An application for a disposal pit permit shall include:

(1) the dimensions of all disposal pits;

(2) the locations and dimensions of all trenches used to separate and convey contact stormwater and non-contact stormwater;

(3) the maximum waste elevations and final cover; and

(4) details of the final cover anchor trench and final cover composition.

(c) Closure. Unless otherwise required by permit, a post-closure monitoring period of no less than five years is required for any commercial disposal pit, a facility where a commercial disposal pit is located, or if the Director determines that such post-closure monitoring is necessary to prevent pollution.

§4.154. Closure of Pits Authorized by Permit

In addition to the requirements outlined in Division 3 (relating to Operations Authorized by Rule) and §4.132 of this title (relating to Closure), the permittee is required to comply with the following when operations at the pit terminate.

(1) Unless otherwise required by permit, all pits shall be dewatered and emptied within 120 days of cessation of use.

(2) After the soil sampling analysis has been approved by the Director, the pit shall be backfilled and compacted within 120 days.

(3) Once backfilled, the pit shall be reseeded with vegetation natural to the region to prevent erosion after pit closure.

DIVISION 7 ADDITIONAL REQUIREMENTS FOR LANDFARMING

§4.160. Additional Requirements for Landfarming Permits

In addition to the requirements of this division, all applications for landfarming permits and all permittees conducting landfarming shall comply with Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations).

§4.161 Design and Construction Requirements for Landfarming Permits

(a) Application for landfarm permit.

(1) The facility diagram submitted with the permit application shall include:

(A) two perpendicular, sectional views of all landfarm cells to be constructed, showing the bottom, sides, and dikes or berms of the cell with dimensions indicated; and

(B) the locations and dimensions of all areas where landfarming will occur, dikes, well locations, fences, and access roads, taking into consideration the following restrictions:

(i) a minimum 50-foot buffer zone shall be maintained between the boundaries of the property and the treatment cells; and

(ii) a minimum 300-foot buffer zone shall be maintained between the toe of the constructed berms and any drainage features or surface waters.

(2) The applicant shall submit information to demonstrate that the area has at least 20 inches of tillable soil that is suitable for the application, treatment, and disposal of oil and gas waste.

(3) The applicant shall submit information sufficient for the Director to determine whether the proposed facility will pose a threat of pollution or a threat to public health or safety. The Director will consider the following factors when determining whether the proposed facility presents a threat of pollution or a threat to public health or safety:

(A) the volume and characteristics of the oil and gas waste to be managed at the landfarm facility;

(B) depth to and quality of the shallowest groundwater;

(C) distance to the nearest property line or public road;

(D) proximity to coastal natural resources, sensitive areas as defined by §4.110(77) of this title (relating to Definitions), water supplies, and/or public, domestic, or irrigation water wells; and

(E) any other factors reasonably necessary to determine whether issuance of the permit will pose a threat of pollution or a threat to public health or safety.

(b) Berm construction. All berms shall be constructed and maintained:

(1) to fully enclose each landfarm area;

(2) to a height of at least 36 inches above land surface with a slope no steeper than a one to three (vertical to horizontal) ratio on each side;

(3) so that at least two feet of freeboard is available; and

(4) as otherwise required by the permit.

(c) Reasons for denial. The Director shall deny an application for a landfarm permit if the proposed facility location is within:

(1) a 100-year flood plain;

(2) 300 feet of surface water bodies;

(3) 300 feet of domestic or irrigation water wells;

(4) 500 feet of public water system wells or intakes; or

(5) any other sensitive area as defined by §4.110(77) of this title.

§4.162. Operating Requirements for Landfarming Permits.

(a) Application. The applicant shall submit the following operating information with each application for landfarm permit:

(1) the estimated chloride concentration of the waste to be accepted at the facility;

(2) the procedure by which waste will be mixed into the soil;

(3) waste to soil application rates;

(4) the frequency of soil tilling;

(5) the maximum depth to which waste will be tilled;

(6) documentation on any soil amendments or microbes to be used;

(7) plans for monitoring and testing the landfarm area, and other appropriate procedures to ensure the treatment of organic constituents and prevention of pollution; and

(8) the estimated duration of landfarming activities.

(b) Operating requirements. A landfarm permittee shall comply with the following requirements.

(1) Prior to waste application, the permittee shall thoroughly disk the entire landfarm area and shall otherwise prepare the area by adding fertilizer, lime, and/or other agricultural chemicals, if needed.

(2) A landfarm permittee shall comply with the following waste application requirements.

(A) The permittee shall apply the waste to each landfarm cell to prevent the pooling or migration of the waste outside of the approved landfarm cell and to prevent the waste from

entering any watercourses or drainageways, including any drainage ditch, dry creek, flowing creek, river, or any other surface water.

(B) The cumulative volume of waste applied to any landfarm cell shall not exceed the permitted volume; the permittee shall maintain freeboard of at least two feet.

(C) The permittee shall ensure that the waste is uniformly dispersed across the landfarm area and the waste is fully and evenly incorporated into the top six inches of soil. The waste shall be mixed with the soil within 24 hours of waste application. Any active cell shall be disked once a month thereafter until the cell is closed in accordance with the permit.

(D) The permittee is prohibited from applying waste to the cells during periods of rainfall.

(3) Any standing or pooled rainwater or other liquid in a landfarm cell or within the perimeter berm shall be removed within 72 hours and disposed of in an authorized manner.

(4) Any spills of waste or any other materials shall be promptly containerized and disposed of in an authorized manner.

(5) Vehicle access into each cell shall be at a location where the stormwater surface flow cannot enter the treatment cells.

§4.163. Monitoring.

(a) The operator shall monitor three soil zones in each active cell at the following frequency:

(1) the surface treatment zone from the ground surface to a depth of 12 inches below land surface shall be sampled and analyzed quarterly;

(2) the waste treatment zone from 12 to 24 inches below land surface shall be sampled and analyzed quarterly; and

(3) the compliance monitoring zone from 24 to 36 inches below land surface shall be sampled and analyzed annually.

(b) The operator shall collect samples from each active cell as follows:

(1) The appropriate District Office shall be notified by phone or email at least 48 hours prior to any sampling event.

(2) Each active cell shall be divided into four-acre plots or other plot size as defined in the permit.

(3) The applicant shall take at least one composite sample for each treatment zone in each plot by subdividing each plot into four equal-sized quadrants.

(A) One composite sample of the surface treatment zone in each plot shall be made from four individual grab samples collected from the surface treatment zone of each quadrant.

(B) One composite sample of the waste treatment zone in each plot shall be made from four individual grab samples collected from the waste treatment zone of each quadrant.

(C) One composite sample of the compliance monitoring zone in each plot shall be made from four individual grab samples collected from the compliance monitoring zone of each quadrant.

(c) The operator shall analyze samples from each active cell according to the analysis requirements specified in the permit.

(d) If any composite sample exceeds the limitations specified by the permit, the operator shall remediate the parcel where the sample was collected as follows.

(1) The plot shall be tilled.

(2) The operator shall collect a composite sample from the four quadrants of the plot and re-analyze the sample for the parameter for which the limitations were exceeded.

(3) The operator shall re-till and resample the plot no less than once per month until the sample analyses indicate that the parameter limitations are not exceeded.

(4) If the parcel exceeds the limitation after six months of sampling, that plot is not authorized to accept additional waste until a sample analysis does not exceed the particular limitation.

(e) Documentation of the sampling and analysis shall be filed with the Technical Permitting Section and the appropriate District Office as part of the quarterly report required by the permit. A summary of the soil sampling required by the permit shall include:

(1) a map drawn to scale with coordinates of the sampling locations;

(2) a table indicating the results of the parameters sampled;

(3) the date of sampling;

(4) the approximate depth of the sample below land surface and corresponding zone; and

(5) copies of the laboratory analytical reports and the corresponding chain of custody.

§4.164. Closure.

(a) The permittee shall notify the Technical Permitting Section and the appropriate District Office in writing at least 45 days prior to commencing closure of any landfarm cell.

(b) The permittee shall submit a detailed closure plan to the Technical Permitting Section. The Technical Permitting Section must approve the closure plan before the permittee may commence closure of any cell. The composite samples required by §4.163 of this title (relating to Monitoring) shall not

exceed the limitations specified by permit before the Technical Permitting Section will approve closure of the cell.

(c) Once the Technical Permitting Section approves closure of a cell, the permittee shall level any berms and grade the area in accordance with the following requirements.

(1) All landfarm cells shall be graded and contoured to prevent rain from collecting or pooling at the former cell locations after closure; and

(2) To the extent practicable, all landfarm cells shall be contoured to original grade and reseeded and/or revegetated with ground cover appropriate for the geographic region.

DIVISION 8 ADDITIONAL REQUIREMENTS FOR RECLAMATION PLANTS

§4.170. Additional Requirements for Reclamation Plants

(a) Applicability.

(1) This section is applicable to reclamation of tank bottoms and other oil and gas wastes generated through activities associated with the exploration, development, and production (including transportation) of crude oil and other waste materials containing oil, as those activities are defined in §4.110(7) of this title (relating to Definitions).

(2) Removal of tank bottoms or other oil and gas wastes from any producing lease tank, pipeline storage tank, or other production facility, for reclaiming by any person, is prohibited unless such person has either obtained a permit to operate a reclamation plant or is an authorized person. Applicants for a reclamation plant operating permit shall file the appropriate form with the Technical Permitting Section in Austin. For purposes of this division, an "authorized person" is a tank bottoms cleaner or transporter that is under contract for disposition of untreated tank bottoms or other oil and gas wastes to a person who has obtained a permit to operate a reclamation plant.

(3) The removal of tank bottoms or other oil and gas wastes from any facility for which monthly reports are not filed with the Commission shall be authorized in writing by the Director prior to such removal. A written request for such authorization shall be sent to the Technical Permitting Section in Austin, and shall detail the location, description, estimated volume, and specific origin of the material to be removed as well as the name of the reclaimer and intended destination of the material. If the authorization is denied, the applicant may request a hearing.

(4) No person shall remove basic sediment from any producing lease tank, pipeline storage tank, or other production facility unless authorized to do so by a waste hauler permit pursuant to Division 10 of this subchapter (relating to Requirements for Oil and Gas Waste Transportation).

(5) Unless expressly authorized by permit, no person shall reclaim basic sediment and waste without a reclamation plant permit.

(6) A reclamation plant is a commercial facility and is subject to Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities).

(7) Reclamation plant permits that were issued pursuant to §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials) before [insert the effective date of this rulemaking] shall expire five years from [insert the effective date of this rulemaking]. Permits may be renewed pursuant to §4.122 of this title (relating to Permit Renewals, Transfers, and Amendments).

(8) This section does not apply where basic sediment is recycled or processed on-site by the operator and returned to a tank or vessel at the same lease or facility.

(9) This section does not apply to the recycling of drilling mud. This section does apply to unrefined hydrocarbons recovered from such mud that are sent to a permitted reclamation plant.

(b) Application.

(1) In addition to the requirements of this division, all applicants for reclamation plant permits and permittees operating reclamation plants shall comply with the following:

(A) Division 4 of this subchapter (relating to Requirements for all Permitted Waste Management Operations);

(B) Division 5 of this subchapter (relating to Additional Requirements for Commercial Facilities); and

(C) Division 6 of this subchapter (relating to Additional Requirements for Permitted Pits).

(2) Each application for reclamation plant permit shall include:

(A) a list of the waste types to be received;

(B) a detailed description of the treatment process, equipment, and pits, storage, or on-site containment at the facility; and

(C) the spill control plan for the facility.

(3) Applicants for a reclamation plant permit shall file the application on the Commission-prescribed form or electronic system.

§4.171. General Permit Provisions.

(a) Reclamation plant permits shall be issued for a term of not more than five years.

(b) Reclamation plant permits may be renewed, transferred, or amended pursuant to §4.122 of this title (relating to Permit Renewals, Transfers, and Amendments). Reclamation plant permits are subject to the financial security requirements in §4.140 of this title (relating to Additional Requirements for Commercial Facilities) and may be subject to fees in accordance with §4.106 of this title (relating to Fees).

(c) If the waste hauler transporting basic sediment to the reclamation plant does not comply with Division 10 of this subchapter, the reclamation plant permittee shall not accept the basic sediment and shall report the violation to the District Office no later than 24 hours after the violation occurs.

(d) The receipt of any tank bottoms or other oil and gas wastes from outside the state of Texas shall be authorized in writing by the Commission prior to receipt. If a request for authorization is denied, the applicant may request a hearing.

(e) The receipt of any waste materials other than tank bottoms or other oil and gas wastes shall be authorized in writing by the Commission prior to receipt. The Commission may require the reclamation plant operator to submit an analysis of the waste materials prior to a determination of whether to authorize receipt. If the request for authorization is denied, the applicant may request a hearing.

(f) By the 15th day of each calendar month, the operator of a reclamation plant shall file a report for each of the operator's reclamation plants covering each facility's activities for the previous month. The operator shall file the report on a Commission-designated form or electronic filing system and shall file a copy of the monthly report in the District Office for any district in which the operator made receipts or deliveries for the month covered by the report.

(g) All wastes generated by reclaiming operations shall be disposed of in accordance with this subchapter, §3.9 of this title (relating to Disposal Wells), or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

§4.172. Minimum Permit Provisions for Operations.

(a) The following provisions apply to any removal of tank bottoms or other oil and gas wastes from any oil producing lease tank, pipeline storage tank, or other production facility.

(1) Tank bottoms and other oil and gas wastes shall be reclaimed using the methods authorized in the permit.

(2) An authorized representative of the operator of a reclamation plant shall execute a manifest in accordance with §3.85 of this title (relating to Manifest To Accompany Each Transport of Liquid Hydrocarbons by Vehicle) upon each removal of tank bottoms or other oil and gas wastes from any oil producing lease tank, pipeline storage tank, or other production facility. In addition to the

information required pursuant to §3.85 of this title, the operator of the reclamation plant or other authorized person shall also include on the manifest:

(A) the Commission identification number of the lease or facility from which the material is removed; and

(B) the gross and net volume of the material as determined by the required shakeout test.

(3) The operator of the reclamation plant or other authorized person shall complete the manifest before leaving the lease or facility from which the liquid hydrocarbons are removed and shall retain a copy for three years.

(4) The operator of the reclamation plant or other authorized person shall keep a copy of the manifest in the vehicle transporting the material.

(b) The operator of a reclamation plant or other authorized person shall conduct a shakeout test on all tank bottoms or other oil and gas wastes upon removal from any producing lease tank, pipeline storage tank, or other production facility to determine the crude oil and/or lease hydrocarbon condensate content. The shakeout test shall be conducted in accordance with the most current API or ASTM method.

(c) Pursuant to §4.190 of this title (relating to Oil and Gas Waste Characterization and Documentation), waste characterization and profiling shall be performed before the waste is accepted at the reclamation plant.

§4.173. Minimum Permit Provisions for Reporting.

(a) An operator of a reclamation plant shall file a monthly report documenting the volumetric throughput of waste and reclaimed hydrocarbons.

(b) The Commission may establish a form or electronic system for filing monthly reports for reclamation plants.

(c) For wastes taken to a reclamation plant the following provisions shall apply.

(1) The net crude oil content or lease condensate from a producing lease's tank bottom as indicated by the shakeout test shall be used to calculate the amount of oil to be reported as a disposition on the monthly production report. The net amount of crude oil or lease condensate from tank bottoms taken from a pipeline facility shall be reported as a delivery on the monthly transporter report.

(2) For other oil and gas wastes, the net crude oil content or lease condensate of the wastes removed from a tank, treater, firewall, pit, or other container at an active facility, including a pipeline facility, shall also be reported as a disposition or delivery from the facility.

(d) The net crude oil content or lease condensate of any tank bottoms or other oil and gas wastes removed from an active facility, including a pipeline facility, and disposed of on site or delivered to a site other than a reclamation plant shall also be reported as a delivery or disposition from the facility. All such disposal shall be in accordance with this subchapter and §§3.9 and 3.46 of this title (relating to Disposal Wells; and Fluid Injection into Productive Reservoirs, respectively). Operators may be required to obtain a minor permit for such disposal pursuant to §4.182 of this title (relating to Minor Permits). Prior to approval of the minor permit, the Commission may require an analysis of the disposable material to be performed.

DIVISION 9 MISCELLANEOUS PERMITS

§4.180. Activities Permitted as Miscellaneous Permits

This division contains permit requirements for some activities not otherwise addressed in this subchapter. Unless otherwise specified in this division or by the Director, the requirements of Divisions 4 through 8 of this subchapter do not apply to activities permitted under this division.

§4.181. Emergency Permits

(a) If the District Director determines that expeditious issuance of the permit will prevent or is likely to prevent the waste of oil, gas, or geothermal resources or the pollution of surface or subsurface water, the District Director may issue an emergency permit.

(b) An application for an emergency permit to use or maintain a pit or to dispose of oil and gas wastes shall be filed with the appropriate District Office. Notice of the application is not required.

(c) If warranted by the nature of the emergency, the District Director may issue an emergency permit based upon an oral application, or may orally authorize an activity before issuing a written permit authorizing that activity.

(d) An emergency permit is valid for up to 30 days, but may be modified, suspended, or terminated by the District Director at any time for good cause.

§4.182. Minor Permits

(a) If the District Director determines that an application is for a permit to store only a minor amount of oil field fluids or to store or dispose of only a minor amount of oil and gas waste, the District Director may issue a minor permit provided the permit does not authorize an activity which results in waste of oil, gas, or geothermal resources or pollution of surface or subsurface water.

(b) An application for a minor permit shall be filed with the Commission in the appropriate District Office. Notice of the application shall be given as required by the District Director. The Director may determine that notice of the application is not required.

(c) A minor permit is valid for 60 days, but a minor permit which is issued without notice of the application may be modified, suspended, or terminated by the District Director at any time for good cause.

§4.183. Miscellaneous Permits

(a) In addition to the requirements detailed in Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations), the Director may establish permit requirements for land application of high-quality produced water and land application of hydrostatic test waters not otherwise authorized by §4.111 of this title (relating to Authorized Disposal Methods for Certain Wastes).

(b) For any waste management operation not otherwise authorized by rule or permit, the Director may establish permit requirements necessary to prevent pollution and protect human health and safety.

§4.184. Permitted Recycling

(a) For non-commercial recycling not otherwise authorized by this subchapter, the Director may authorize such recycling by permit. In determining appropriate permit conditions, the Director shall review the general permit requirements outlined in Division 4 of this subchapter (relating to Requirements for All Permitted Waste Management Operations) and determine which permit requirements, if any, are necessary to prevent pollution.

(b) Commercial recycling shall be permitted in accordance with Subchapter B of this title (relating to Commercial Recycling).

§4.185. Pilot Programs

(a) For any recycling activities not otherwise authorized by rule or permit in this subchapter, an operator may propose a pilot program.

(b) A pilot program is a program implemented to assess:

(1) whether the recycled product can be reused in certain activities that are safe and protective of human health and the environment;

(2) the efficiency and effectiveness of the recycling project; or

(3) the appropriate regulatory requirements of a permitted recycling program.

(c) If the Director finds that the proposed pilot program does not present a threat of pollution and encourages recycling of oil and gas wastes, the Commission may authorize a pilot program for operation of no more than one year.

(1) If, after one year, the Commission determines that the proposed pilot program prevents pollution and promotes the beneficial reuse of oil and gas waste, the Commission may authorize the recycling by permit pursuant to §4.184 of this title (relating to Permitted Recycling).

(2) If, after one year, the Commission determines that more time is needed to fulfill the objectives of the pilot program, the Commission may extend the pilot program in increments of no more than one year.

DIVISION 10 REQUIREMENTS FOR OIL AND GAS WASTE TRANSPORTATION

§4.190. Oil and Gas Waste Characterization and Documentation

(a) The generator of oil and gas waste is responsible for characterizing and documenting the waste prior to transportation.

(b) A generator of any waste subject to Commission jurisdiction shall document the waste characterization by completing and retaining a Waste Profile Form that documents the origin, approximate quantity, and characteristics of the waste generated.

(1) The Waste Profile Form will be made available electronically by the Commission and will include the following information:

(A) the generator name and P-5 operator number, including the contact information of the person preparing the waste profile;

(B) a generator-assigned identifier specific to the generated waste;

(C) identification of the producing lease or property and Commission-assigned identifier;

(D) a description of the waste, including physical and chemical characteristics and constituents;

(E) the estimated quantity of the waste;

(F) the basis for the characterization, which shall be made in accordance with §4.102(a) of this title (relating to Responsibility for Oil and Gas Wastes); and

(G) other information pertinent to characterization.

(2) The generator shall associate the Waste Profile Form and the generator-assigned identifier with a specific manifest or group of manifests for shipment of the media so the material can be easily correlated to the correct shipping documents.

(3) A generator of waste that chooses to dispose of or recycle such waste shall provide the Waste Profile Form to the waste hauler receiver.

(4) The receiver of the oil and gas waste shall include the waste profile information in the periodic reporting requirements as described in the facility permit conditions.

(c) This section takes effect upon the Commission making an electronic filing system available to the generators of oil and gas waste for characterizing and documenting the waste.

§4.191. Oil and Gas Waste Manifests

(a) Oil and gas waste that is transported by vehicle from the lease, unit, or other oil or gas property or facility where it is generated to an off-lease facility that manages oil and gas waste shall:

(1) be accompanied by a paper manifest that meets the requirements of this section; or

(2) be documented and tracked by an electronic manifest system that meets the requirements of this section and is accessible to the Commission and all parties involved in the generation, transportation, and receipt of the waste.

(b) The oil and gas waste manifests shall include the following information:

(1) identity of the waste generator, including operator name, Commission-issued operator number, and detailed contact information;

(2) identity of the property or facility where the oil and gas waste was generated, using Commission-issued identifiers including:

(A) operator name and Commission-assigned operator number of the generator;

(B) lease name and Commission-assigned lease number;

(C) facility name and Commission-assigned number, or the latitude and longitude of the waste origin if a Commission-assigned identifier is not available; and

(D) county name;

(3) the corresponding waste profile identifier prepared by the generator as required in §4.190 of this title (relating to Oil and Gas Waste Characterization and Documentation);

(4) identity of the facility to which the oil and gas waste is delivered including the identifier issued by the appropriate regulatory agency and detailed contact information for the facility;

(5) transporter name and waste hauler permit number with driver signature;

(6) type and volume of oil and gas waste transported;

(7) date of shipment;

(8) name and signature of generator; and

(9) date of acceptance with waste receiver signature.

(c) The generator of the oil and gas waste, the waste hauler, and the receiver shall keep for a period of three years from the date of shipment copies or electronic records of all manifests.

§4.192. Special Waste Authorization

(a) Section 3.30(e) of this title (relating to Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Commission on Environmental Quality (TCEQ)) provides a means by which certain oil and gas waste may be managed at an appropriate TCEQ-regulated facility and by which certain TCEQ-jurisdictional waste may be managed at an appropriate RRC-regulated facility.

(b) A Special Waste Authorization approved by both agencies is required before oil and gas waste can be managed at a TCEQ-regulated facility or before TCEQ-jurisdictional waste can be received at an RRC-regulated facility.

(c) A request for a Special Waste Authorization can only be made by the generator and shall include the following information:

(1) identification of the generator using Commission-issued identifiers including:

(A) operator name and Commission-assigned operator number of the generator;

(B) lease name and Commission-assigned lease number;

(C) facility name and Commission-assigned number, or the latitude and longitude of the waste origin if a Commission-assigned identifier is not available; and

(D) county name;

(2) waste profile; and

(3) identification of the requested receiver, including:

(A) the name and location of the receiving facility;

(B) identifier issued by the appropriate regulatory authority;

(C) detailed contact information for the receiving facility; and

(D) the reason for requesting the Special Waste Authorization.

§4.193. Oil and Gas Waste Haulers

(a) Prohibitions. A person who transports oil and gas waste for hire by any method other than by pipeline shall not haul or dispose of oil and gas waste off a lease, unit, or other oil or gas property where it is generated without a valid oil and gas waste hauler permit. A permittee under this division shall not gather oil, gas, or geothermal resources unless otherwise authorized by Commission rules. An oil and gas waste hauler shall not transport oil, gas, or geothermal resources in the same vehicle being used to

transport oil and gas wastes other than incidental volumes of skim oil normally present in produced water or other oil and gas wastes.

(b) Exclusions.

(1) Hauling of inert waste, asbestos-containing material regulated under the Clean Air Act (42 USC §§7401 et seq.), polychlorinated biphenyl (PCB) waste regulated under the Toxic Substances Control Act (15 USC §§2601 et seq), or hazardous oil and gas waste subject to regulation under §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) is excluded from this section.

(2) Hauling of oil and gas NORM waste that is not exempt from Subchapter F of this title (relating to Oil and Gas NORM) and that exceeds the exemption criteria specified in 25 Texas Administrative Code §289.259(d)(1), (2), and (3) (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), is excluded from this section.

(c) Application. An application for an oil and gas waste hauler permit shall be made on the Commission-prescribed forms or on an electronic system established by the Commission. The application shall include:

(1) the permit application fee required by §3.78 of this title (relating to Fees and Financial Security Requirements);

(2) vehicle identification information to support Commission issuance of an approved vehicle list;

(3) a certification by the hauler that the vehicles listed on the application are designed so that they will not leak during transportation. The certification shall include a statement that vehicles used to haul oil and gas waste are designed to transport oil and gas wastes and shall be operated and maintained to prevent the escape of oil and gas waste; and

(4) any other information required by the Commission.

(d) Permit term.

(1) An oil and gas waste hauler permit may be issued for a term not to exceed one year.

(2) A waste hauler permittee may apply to renew a permit using the permittee's assigned permit number and by paying the fee required by §3.78 of this title at least 60 days before the expiration date specified in the permit.

(e) Permit conditions. Each oil and gas waste hauler shall operate in strict compliance with the instructions and conditions stated on the permit, which are restated as follows.

(1) This permit, unless suspended or revoked for cause shown, shall remain valid until the expiration date specified in this permit.

(2) Each vehicle used by a permittee shall be marked on both sides and the rear with the permittee's name and permit number in characters not less than three inches high. For the purposes of this permit, "vehicle" means any truck tank, trailer tank, tank car, vacuum truck, dump truck, garbage truck, or other container in which oil and gas waste will be hauled by the permittee.

(3) Each vehicle shall carry a copy of the permit including those parts of the Commission-issued attachments listing approved vehicles. This permit authority is limited to those vehicles shown on the Commission-issued list of approved vehicles.

(4) This permit is issued pursuant to the information furnished on the Commission-prescribed application form, and any change in conditions shall be reported to the Commission on an amended application form. The permit authority will be revised as required by the amended application.

(5) This permit authority is limited to hauling, handling, and disposal of oil and gas waste.

(6) This permit authorizes the permittee to use Commission-permitted disposal systems provided the disposal systems are permitted to receive the specific type of waste being hauled.

(7) This permit also authorizes the permittee to use a disposal system operated under authority of a minor permit issued by the Commission.

(8) This permit authorizes the permittee to transport hazardous oil and gas waste to any facility in accordance with the provisions of §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste) provided the shipment is accompanied by a manifest that meets the requirements of §3.98(o) or §3.98(w) of this title as applicable.

(9) This permit authorizes the transportation of non-hazardous oil and gas waste to a disposal facility permitted by another state agency, another state, or an agency of the federal government, provided the shipment is accompanied by a manifest, run ticket, or shipping paper and the person submits a copy of such manifest, run ticket, or shipping paper showing the information specified in §4.191 of this title (relating to Oil and Gas Waste Manifests) to the appropriate Commission District Office within 30 days of shipment.

(10) Each vehicle shall be operated and maintained in such a manner as to prevent spillage, leakage, or other escape of oil and gas waste during transportation. Vehicles used to haul oil and gas waste shall be designed to transport oil and gas wastes and shall be operated and maintained to prevent the escape of oil and gas waste.

(11) Each vehicle shall be made available for inspection upon request by the Commission.

§4.194. Recordkeeping

(a) The generator, waste hauler, and receiver shall keep all waste profiles, manifests, and other documentation for a period of at least three years. The person keeping any records required by this section shall make the records available to the Commission upon request.

(b) Upon discovering any significant discrepancy in waste descriptions, volumes, place of origin, disposal locations or destinations, or other information based on personal observation or information contained in the manifest or electronic system, the receiver shall submit to the Commission, the generator, and the waste hauler a letter describing the discrepancy and a copy of the manifest or electronic system documentation.

§4.195. Waste Originating Outside of Texas

Notwithstanding the provisions of §4.190 through §4.192 of this title (relating to Oil and Gas Waste Characterization and Documentation, Oil and Gas Waste Manifests, and Special Waste Authorization, respectively), oil and gas waste that is generated outside of Texas and transported into Texas for management shall be accompanied by documentation including the name of the generator, the location of origin, and any operator and facility identifiers issued by the appropriate regulatory agency of that state to ensure the origin of the waste is accurately identified and possession of the waste is tracked.

DIVISION 11 REQUIREMENTS FOR SURFACE WATER PROTECTION

§4.196. Surface Water Pollution Prevention

(a) An operator shall not pollute the waters of the Texas offshore and adjacent estuarine zones (saltwater bearing bays, inlets, and estuaries) or damage the aquatic life therein.

(b) All oil, gas, and geothermal resource well drilling and producing operations shall be conducted in such a manner to preclude the pollution of the waters of the Texas offshore and adjacent estuarine zones. The following procedures shall be utilized to prevent pollution.

(1) No oil or other hydrocarbons in any form or combination with other materials or constituent shall be disposed of into the Texas offshore and adjacent estuarine zones.

(2) All deck areas on drilling platforms, barges, workover unit, and associated equipment both floating and stationary subject to contamination shall be either curbed and connected by drain to a collecting tank, sump, or enclosed drilling slot in which the containment will be treated and disposed of without causing hazard or pollution; or else drip pans, or their equivalent, shall be placed under any equipment which might reasonably be considered a source from which pollutants may escape into

surrounding water. These drip pans shall be piped to collecting tanks, sumps, or enclosed drilling slots to prevent overflow or prevent pollution of the surrounding water.

(3) Solid wastes such as cans, bottles, any form of trash, or ashes of combustible waste shall be transported to shore in appropriate containers.

(4) Drilling muds which contain oil shall be transported to shore or a designated area for disposal.

(5) Fluids produced from offshore wells shall be mechanically contained in adequately pressure-controlled piping or vessels from producing well to disposition point. Oil and water separation facilities at offshore and onshore locations shall contain safeguards to prevent discharge of pollutants to the Texas offshore and adjacent estuarine zones.

(6) Any person observing water pollution shall report such sighting, noting size, material, location, and current conditions to the ranking operating personnel. Immediate action shall be taken or notification made to eliminate further pollution. The operator shall then transmit the report to the appropriate Commission District Office.

(7) Immediate corrective action shall be taken in all cases where pollution has occurred. An operator responsible for the pollution shall remove immediately such oil, oil field waste, or other pollution materials from the waters and the shoreline where it is found. Such removal operations will be at the expense of the responsible operator.

(c) The Commission may suspend producing and/or drilling operations from any facility if the provisions of this rule are being violated.

(d) The requirements of this section shall also apply to all oil, gas, or geothermal resource operations conducted on the inland and fresh waters of the State of Texas, such as lakes, rivers, and streams.

§4.197. Consistency with the Texas Coastal Management Program

(a) Applicability. The provisions of this section apply only to activities that occur in the coastal zone and that are subject to the CMP rules.

(1) Disposal of oil and gas waste in pits. The following provisions apply to oil and gas waste disposal pits located in the coastal zone.

(A) No commercial oil and gas waste disposal pit constructed after October 25, 1995, shall be located in any CNRA.

(B) All oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.

(2) Development in critical areas. The provisions of this paragraph apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing development affecting critical areas. Prior to issuing any such certification, the Commission shall confirm that the requirements of 31 Texas Administrative Code §26.23(a)(1) - (7) (relating to Policies for Development in Critical Areas) have been satisfied. The Commission shall coordinate its efforts under this section with those of other appropriate state and federal agencies.

(3) Dredging and dredged material disposal and placement. The provisions of this section apply to issuance under §401 of the federal Clean Water Act, United States Code, Title 33, §1341, of certifications of compliance with applicable water quality requirements for federal permits authorizing dredging and dredged material disposal and placement in the coastal zone. Prior to issuing any such certification, the Commission shall confirm that the requirements of 31 Texas Administrative Code §26.25 (relating to Policies for Dredging and Dredged Material and Placement) have been satisfied.

(b) Consistency determinations. The provisions of this subsection apply to issuance of determinations required under 31 Texas Administrative Code §29.30 (relating to Agency Consistency Determination) for the following actions listed in 31 Texas Administrative Code §29.11(a)(3) (relating to Actions and Rules Subject to the Coastal Management Program): permits to dispose of oil and gas waste in a pit; and certifications of compliance with applicable water quality requirements for federal permits for development in critical areas and dredging and dredged material disposal and placement in the coastal area.

(1) The Commission shall issue consistency determinations under this subsection as an element of the permitting process for permits to dispose of oil and gas waste in a pit.

(2) Prior to issuance of a permit or certification covered by this subsection, the Commission shall determine if the proposed activity will have a direct and significant adverse effect on any CNRA identified in the provisions of subsection (a) of this section that are applicable to such activity.

(A) If the Commission determines that issuance of a permit or a certification covered by this subsection would not result in direct and significant adverse effects to any coastal natural resource area (CNRA) identified in the provisions of subsection (a) of this section that are applicable to the proposed activity, the Commission shall issue a written determination of no direct and significant adverse effect which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies, and has found that the proposed action will not have a direct and significant adverse effect on any coastal natural resource area (CNRA) identified in the applicable policies."

(B) If the Commission determines that issuance of a permit or certification covered by this paragraph would result in direct and significant adverse effects to a CNRA identified in the provisions of subsection (a) of this section that are applicable to the proposed activity, the Commission shall determine whether the proposed activity would meet the applicable requirements of subsection (a) of this section.

(i) If the Commission determines that the proposed activity would meet the applicable requirements of subsection (a) of this section, the Commission shall issue a written consistency determination which shall read as follows: "The Railroad Commission has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies, and has determined that the proposed action is consistent with the applicable CMP goals and policies."

(ii) If the Commission determines that the proposed activity would not meet the applicable requirements of subsection (a) of this section, the Commission shall not issue the permit or certification.

(c) Thresholds for referral. Any Commission action that is not identified in this subsection shall be deemed not to exceed thresholds for referral for purposes of the CMP rules. Pursuant to 31 Texas Administrative Code §29.32 (relating to Requirements for Referral of a Proposed Agency Action), the thresholds for referral of consistency determinations issued by the Commission are as follows:

(1) for oil and gas waste disposal pits, any permit to construct a pit occupying five acres or more of any CNRA that has been mapped or that may be readily determined by a survey of the site;

(2) for certification of federal permits for development in critical areas:

(A) in the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of:

(i) ten acres or more of submerged aquatic vegetation or tidal sand or mud flats; or

(ii) five acres or more of any other critical area; and

(B) in all areas within the coastal zone other than the bays and estuaries between Pass Cavallo in Matagorda Bay and the border with the Republic of Mexico, any certification of a federal permit authorizing disturbance of five acres or more of any critical area; and

(3) for certification of federal permits for dredging and dredged material disposal or placement, certification of a permit authorizing removal of more than 10,000 cubic yards of dredged material from a critical area.

Figure: 16 TAC §4.111(a)

Limitation for Authorized Land Application of Water Condensate

Parameter	Method	Limitation
Benzene	EPA 8260 or 8021B	0.005 mg/L
Toluene	EPA 8260 or 8021B	1 mg/L
Ethylbenzene	EPA 8260 or 8021B	0.7 mg/L
Xylene	EPA 8260 or 8021B	10 mg/L

Figure: 16 TAC §4.114(f)

Standard Soil Sampling Closure Parameters **If Waste is Removed from the Pit in Accordance with 16 TAC Chapter 4**		
Constituent	Method (or equivalent)	Limit
pH	EPA Method 9045C	6 to 10 standard units
Chloride	SW-846 9056A	≤ 3,000 mg/kg
Total Petroleum Hydrocarbons	EPA SW-846 418.1	≤ 10,000 mg/kg or 1% by weight
BTEX	EPA Method 5035A/8021/8260B	≤ 30 mg/kg
Metals	EPA Method 6010/6020/7471A	
Arsenic		≤ 10 mg/kg
Barium		≤ 10,000 mg/kg
Cadmium		≤ 10 mg/kg
Chromium		≤ 100 mg/kg
Lead		≤ 200 mg/kg
Mercury		≤ 10 mg/kg
Selenium		≤ 10 mg/kg
Silver		≤ 200 mg/kg

Figure: 16 TAC §4.114(g)

Standard Waste Sampling Closure Parameters **If Waste is Treated and Buried in the Pit in Accordance with 16 TAC Chapter 4**		
Constituent	Method (or equivalent)	Limit
pH	EPA Method 9045C	6 to 10 standard units
Chloride • if the depth below the bottom of the pit to groundwater is ≤ 50 feet • if the depth below the bottom of the pit to groundwater is 51 feet to 100 feet • if the depth below the bottom of the pit to groundwater is > 100 feet	SW-846 9056A	 ≤ 20,000 mg/kg ≤ 40,000 mg/kg ≤ 80,000 mg/kg
Total Petroleum Hydrocarbons	EPA SW-846 418.1	≤ 10,000 mg/kg or 1% by weight
BTEX	EPA Method 5035A/8021/8260B	≤ 30 mg/kg
Metals Arsenic Barium Cadmium Chromium Lead Mercury Selenium Silver	EPA Method 6010/6020/7471A	 ≤ 10 mg/kg ≤ 10,000 mg/kg ≤ 10 mg/kg ≤ 100 mg/kg ≤ 200 mg/kg ≤ 10 mg/kg ≤ 10 mg/kg ≤ 200 mg/kg