

**TITLE 16. ECONOMIC REGULATION  
PART 1. RAILROAD COMMISSION OF TEXAS  
CHAPTER 4. ENVIRONMENTAL PROTECTION  
SUBCHAPTER B. COMMERCIAL RECYCLING  
DIVISION 1. GENERAL; DEFINITIONS**

*§4.201. Purpose.*

(a) 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 and operating standards and requirements for commercial recycling of oil and gas wastes under the jurisdiction of the Commission.

(b) No person conducting activities subject to this subchapter may cause or allow pollution of surface or subsurface water in the state.

(c) The provisions of this subchapter do not supersede other Commission regulations relating to oil field fluids or oil and gas waste.

*The provisions of this §4.201 adopted to be effective December 4, 2006, 31 TexReg 9711; amended to be effective April 15, 2013, 38 TexReg 2334.*

*§4.202. Applicability and Exclusions.*

(a) The provisions of this subchapter apply to the following categories of commercial recycling:

- (1) on-lease commercial recycling of solid oil and gas waste;
  - (2) off-lease or centralized commercial solid oil and gas waste recycling;
  - (3) stationary commercial solid oil and gas waste recycling;
  - (4) off-lease commercial recycling of fluid;
- and
- (5) stationary commercial recycling of fluid.

(b) The provisions of this subchapter do not apply to recycling methods authorized for certain wastes by §3.8 of this title (relating to Water Protection); §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials); or §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste).

(c) The provisions of this subchapter do not apply to non-commercial fluid recycling. Such recycling is subject to the requirements of §3.8 of this title.

(d) The permitting provisions of this subchapter do not apply to the recycling of fluid received at a commercial disposal well operated pursuant to permit issued under §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs), provided the operator of the disposal well treats, or contracts with a person for the treatment of the fluid; the operator of the disposal well is responsible for all activities, including the recycling, that occurs on the lease; and has obtained financial security in accordance with §3.78 of this title

(relating to Fees and Financial Security Requirements); provides written notification to the appropriate district office seven days before recycling operations are expected to begin and includes information on how fluids will be controlled and contained during recycling operations; and provides written notification to the appropriate district office within seven days of concluding recycling operations. Such recycling is authorized by this subchapter.

(e) The provisions of this subchapter are in addition to the permitting requirements of §3.8 of this title, which requires a permit for any pit not specifically authorized in the rule.

(f) The provisions of this subchapter do not authorize discharge of oil and gas waste.

(g) The provisions of this subchapter do not apply to recycling facilities regulated by the Texas Commission on Environmental Quality or its predecessor or successor agencies, another state, or the federal government.

*The provisions of this §4.202 adopted to be effective December 4, 2006, 31 TexReg 9711; amended to be effective April 15, 2013, 38 TexReg 2334.*

*§4.203. Responsibility for Management of Waste to be Recycled.*

(a) Permit required. A person who operates a commercial recycling facility shall obtain a permit from the Commission under this subchapter before engaging in such operation.

(b) Hauling of waste. A waste hauler transporting and delivering oil and gas waste for commercial recycling permitted pursuant to this subchapter shall be permitted by the Commission as an Oil and Gas Waste Hauler pursuant to §3.8(f) of this title (relating to Water Protection).

(c) Responsibility of generator and carrier. No generator or carrier may knowingly use the services of a commercial recycling facility unless the facility has a permit issued under this subchapter. A person who plans to use the services of a commercial recycling facility has a duty to determine that the commercial recycling facility has all permits required by statute or Commission rule.

*The provisions of this §4.203 adopted to be effective December 4, 2006, 31 TexReg 9711; amended to be effective April 15, 2013, 38 TexReg 2334.*

*§4.204. Definitions.* Unless a word or term is defined differently in this section, the definitions in §3.8 of this title (relating to Water Protection), §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), and §4.603 of this title (relating to Definitions), shall apply in this subchapter. In addition, the following words and terms when used in this

subchapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) 100-year flood plain--An area that is inundated by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year.

(2) Adjoining--Every tract of property surrounding the tract of property upon which the activity sought to be permitted will occur, including those tracts that meet only at a corner point.

(3) Commercial recycling facility--A facility whose owner or operator receives compensation from others for the storage, handling, treatment, and recycling of oil and gas wastes and the primary business purpose of the facility is to provide these services for compensation, whether from the generator of the waste, another receiver, or the purchaser of the recyclable product produced at the facility. Includes recycling of solid oil and gas wastes on or off lease. Does not include non-commercial fluid recycling as defined in §3.8 of this title.

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

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

(6) EPA Method 1312, Synthetic Precipitation Leaching Procedure (SPLP)--An analytical method used to evaluate the potential for leaching of metals and/or benzene into surface and subsurface water.

(7) Legitimate commercial use--Use or reuse of a recyclable product as authorized or defined in a permit issued pursuant to this subchapter:

(A) as an effective substitute for a commercial product or as an ingredient to make a commercial product; or

(B) as a replacement for a product or material that otherwise would have been purchased; and

(C) in a manner that does not constitute disposal.

(8) Louisiana Department of Natural Resources Leachate Test Method--An analytical method designed to simulate water leach effects on treated oil and gas wastes included in "Laboratory Manual for the Analysis of E&P Waste," Louisiana Department of Natural Resources, May 2005.

(9) On-lease commercial solid oil and gas waste recycling--Commercial recycling performed on an oil or gas lease or well site using equipment that moves from one location to another, at which all materials and wastes are stored in authorized pits and/or tanks, and restricted in the:

(A) amount of time, generally less than one year, operations occur at any one location;

(B) volume and source of the waste that may be processed at any one location;

(C) the type and characteristics of the waste; and

(D) size of the area used for recycling.

(10) Oil and gas wastes--For purposes of this subchapter, this term means materials which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as that term is defined in §3.8 of this title, and materials which have been generated in connection with activities associated with the solution mining of brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants unless 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 (42 United States Code §6901 et seq.).

(11) 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.

(12) 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.

(13) Recycle--To process and/or use or re-use oil and gas wastes as a product for which there is a legitimate commercial use and the actual use of the recyclable product for the purposes authorized in this subchapter or a permit. 'Recycle,' as defined in this subsection, does not include injection pursuant to a permit issued under §3.46 of this title (relating to Fluid Injection into Productive Reservoirs).

(14) Off-lease or centralized commercial solid oil and gas waste recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle solid oil and gas waste.

(15) Off-lease commercial fluid recycling facility--A commercial recycling facility that is capable of being moved from one location to another, but which is generally in operation in one location for a period of time longer than one year, but less than two years that shall recycle wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process.

(16) Solid oil and gas waste--Oil and gas waste that is not typically capable of being injected into a disposal well without the addition of fluids.

(17) Stationary commercial recycling facility--A commercial recycling facility in an immobile, fixed location for a period of greater than two years that recycles solid oil and gas waste or wellbore fluid produced from an oil or gas well, including produced formation fluid, workover fluid, and completion fluid, including fluids produced from the hydraulic fracturing process.

*The provisions of this §4.204 adopted to be effective December 4, 2006, 31 TexReg 9711; amended to be effective February 3, 2011, 36 TexReg 410; amended to be effective April 15, 2013, 38 TexReg 2334.*

*§4.205. Exceptions.* Except for the requirements related to financial security found in §§4.239(b), 4.255(b), 4.271(b), and 4.287(b) of this title; the notice requirements found in §§4.238, 4.254, 4.270, and 4.286 of this title; and the requirements related to sampling and analysis found in §§4.221, 4.222, 4.223, 4.242, 4.243, 4.258, 4.259, 4.274, 4.275, 4.290, and 4.291 of this title, 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 director shall review each written request on a case-by-case basis. 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 may not use the requested alternative until the alternative is approved by the Commission.

*The provisions of this §4.205 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.206. Administrative Decision on Permit Application.*

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

(b) The director 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 director shall provide the applicant written notice of the basis for administrative denial.

(c) The applicant may request a hearing upon receipt of notice of administrative denial. A request for hearing shall be made to the director within 30 days of the date on the notice of administrative denial. If the director receives a request for a hearing, the director shall refer the matter to the Office of General Counsel for assignment of a hearings examiner who shall conduct the hearing in accordance with Chapter 1 of this title (relating to Practice and Procedure).

*The provisions of this §4.206 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.207. Protests and Hearings.*

(a) If a person who receives notice or other affected person files a proper protest with the Commission, the director shall give the applicant written notice of the protest and of the applicant's right to either request a hearing on the application or withdraw the application. The applicant shall have 30 days from the date of the director's notice to respond, in writing, by either requesting a hearing or withdrawing the application. In the absence of a timely written response from the applicant, the director shall consider the application to have been withdrawn.

(b) Even if there is no protest filed, the director 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 stored, handled and treated 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.

(c) Before a hearing on a permit application for a commercial recycling facility, the Commission shall provide notice of the hearing to all affected persons, and other persons or governmental entities who express, in writing, an interest in the application.

*The provisions of this §4.207 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.208. General Standards for Permit Issuance.*

(a) A permit for a commercial recycling facility issued pursuant to this subchapter shall provide that the facility may only receive, store, handle, treat, or recycle waste:

- (1) under the jurisdiction of the Commission;
- (2) that is not a hazardous waste as defined by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal

Act, as amended (42 United States Code, §6901, et seq.); and

(3) that is not oil and gas naturally occurring radioactive (NORM) waste as defined in §4.603 of this title (relating to Definitions).

(b) A permit issued pursuant to this subchapter may be issued only if the director or the Commission determines that:

(1) the storage, handling, treatment, and/or recycling of oil and gas wastes and other substances and materials will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, a threat to public health and safety; and

(2) the recyclable product can meet engineering and environmental standards the Commission establishes in the permit or in this subchapter for its intended use.

*The provisions of this §4.208 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.209. Permit Renewal.** Permits issued pursuant to this subchapter may be renewed, but are not transferable to another operator without the written approval of the director.

*The provisions of this §4.209 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.210. Modification, Suspension, and Termination.** A permit granted pursuant to this subchapter may be modified, suspended, or terminated by the Commission for good cause after notice and opportunity for hearing. 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) the permittee has violated the terms and conditions of the permit or Commission rules;

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

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

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

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

*The provisions of this §4.210 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.211. Penalties.** Violations of this subchapter or a permit issued pursuant to this subchapter may subject a

person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes or rules administered by the Commission.

*The provisions of this §4.211 adopted to be effective April 15, 2013, 38 TexReg 2334.*

## **DIVISION 2. REQUIREMENTS FOR ON-LEASE COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING**

**§4.212. General Permit Application Requirements for On-Lease Commercial Solid Oil and Gas Waste Recycling Facilities.**

(a) An application for a permit for on-lease solid oil and gas waste commercial recycling shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; telephone number; and facsimile transmission (fax) number; and the name of a contact person.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall neither administratively approve an application nor refer an application to hearing unless the director has determined that the application is administratively complete. 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. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, 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."

*The provisions of this §4.212 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.213. Minimum Engineering and Geologic Information.**

(a) The director may require a permit applicant for on-lease commercial solid oil and gas waste recycling to provide the Commission with engineering, or other

information which the director deems necessary to show that issuance of the permit will not result in 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) Engineering work products prepared by the applicant shall be sealed by a registered engineer as required by the Texas Occupations Code, Chapter 1001.

*The provisions of this §4.213 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.214. Minimum Design and Construction Information.** A permit application for on-lease commercial solid oil and gas waste recycling shall include:

(1) the typical layout and design of receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, and dikes.

(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/cells;

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

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

*The provisions of this §4.214 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.215. Minimum Operating Information.** A permit application for on-lease commercial solid oil and gas waste recycling shall include the following operating information:

(1) a list of Commission districts for which the applicant seeks authority for on-lease commercial solid oil and gas waste recycling;

(2) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored;

(3) the estimated maximum volume and time that the recyclable product will be stored;

(4) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives (e.g., asphalt emulsion, quicklime, Portland cement, fly ash, etc.) to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(5) a description of all inert material (e.g., brick, rock, gravel, caliche) to be stored and used as aggregate in the treatment process; and

(6) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the engineering and environmental standards for the proposed use.

*The provisions of this §4.215 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.216. Minimum Monitoring Information.** A permit application for on-lease commercial solid oil and gas waste recycling shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions; and

(2) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

*The provisions of this §4.216 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.217. Minimum Closure Information.** A permit application for on-lease commercial solid oil and gas waste recycling shall include a detailed plan for closure of the site when operations terminate. The closure plan shall address how the applicant intends to:

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

(2) close all storage areas/cells;

(3) remove dikes; and

(4) contour and reseed disturbed areas.

*The provisions of this §4.217 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.218. General Permit Provisions for On-Lease Commercial Solid Oil and Gas Waste Recycling.**

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall specify the Commission districts within which recycling is authorized, shall be valid issued for a term of not more than five years, and shall authorize operations at any one lease for no more than one year. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director. Any request for transfer of this permit should be filed with the Oil and Gas Division in Austin at least 60 days before the permittee wishes the transfer to take place.

(b) A permit for on-lease commercial solid oil and gas waste recycling shall include a condition requiring that the permittee obtain written permission from the surface owner of the lease upon which recycling will take place and notify the appropriate Commission district office 72 hours before operations commence on each lease.

*The provisions of this §4.218 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.219. Minimum Permit Provisions for Siting.*

(a) A permit for on-lease commercial solid oil and gas waste recycling may be issued only if the director or the Commission determines that the operations will pose no unreasonable risk of pollution or threat to public health or safety.

(b) On-lease commercial solid oil and gas waste recycling permitted pursuant to this division and after the effective date of this division shall not be located:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill); or

(2) within 150 feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from on-lease commercial solid oil and gas waste recycling include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title; and

(3) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for on-lease commercial solid oil and gas waste recycling refer to conditions at the time the equipment and tanks used in the recycling are placed.

*The provisions of this §4.219 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.220. Minimum Permit Provisions for Design and Construction.*

(a) A permit issued pursuant to this division for on-lease commercial solid oil and gas waste recycling shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff,

to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control and remediate spills; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material.

(b) All storage cells at the site shall be:

(1) located above the top of the seasonal high water table;

(2) designed to prevent stormwater runoff from entering the area; and

(3) surrounded by berms with a minimum width at base of three times the height and the berms constructed such that the height, slope, and construction material are structurally sound and do not allow seepage.

(c) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall require that the permittee notify the appropriate Commission district office prior to commencement of construction, including construction of any dikes, and again upon completion of construction, and that the permittee may commence operations under the permit 72 hours after notice to the appropriate district office.

*The provisions of this §4.220 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.221. Minimum Permit Provisions for Operations.*

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit generated on-lease, including requirements that the permittee test incoming oil and gas waste and keep records of amounts of wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for on-lease commercial solid oil and gas waste recycling issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(3) The permittee shall demonstrate the ability to successfully process a 1,000 cubic yard batch of solid oil and gas waste.

(A) The Oil and Gas Division in Austin and the appropriate District Office must be notified in writing at least 72 hours before waste processing begins.

(B) Samples of the partially treated waste shall be collected from every 200 cubic yards of an 800 cubic yard batch and analyzed for wetting and drying durability by ASTM D 559-96, modified to provide that samples are compacted and molded from finished partially treated waste. The total weight loss after 12 cycles may not exceed 15 percent.

(C) A written report of the trial run shall be submitted to the Oil and Gas Division in Austin and the appropriate district office within 60 days of receipt of the analyses required in this section. The following information must be included:

- (i) the actual volume of waste material processed;
- (ii) the volume of stabilization material used;
- (iii) copies of all lab analyses required by this section; and
- (iv) the results of the analysis required under subparagraph (B) of this paragraph.

(D) The final processed material must meet the limitations of this section.

(4) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(5) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the site, that the Commission determines to be reasonably necessary to ensure that the permittee does not accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) Excess rainwater collected within a bermed area shall be removed and disposed of in an authorized manner.

(e) Appropriate measures shall be taken to control dust at all times.

(f) Processed material meeting or exceeding process control parameters listed in §4.222(d) of this title (relating to Minimum Permit Provisions for Monitoring) is suitable for use on lease roads, drilling pads, tank batteries, compressor station pads, and county roads.

*The provisions of this §4.221 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.222. Minimum Permit Provisions for Monitoring.*

(a) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division shall include monitoring requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the director or the Commission shall establish and include in the permit for on-lease commercial solid oil and gas waste recycling the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

- (1) the type of oil and gas waste; and
- (2) the intended use for the recyclable product.

(c) A permit for on-lease commercial solid oil and gas waste recycling may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this subchapter or in a permit issued by the Commission.

(d) A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic yard composite for the following minimum parameters and meet the following limits:

Engineering and Environmental Standards for Recyclable Product to be Used as Road Base		
PARAMETER	LIMITATION	METHOD
Arsenic	Less than 5.000 mg/l	EPA Method 1312, Synthetic Leaching Procedure (SPLP)
Barium	Less than 100.00 mg/l	
Cadmium	less than 1.00 mg/l	
Chromium (total)	less than 5.00 mg/l	
Lead	less than 5.00 mg/l	
Mercury	less than 0.20 mg/l	
Selenium	less than 1.00 mg/l	
Silver	less than 5.00 mg/l	
Zinc	less than 5.00 mg/l	
Benzene	less than 0.50 mg/l	
Chlorides	less than 700.00 mg/l	LDNR leachate test method 1:4 Solid Solution
TPH	less than 100 mg/l	
pH	6 to 12.49 Standard Units	
Minimum compressive strength	35 psi	A Texas Department of Transportation approved procedure appropriate for testing and evaluating a material for compressive strength.

(e) Recordkeeping and reporting requirements.

(1) Recordkeeping requirements.

(A) Records must be kept of all waste treated for a period of three years from the date of treatment.

(B) These records must include the following:

- (i) name of the generator;
- (ii) source of the waste (lease number or gas I.D. number and well number, or API number);
- (iii) date the waste was treated at the drill site;
- (iv) volume of the waste treated at the drill site;
- (v) name of the carrier;
- (vi) identification of the receiving site including the lease number or gas I.D. number and well number, API number, or county road number;
- (vii) documentation that the landowner of the receiving location has been notified of the use of the recyclable product on the landowner's property if used on private land; and
- (viii) documentation indicating the approximate location where recyclable product is used

including a topographic map showing the location of the area.

(2) Reporting requirements. The permittee shall provide the Commission, on a quarterly basis, a copy of the records required in this section.

*The provisions of this §4.222 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.223. Minimum Permit Provisions for Closure.** A permit for on-lease commercial solid oil and gas waste recycling issued pursuant to this subchapter shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples; and post-closure monitoring.

*The provisions of this §4.223 adopted to be effective April 15, 2013, 38 TexReg 2334.*

§4.224. *Permit Renewal.* Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division or §3.8 of this title (relating to Water Protection) shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application for renewal shall include details of proposed changes or shall state that there are no changes proposed that would require amendment of the permit other than the expiration date.

*The provisions of this §4.224 adopted to be effective April 15, 2013, 38 TexReg 2334.*

### **DIVISION 3. REQUIREMENTS FOR OFF-LEASE OR CENTRALIZED COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING**

§4.230. *General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling.*

(a) An application for a permit for off-lease or centralized commercial solid oil and gas waste recycling shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall neither administratively approve an application nor refer an application to hearing unless the director has determined that the application is administratively complete. 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. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, 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."

*The provisions of this §4.230 adopted to be effective April 15, 2013, 38 TexReg 2334.*

§4.231. *Minimum Engineering and Geologic Information.*

(a) The director may require a permit applicant for off-lease or centralized commercial solid oil and gas waste recycling to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in 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) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

*The provisions of this §4.231 adopted to be effective April 15, 2013, 38 TexReg 2334.*

§4.232. *Minimum Siting Information.* A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

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

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

*The provisions of this §4.232 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.233. Minimum Real Property Information.*

(a) A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include a copy of the signed lease agreement between the applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall identify the location of the facility by including a plat or plats showing:

(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 site coordinates in degrees, minutes, and seconds of longitude and latitude;

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

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

*The provisions of this §4.233 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.234. Minimum Design and Construction Information.*

(a) A permit application for an off-lease or centralized commercial solid oil and gas waste recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for an off-lease or centralized commercial solid oil and gas waste recycling facility also shall include:

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

(2) 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;

(3) a map view and two perpendicular cross-sectional views of pits and/or storage areas/cells to be

constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

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

(5) if the application is for a stationary commercial recycling facility, a plan for the installation of monitoring wells at the facility.

*The provisions of this §4.234 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.235. Minimum Operating Information.* A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., oil-based drilling fluid and cuttings, crude oil-contaminated soils, production tank bottoms, hydraulic fracturing flowback fluid, produced water, etc.) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives (e.g., asphalt emulsion, quicklime, Portland cement, fly ash, etc.) to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of all inert material (e.g., brick, rock, gravel, caliche) to be stored at the facility and used as aggregate in the treatment process;

(8) a description of any testing to be performed to demonstrate that the proposed processing will result

in a recyclable product that meets the engineering and environmental standards for the proposed use; and

(9) an estimate of the duration of operation of the proposed facility.

*The provisions of this §4.235 adopted to be effective April 15, 2013, 38 TexReg 2334.*

§4.236. *Minimum Monitoring Information.* A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at a commercial recycling facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

*The provisions of this §4.236 adopted to be effective April 15, 2013, 38 TexReg 2334.*

§4.237. *Minimum Closure Information.*

(a) A permit application for off-lease or centralized commercial solid oil and gas waste recycling shall include a detailed plan for closure of the facility when operations terminate. 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 storage areas/cells;

(3) remove dikes; and

(4) contour and reseed disturbed areas.

(b) A permit application for a stationary commercial recycling facility also shall include in the closure plan information addressing how the applicant intends to:

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

(2) plug groundwater monitoring wells.

*The provisions of this §4.237 adopted to be effective April 15, 2013, 38 TexReg 2334.*

§4.238. *Notice.*

(a) A permit applicant for off-lease or centralized commercial solid oil and gas waste recycling shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling 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;

(C) the surface owners of tracts adjoining the tract on which the proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fence line or edge of the facility as shown on the plat required under §4.233(b) of this title (relating to Minimum Real Property Information); and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recycled material.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.

(b) If the director finds that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

*The provisions of this §4.238 adopted to be effective April 15, 2013, 38 TexReg 2334.*

§4.239. *General Permit Provisions.*

(a) A permit for an off-lease or centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall be valid issued for

a term of not more than two years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director.

(b) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that, prior to operating, the facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the appropriate Commission district office before recycling operations commence.

*The provisions of this §4.239 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.240. Minimum Permit Provisions for Siting.*

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) An off-lease centralized commercial solid oil and gas waste recycling facility permitted pursuant to this division and after the effective date of this division shall not be located within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from an off-lease centralized commercial solid oil and gas waste recycling facility include:

- (1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;
- (2) surface water;
- (3) depth to and quality of the shallowest groundwater;
- (4) distance to the nearest property line or public road;
- (5) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill), or water supplies, and/or public, domestic, or irrigation water wells; and
- (6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for an off-lease centralized commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

*The provisions of this §4.240 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.241. Minimum Permit Provisions for Design and Construction.*

(a) A permit issued pursuant to this division for an off-lease centralized commercial solid oil and gas waste recycling facility shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division that requires the installation of monitoring wells shall require that the permittee comply with subsections (b) and (c) of this section prior to commencing recycling operations.

*The provisions of this §4.241 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.242. Minimum Permit Provisions for Operations.*

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and

submit to the director for review a report of the results of the trial run prior to commencing operations.

(3) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

*The provisions of this §4.242 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.243. Minimum Permit Provisions for Monitoring.*

(a) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include monitoring requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the director or the Commission shall establish and include in the permit for an off-lease centralized commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one

sample from each 200 cubic yards of partially treated waste be collected and analyzed for every 800 cubic

yards composite for the following minimum parameters and meet the following limits:

Engineering and Environmental Standards for Recyclable Product to be Used as Road Base		
PARAMETER	LIMITATION	METHOD
Arsenic	Less than 5.000 mg/l	EPA Method 1312, Synthetic Leaching Procedure (SPLP)
Barium	Less than 100.00 mg/l	
Cadmium	less than 1.00 mg/l	
Chromium (total)	less than 5.00 mg/l	
Lead	less than 5.00 mg/l	
Mercury	less than 0.20 mg/l	
Selenium	less than 1.00 mg/l	
Silver	less than 5.00 mg/l	
Zinc	less than 5.00 mg/l	
Benzene	less than 0.50 mg/l	
Chlorides	less than 700.00 mg/l	LDNR leachate test method 1:4 Solid Solution
TPH	less than 100 mg/l	
pH	6 to 12.49 Standard Units	
Minimum compressive strength	35 psi	A Texas Department of Transportation approved procedure appropriate for testing and evaluating a material for compressive strength.

*The provisions of this §4.243 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.244. Minimum Permit Provisions for Closure.** A permit for an off-lease centralized commercial solid oil and gas waste recycling facility issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.

*The provisions of this §4.244 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.245. Permit Renewal.** Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division or §3.8 of this title (relating to Water Protection) shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.230 of this title (relating to General Permit Application Requirements for Off-Lease or Centralized Commercial Solid Oil and Gas Waste Recycling), and the notice requirements of §4.238 of this title (relating to Notice). The director may require the applicant to comply with any of the requirements of §§4.231 - 4.237 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any

changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

*The provisions of this §4.245 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### **DIVISION 4. REQUIREMENTS FOR STATIONARY COMMERCIAL SOLID OIL AND GAS WASTE RECYCLING FACILITIES**

*§4.246. General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility.*

(a) An application for a permit for a stationary commercial solid oil and gas waste recycling facility shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall neither administratively approve an application nor refer an application to hearing unless the director has determined that the application is administratively complete. 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. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, 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."

*The provisions of this §4.246 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.247. Minimum Engineering and Geologic Information.*

(a) The director may require a permit applicant for a stationary commercial solid oil and gas waste

recycling facility to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in 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) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

*The provisions of this §4.247 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.248. Minimum Siting Information.* A permit application for a stationary commercial solid oil and gas waste recycling facility shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

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

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

*The provisions of this §4.248 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.249. Minimum Real Property Information.*

(a) A permit application for a stationary commercial solid oil and gas waste recycling facility shall include a copy of the signed lease agreement between the applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for a stationary commercial solid oil and gas waste recycling facility shall identify the location of the facility by including a plat or plats showing:

(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 site coordinates in degrees, minutes, and seconds of longitude and latitude;

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

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

*The provisions of this §4.249 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.250. Minimum Design and Construction Information.*

(a) A permit application for a stationary commercial solid oil and gas waste recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for a stationary commercial solid oil and gas waste recycling facility also shall include:

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

(2) 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;

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

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

(5) a plan for the installation of monitoring wells at the facility.

*The provisions of this §4.250 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.251. Minimum Operating Information.* A permit application for a stationary commercial solid oil and gas waste recycling facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., oil-based drilling fluid and cuttings, crude oil-contaminated soils, production tank bottoms, etc.) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives (e.g., asphalt emulsion, quicklime, Portland cement, fly ash, etc.) to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of all inert material (e.g., brick, rock, gravel, caliche) to be stored at the facility and used as aggregate in the treatment process;

(8) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the engineering and environmental standards for the proposed use; and

(9) an estimate of the duration of operation of the proposed facility.

*The provisions of this §4.251 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.252. Minimum Monitoring Information.* A permit application for a stationary commercial solid oil and gas waste recycling facility shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at the facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

*The provisions of this §4.252 adopted to be effective April 15, 2013, 38 TexReg 2334.*

§4.253. *Minimum Closure Information.* A permit application for a stationary commercial solid oil and gas waste recycling facility shall include a detailed plan for closure of the facility when operations terminate. 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 storage areas/cells;

(3) remove dikes;

(4) contour and reseed disturbed areas;

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

(6) plug groundwater monitoring wells.

*The provisions of this §4.253 adopted to be effective April 15, 2013, 38 TexReg 2334.*

§4.254. *Notice.*

(a) A permit applicant for a stationary commercial solid oil and gas waste recycling facility shall publish notice and file proof of publication in accordance with the following requirements.

(1) A 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 the date on which the application is filed with the Commission.

(2) The published notice shall:

(A) be entitled, "Notice of Application for Commercial Solid Oil and Gas Waste Recycling Facility";

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

(C) identify the name of the applicant;

(D) state the physical address of the proposed facility and its location in relation to the nearest municipality or community;

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

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

(G) provide the address to which protests may be mailed.

(3) The applicant shall submit to the Commission proof that the applicant published notice as required by this section. Proof of publication of the notice shall consist of a sworn 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 to which are attached the tear sheets of the published notices.

(b) A permit applicant for a stationary commercial solid oil and gas waste recycling facility shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling 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;

(C) the surface owners of tracts adjoining the tract on which proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.249(b) of this title (relating to Minimum Real Property Information); and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recycled material.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.

(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

*The provisions of this §4.254 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### §4.255. General Permit Provisions.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall be issued for a term of not more than five years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director.

(b) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that, prior to operating, a stationary commercial solid oil and gas waste recycling facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for a stationary commercial solid oil and gas waste recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the appropriate Commission district office before recycling operations commence on each tract.

*The provisions of this §4.255 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### §4.256. Minimum Permit Provisions for Siting.

(a) A permit for a stationary commercial solid oil and gas waste recycling facility may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) A stationary commercial solid oil and gas waste recycling facility permitted pursuant to this division and

after the effective date of this division shall not be located:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill); or

(2) within 150 feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from a stationary commercial solid oil and gas waste recycling facility include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

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

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

(4) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title, or surface water and/or public, domestic, or irrigation water wells; and

(5) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section for a stationary commercial solid oil and gas waste recycling facility refer to conditions at the time the facility is constructed.

*The provisions of this §4.256 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### §4.257. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this division for a stationary commercial solid oil and gas waste recycling facility shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control and remediate spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial solid oil and gas waste recycling facility pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

(f) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division that requires the installation of monitoring wells shall require that the permittee comply with subsections (b) and (c) of this section prior to commencing recycling operations.

*The provisions of this §4.257 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.258. Minimum Permit Provisions for Operations.*

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a stationary commercial solid oil and gas waste recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the appropriate district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall demonstrate the ability to successfully process a one thousand cubic yard batch of solid oil and gas waste.

(A) The Oil and Gas Division in Austin and the appropriate district office must be notified in writing at least 72 hours before waste processing begins.

(B) Samples of the partially treated waste must be collected and analyzed as required by §4.243 of this title (relating to Minimum Permit Provisions for Monitoring).

(C) Samples shall be collected from every 200 cubic yards of an 800 cubic yard batch and analyzed for wetting and drying durability by ASTM D 559-96, modified to provide that samples are compacted and molded from finished partially treated waste. The total weight loss after 12 cycles may not exceed 15 percent.

(3) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(4) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(5) The permittee shall not use the recyclable product until the director approves the trial run report.

(6) A written report of the trial run shall be submitted to the Oil and Gas Division in Austin and the appropriate district office within 60 days of receipt of the analyses required in §4.243 of this title. The following information must be included:

(A) the actual volume of waste material processed;

(B) the volume of stabilization material used;

(C) copies of all lab analyses required by §4.243 of this title; and

(D) the results of the analysis required under paragraph (2)(C) of this subsection.

(7) The final recyclable material must meet the limitations of §4.243 of this title.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

*The provisions of this §4.258 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.259. Minimum Permit Provisions for Monitoring.*

(a) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include monitoring requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets

the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) Consistent with the requirements of §4.208 of this title (relating to General Standards for Permit Issuance), the director or the Commission shall establish and include in the permit for a stationary commercial solid oil and gas waste recycling facility the parameters for which the partially treated waste is to be tested, and the limitations on those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit for a stationary commercial solid oil and gas waste recycling facility may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

(d) A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division from which the recycled product will be used as road base or other similar uses shall include a requirement that a minimum of one sample from each 200 tons of partially treated waste be collected and analyzed for every 800 ton composite for the following minimum parameters and meet the following limits:

Engineering and Environmental Standards for Recyclable Product to be Used as Road Base		
PARAMETER	LIMITATION	METHOD
Arsenic	Less than 5.000 mg/l	EPA Method 1312, Synthetic Leaching Procedure (SPLP)
Barium	Less than 100.00 mg/l	
Cadmium	less than 1.00 mg/l	
Chromium (total)	less than 5.00 mg/l	
Lead	less than 5.00 mg/l	
Mercury	less than 0.20 mg/l	
Selenium	less than 1.00 mg/l	
Silver	less than 5.00 mg/l	
Zinc	less than 5.00 mg/l	
Benzene	less than 0.50 mg/l	
Chlorides	less than 700.00 mg/l	
TPH	less than 100 mg/l	
pH	6 to 12.49 Standard Units	
Minimum compressive strength	35 psi	A Texas Department of Transportation approved procedure appropriate for testing and evaluating a material for compressive strength.

(e) Groundwater monitor wells.

(1) Groundwater monitor wells, if required, must be monitored for the following parameters after installation and quarterly thereafter:

- (A) static water level;
- (B) benzene;
- (C) total petroleum hydrocarbons (TPH);
- (D) total dissolved solids (TDS);
- (E) chlorides;
- (F) bromides;
- (G) sulfates;
- (H) nitrates;
- (I) carbonates;
- (J) calcium;
- (K) magnesium;
- (L) sodium; and
- (M) potassium.

(2) Copies of the sampling and analytical results shall be filed semi-annually with the Oil and Gas Division and the appropriate district office.

*The provisions of this §4.259 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.260. Minimum Permit Provisions for Closure.** A permit for a stationary commercial solid oil and gas waste recycling facility issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.

*The provisions of this §4.260 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.261. Permit Renewal.** Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division or §3.8 of this title (relating to Water Protection) shall be submitted in writing a

minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.246 of this title (relating to General Permit Application Requirements for a Stationary Commercial Solid Oil and Gas Waste Recycling Facility), and the notice requirements of §4.254 of this title (relating to Notice). The director may require the applicant to comply with any of the requirements of §§4.247 - 4.253 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

*The provisions of this §4.261 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### **DIVISION 5. REQUIREMENTS FOR OFF-LEASE COMMERCIAL RECYCLING OF FLUID**

*§4.262. General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid.*

(a) An application for a permit for off-lease commercial recycling of fluid shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall determine that the application is administratively complete prior to administratively approving an application or referring an application to hearing. 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. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, 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."

*The provisions of this §4.262 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.263. Minimum Engineering and Geologic Information.*

(a) The director may require a permit applicant for off-lease commercial recycling of fluid to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in 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) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

*The provisions of this §4.263 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.264. Minimum Siting Information.* A permit application for off-lease commercial recycling of fluid shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

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

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility

but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

*The provisions of this §4.264 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.265. Minimum Real Property Information.**

(a) A permit application for off-lease commercial recycling of fluid shall include a copy of the signed lease agreement between the applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for off-lease commercial recycling of fluid shall identify the location of the facility by including a plat or plats showing:

(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 site coordinates in degrees, minutes, and seconds of longitude and latitude;

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

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

*The provisions of this §4.265 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.266. Minimum Design and Construction Information.**

(a) A permit application for off-lease commercial recycling of fluid shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for off-lease commercial recycling of fluid also shall include:

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

(2) 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;

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

(4) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect storm water from the facility during a 25-year, 24-hour maximum rainfall event, and all calculations made to determine the required capacity and design.

*The provisions of this §4.266 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.267. Minimum Operating Information.** A permit application for off-lease commercial recycling of fluid shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., hydraulic fracturing flowback fluid and/or produced water) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the environmental standards for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

*The provisions of this §4.267 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.268. Minimum Monitoring Information.** A permit application for off-lease commercial recycling of fluid shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at an off-lease commercial recycling of fluid facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

*The provisions of this §4.268 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.269. Minimum Closure Information.** A permit application for off-lease commercial recycling of fluid shall include a detailed plan for closure of the facility when operations terminate. 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 storage areas/cells;

(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.

*The provisions of this §4.269 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.270. Notice.**

(a) A permit applicant for off-lease commercial recycling of fluid shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling 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;

(C) the surface owners of tracts adjoining the tract on which the proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.265(b) of this title (relating to Minimum Real Property Information); and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the date of receipt and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recyclable product.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each person was notified of the application.

(b) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

*The provisions of this §4.270 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**§4.271. General Permit Provisions.**

(a) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall be valid issued for a term of not more than two years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director.

(b) A permit issued pursuant to this division shall require that, prior to operating, off-lease commercial recycling of fluid comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for off-lease commercial recycling of fluid shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the appropriate Commission district office before recycling operations commence on each tract.

*The provisions of this §4.271 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.272. Minimum Permit Provisions for Siting.*

(a) A permit for off-lease commercial recycling of fluid may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) Off-lease commercial recycling of fluid permitted pursuant to this division and after the effective date of this division shall not be located:

(1) within a 100-year flood plain, in a streambed, or in a sensitive area as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill); or

(2) within 150 feet of surface water or public, domestic, or irrigation water wells.

(c) Factors that the Commission will consider in assessing potential risk from off-lease commercial recycling of fluid include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) surface water;

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

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

(5) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title, or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

*The provisions of this §4.272 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.273. Minimum Permit Provisions for Design and Construction.*

(a) A permit issued pursuant to this division shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for off-lease commercial recycling of fluid pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

*The provisions of this §4.273 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.274. Minimum Permit Provisions for Operations.*

(a) A permit for off-lease commercial recycling of fluid issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(3) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

*The provisions of this §4.274 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.275. Minimum Permit Provisions for Monitoring.*

(a) A permit for off-lease commercial recycling fluid issued pursuant to this division shall include monitoring requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and

engineering standards established by the director or the Commission and included in the permit.

(b) A permit under this division for use of the treated fluid for any purpose other than re-use as makeup water for hydraulic fracturing fluids to be used in other wells may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

*The provisions of this §4.275 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.276. Minimum Permit Provisions for Closure.* A permit for off-lease commercial recycling fluid issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.

*The provisions of this §4.276 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.277. Permit Renewal.* Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. The application for renewal of an existing permit issued pursuant to this division shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.262 of this title (relating to General Permit Application Requirements for Off-Lease Commercial Recycling of Fluid), and the notice requirements of §4.270 of this title (relating to Notice). The director may require the applicant to comply with any of the requirements of §§4.263 - 4.269 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

*The provisions of this §4.277 adopted to be effective April 15, 2013, 38 TexReg 2334.*

**DIVISION 6. REQUIREMENTS FOR STATIONARY COMMERCIAL RECYCLING OF FLUID**

*§4.278. General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility.*

(a) An application for a permit for a stationary commercial fluid recycling facility shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person. A permit for a stationary commercial recycling facility also shall contain the facility address.

(c) The permit application shall contain information addressing each applicable application requirement of this division and all information necessary to initiate the final review by the director. The director shall neither administratively approve an application nor refer an application to hearing unless the director has determined that the application is administratively complete. 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. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, 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."

*The provisions of this §4.278 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.279. Minimum Engineering and Geologic Information.*

(a) The director may require a permit applicant for a stationary commercial fluid recycling facility to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in 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) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

*The provisions of this §4.279 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.280. Minimum Siting Information.* A permit application for a stationary commercial fluid recycling facility shall include:

(1) a description of the proposed facility site and surrounding area;

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner;

(3) the depth to the shallowest subsurface water and the direction of groundwater flow at the proposed site, and the source of this information;

(4) the average annual precipitation and evaporation at the proposed site and the source of this information;

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

(6) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(7) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

*The provisions of this §4.280 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.281. Minimum Real Property Information.*

(a) A permit application for a stationary commercial fluid recycling facility shall include a copy of the signed lease agreement between the applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for a stationary commercial fluid recycling facility shall identify the location of the facility by including a plat or plats showing:

(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 site coordinates in degrees, minutes, and seconds of longitude and latitude;

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

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

*The provisions of this §4.281 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.282. Minimum Design and Construction Information.*

(a) A permit application for a stationary commercial fluid recycling facility shall include the layout and design of the facility by including a plat drawn to scale with north arrow to top of the map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, fences, and access roads.

(b) A permit application for a commercial fluid recycling facility also shall include:

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

(2) 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;

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

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

(5) a plan for the installation of monitoring wells at the facility.

*The provisions of this §4.282 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.283. Minimum Operating Information.* A permit application for a stationary commercial fluid recycling

facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes to be accepted at the facility for treatment and recycling; and

(B) provides for testing of wastes to be processed to ensure that only oil and gas waste authorized by this division or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of wastes accepted for recycling in accordance with the permit, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the treatment process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of any testing to be performed to demonstrate that the proposed processing will result in a recyclable product that meets the standards for the proposed use; and

(8) an estimate of the duration of operation of the proposed facility.

*The provisions of this §4.283 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.284. Minimum Monitoring Information.* A permit application for a stationary commercial fluid recycling facility shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells at a commercial fluid recycling facility as required by the permit and this division; and

(3) a plan and schedule for conducting periodic inspections, including plans to inspect equipment, processing, and storage areas.

*The provisions of this §4.284 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.285. Minimum Closure Information.*

(a) A permit application for a stationary commercial fluid recycling facility shall include a detailed plan for closure of the facility when operations

terminate. 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 storage areas/cells;
- (3) remove dikes; and
- (4) contour and reseed disturbed areas.

(b) A permit application for a stationary commercial fluid recycling facility also shall include in the closure plan information addressing how the applicant intends to:

- (1) sample and analyze soil and groundwater throughout the facility; and
- (2) plug groundwater monitoring wells.

*The provisions of this §4.285 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.286. Notice.*

(a) A permit applicant for a stationary commercial fluid recycling facility shall publish notice and file proof of publication in accordance with the following requirements.

(1) A 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 the date on which the application is filed with the Commission.

(2) The published notice shall:

(A) be entitled, "Notice of Application for Stationary Commercial Fluid Recycling Facility";

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

(C) identify the name of the applicant;

(D) state the physical address of the proposed facility and its location in relation to the nearest municipality or community;

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

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

(G) provide the address to which protests may be mailed.

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

which are attached the tear sheets of the published notices.

(b) A permit applicant for a stationary commercial fluid recycling facility shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling 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;

(C) the surface owners of tracts adjoining the tract on which proposed facility will be located, unless the boundary with the adjoining tract is a distance of 1/2-mile or greater from the fenceline or edge of the facility as shown on the plat required under §4.281 of this title (relating to Minimum Real Property Information); and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recycled material.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and

addresses of each person to whom the notice was sent, and the date that each was notified of the application.

(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

*The provisions of this §4.286 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.287. General Permit Provisions.*

(a) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall be valid for a term of not more than five years. Permits issued pursuant to this division may be renewed, but are not transferable to another operator without the written approval of the director.

(b) A permit issued pursuant to this division shall require that, prior to operating, the facility shall comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title (relating to Fees and Financial Security Requirements).

(c) A permit for a stationary commercial fluid recycling facility shall include a condition requiring that the permittee notify the surface owner of the tract upon which recycling will take place and the appropriate Commission district office before recycling operations commence on each tract.

*The provisions of this §4.287 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.288. Minimum Permit Provisions for Siting.*

(a) A permit for a stationary commercial fluid recycling facility may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) A stationary commercial fluid recycling facility permitted pursuant to this division and after the effective date of this division shall not be located within a 100-year flood plain.

(c) Factors that the Commission will consider in assessing potential risk from a stationary commercial fluid recycling facility include:

- (1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;
- (2) surface water;
- (3) depth to and quality of the shallowest groundwater;

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

(5) proximity to coastal natural resources, sensitive areas as defined by §3.91 of this title (relating to Cleanup of Soil Contaminated by a Crude Oil Spill), or water supplies, and/or public, domestic, or irrigation water wells; and

(6) any other factors the Commission deems reasonably necessary in determining whether or not issuance of the permit will pose an unreasonable risk.

(d) All siting requirements in this section refer to conditions at the time the facility is constructed.

*The provisions of this §4.288 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.289. Minimum Permit Provisions for Design and Construction.*

(a) A permit issued pursuant to this division for a stationary commercial fluid recycling facility shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this division shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsections (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

*The provisions of this §4.289 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.290. Minimum Permit Provisions for Operations.*

(a) A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit for a stationary commercial fluid recycling facility issued under this division may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(3) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit issued pursuant to this division shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable product at the facility without actually processing the oil and gas waste and putting the recyclable product to legitimate commercial use.

(d) A permit issued pursuant to this division shall include a requirement that the operator of the facility comply with the requirements of §3.56 of this title (relating to Scrubber Oil and Skim Hydrocarbons), if applicable.

*The provisions of this §4.290 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### *§4.291. Minimum Permit Provisions for Monitoring.*

(a) A permit issued for a stationary commercial fluid recycling facility pursuant to this division shall include requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) A permit under this division may require laboratory testing. A permit that requires laboratory testing shall require that the permittee use an independent third party laboratory to analyze a minimum standard volume of partially treated waste for parameters established in this division or in a permit issued by the Commission.

*The provisions of this §4.291 adopted to be effective April 15, 2013, 38 TexReg 2334.*

*§4.292. Minimum Permit Provisions for Closure.* A permit for a stationary commercial fluid recycling facility issued pursuant to this division shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and

groundwater samples from the facility property; and post-closure monitoring.

*The provisions of this §4.292 adopted to be effective April 15, 2013, 38 TexReg 2334.*

§4.293. *Permit Renewal.* Before the expiration of a permit issued pursuant to this division, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this division or §3.8 of this title (relating to Water Protection) shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.278 of this title (relating to General Permit Application Requirements for a Stationary Commercial Fluid Recycling Facility), and the notice requirements of §4.286 of this title (relating to Notice). The director may require the applicant to comply with any of the requirements of §§4.279 - 4.285 of this title (relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information), depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

*The provisions of this §4.293 adopted to be effective April 15, 2013, 38 TexReg 2334.*

#### **SUBCHAPTER D. RAILROAD COMMISSION OF TEXAS VOLUNTARY CLEANUP PROGRAM**

§4.401. *Purpose.* The purpose of the voluntary cleanup program is to provide an incentive to clean up property contaminated by activities under Railroad Commission jurisdiction by removing the liability to the state of lenders, developers, owners, and operators who did not cause or contribute to contamination released at the site. The program is restricted to voluntary actions but does not replace other voluntary actions.

*The provisions of this §4.401 adopted to be effective June 10, 2002, 27 TexReg 4936.*

§4.405. *Definitions.* The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Applicant--A person who is eligible to participate in the voluntary cleanup program and who submits the required forms, information, and fee for doing so.

(2) Assistant director--The administrative head of the Site Remediation Section.

(3) Certificate of completion--The document executed by the Commission upon satisfactory

completion of obligations under a Voluntary Cleanup Agreement.

(4) Completion--The cleanup of a site to the point that no more response actions are necessary.

(5) Commission--The Railroad Commission of Texas, the director of the Oil and Gas Division, or a staff delegate of the division director.

(6) Conditional certificate of completion--The document executed by the Commission upon a participant's satisfactory conditional completion of obligations under a Voluntary Cleanup Agreement.

(7) Conditional completion--The cleanup of a site to the point that further response actions are limited to maintenance of engineering or institutional controls and/or the continued successful operation of long-term remediation systems.

(8) Contaminant--A waste, pollutant, or other substance or material regulated by or that results from an activity under the jurisdiction of the Commission under Texas Natural Resources Code, Chapters 91 or 141, or the Texas Water Code.

(9) Division--The Oil and Gas Division of the Commission.

(10) Eligible applicant--An applicant who did not cause or contribute to the contaminants on the site that is the subject of the voluntary cleanup agreement and whose application the Site Remediation Section has accepted.

(11) Participant--An eligible applicant with whom the Commission has entered into a voluntary cleanup agreement.

(12) Response action--The control, cleanup, or removal of a contaminant from the environment.

(13) Responsible person--Any operator or other person required by law, rules of the Commission, or a valid order of the Commission to control or clean up the oil and gas wastes or other substances or materials.

(14) Site Remediation Section--Those Commission staff, individually or collectively, who are employed in the Site Remediation Section, or its successor, of the Oil and Gas Division.

(15) Voluntary cleanup--A response action taken under and in compliance with this subchapter.

*The provisions of this §4.405 adopted to be effective June 10, 2002, 27 TexReg 4936.*

#### **§4.410. Eligibility for the Voluntary Cleanup Program.**

(a) Any site that is contaminated with a contaminant is eligible for participation in the voluntary cleanup program except the portion of a site that is the subject of a Commission order to control or clean up the contaminants. On application from an eligible applicant, the Commission may dismiss an order that would otherwise render a site or portion of a site ineligible for the program.

(b) Any person who is not a responsible person as that term is defined in §4.405(13) of this title (relating to Definitions) is eligible to participate in the voluntary cleanup program.

*The provisions of this §4.410 adopted to be effective June 10, 2002, 27 TexReg 4936.*

*§4.415. Application to Participate in the Voluntary Cleanup Program.*

(a) A person applying to participate in the voluntary cleanup program shall submit to the Site Remediation Section an application to participate in the voluntary cleanup program and an application fee as required by subsection (b) of this section.

(b) A person submitting an application to participate in the voluntary cleanup program shall:

(1) use the application form provided by the Commission;

(2) provide the following information:

(A) general information concerning:

(i) the applicant and the applicant's capability, including the applicant's financial capability, to perform the voluntary cleanup;

(ii) the site; and

(iii) the names, addresses, and telephone numbers of all surface and mineral owners and mineral operators of property where the contamination came to be located;

(B) other background information requested by the Site Remediation Section based on the particular circumstances of the site in question;

(C) an environmental assessment of the actual or threatened release of the contaminant or contaminants at the site that includes, at a minimum, the information set forth in subsection (c) of this section; and

(D) if the applicant is not the surface owner of the site, written authorization from all surface owners of the site agreeing to the applicant's participation in the program;

(3) submit the application fee of \$1,000; and

(4) follow any schedule set by the Site Remediation Section.

(c) The environmental assessment required by subsection (b)(2)(C) of this section shall include, at a minimum:

(1) a legal description of the site;

(2) a description of the physical characteristics of the site; and

(3) to the extent known by the applicant:

(A) the operational history of the site;

(B) information concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, and wherever the contamination came to be located; and

(C) relevant information concerning the potential for human exposure to contamination at the site.

*The provisions of this §4.415 adopted to be effective June 10, 2002, 27 TexReg 4936.*

*§4.420. Acceptance or Rejection of an Application.*

(a) The Site Remediation Section shall process applications in the order in which they are received.

(b) The Commission may accept an application if it:

(1) is submitted by a person eligible to participate in the program, pursuant to §4.410(b) of this title (relating to Eligibility for the Voluntary Cleanup Program);

(2) pertains to an eligible site, pursuant to §4.410(a) of this title;

(3) includes all of the information required by §4.415 of this title (relating to Application to Participate in the Voluntary Cleanup Program), provided the information does not indicate that either the person or the site is ineligible;

(4) demonstrates that the applicant has the financial capability to pay for all costs of the response action, including but not limited to the direct costs of the response action and the reasonable costs attributable to the oversight of the response action likely to be incurred by the Commission;

(5) includes written authorization from all surface owners of the site agreeing to the applicant's participation in the program, or proof that the applicant is the surface owner of the site; and

(6) includes the application fee.

(c) The Commission may reject an application to participate in the voluntary cleanup program if:

(1) a state or federal enforcement action is pending that concerns the remediation of the contaminant or contaminants described in the application;

(2) a federal grant requires an enforcement action at the site;

(3) the application is incomplete or inaccurate; or

(4) the application fails to meet the requirements of subsection (b) of this section.

(d) If the Commission rejects the application, the Commission shall:

(1) not later than the 45th day after the Site Remediation Section receives the application, notify the applicant in writing that the application has been rejected;

(2) explain the reasons for rejection of the application; and

(3) inform the applicant that the Commission will refund half the application fee unless the applicant indicates a desire to resubmit the application.

(e) If the Commission rejects an application because it is incomplete or inaccurate, then not later than the 45th day after the Site Remediation Section receives the application, the Assistant Director shall notify the applicant in writing of all information needed to make the application complete or accurate. If the applicant resubmits the application not later than the 45th day after the Assistant Director issues notice that the application has been rejected, the applicant shall not submit an additional application fee. This waiver of the application fee applies only to the first re-submission within 45 days of notice of an incomplete application. An applicant who re-submits an application after the 45th day shall submit the application fee required by §4.415(b)(3) of this title.

*The provisions of this §4.420 adopted to be effective June 10, 2002, 27 TexReg 4936; amended to be effective February 3, 2011, 36 TexReg 410.*

#### §4.425. Voluntary Cleanup Agreement.

(a) Before the Site Remediation Section evaluates any plan or report detailing the cleanup goals and proposed response action methods, the eligible applicant shall enter into a voluntary cleanup agreement with the Commission that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans.

(b) A voluntary cleanup agreement shall:

(1) include provisions by which the participant commits to pay the Commission all reasonable costs:

(A) incurred by the Commission for review and oversight of the participant's work plan and reports and for the Commission's field activities;

(B) attributable to the voluntary cleanup agreement including direct and indirect costs of overhead, salaries, equipment, utilities, and legal, management, and support costs; and

(C) that exceed the amount of the application fee submitted to the Commission by the applicant as required by §4.415 of this title (relating to Application to Participate in the Voluntary Cleanup Program);

(2) identify all statutes and rules with which the participant shall comply;

(3) identify all state and federal standards, requirements, criteria, or limitations to which the response action would otherwise be subject if a state or federal permit were required;

(4) describe any work plan or report that the participant is required to submit for review by the Commission, including a final report that provides all information necessary to verify that all work contemplated by the voluntary cleanup agreement has been completed;

(5) include a schedule for the participant to submit and for the Site Remediation Section to review

the information required by paragraph (4) of this subsection;

(6) identify specific tasks, deliverables, and schedules for conducting and completing the response action, including terms specifying negotiating periods between reports and consequences for failure to meet deadlines in the agreement;

(7) state the technical standards to be applied by the Site Remediation Section in evaluating the work plans and reports with reference to the proposed future land use to be achieved; and

(8) be signed by both the participant or the participant's authorized representative and the Assistant Director.

(c) If the eligible applicant and the Commission do not reach an agreement on or before the 30th day after good faith negotiations have begun:

(1) either the eligible applicant or the Commission may withdraw from the negotiations, in which event the Commission shall retain the application fee; or

(2) the eligible applicant and the Commission may continue negotiating.

(d) The Commission shall not initiate an enforcement action against a participant who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for activity that resulted in the contamination or release that is the subject of a voluntary cleanup agreement.

*The provisions of this §4.425 adopted to be effective June 10, 2002, 27 TexReg 4936.*

#### §4.430. Termination of Agreement and Cost Recovery.

(a) At any time and for any reason, either the Commission or the participant may terminate a voluntary cleanup agreement by giving to the other written notice 15 days prior to the stated termination date. The participant shall pay and the Commission shall recover only those costs incurred or obligated by the Commission before notice of termination of becomes effective. The Commission shall retain the application fee.

(b) Termination of the agreement does not affect any right the Commission has under other law to recover its costs. The Commission shall not issue a certificate of completion to a participant in a voluntary cleanup agreement that is terminated.

(c) If the participant does not pay to the Commission the Commission's costs under a voluntary cleanup agreement before the 31st day after the date the person receives notice that the costs are due and owing, the Commission may request that the attorney general bring an action in the name of the state in Travis County to recover the amount owed plus reasonable legal expenses, including attorneys' fees, witness costs,

court costs, and deposition costs, pursuant to Texas Natural Resources Code, §91.657(c).

*The provisions of this §4.430 adopted to be effective June 10, 2002, 27 TexReg 4936.*

*§4.435. Voluntary Cleanup Work Plans and Reports.*

(a) After signing a voluntary cleanup agreement, the participant shall prepare and submit to the Site Remediation Section the work plans and reports required by the agreement.

(b) The Site Remediation Section shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The Site Remediation Section may approve or not approve a voluntary cleanup work plan or report. If the Site Remediation Section does not approve a work plan or report, the Site Remediation Section shall, within the deadline established by the Voluntary Cleanup Agreement, notify the participant of the specific additional information or commitments needed to obtain approval.

(c) At any time during the evaluation of a work plan or report, the Site Remediation Section may request additional or corrected information.

(d) After considering future land use, the Site Remediation Section may approve work plans and reports submitted under this section that do not require cleanup or removal of all contaminants at a site if the partial response actions for the property:

(1) will be completed in a manner that protects human health and the environment;

(2) will not cause, contribute, or exacerbate discharges, releases, or threatened releases that are not required to be cleaned up or removed under the work plan; and

(3) will not interfere with or substantially increase the cost of response actions to address any remaining contaminants.

*The provisions of this §4.435 adopted to be effective June 10, 2002, 27 TexReg 4936.*

*§4.440. Certificate of Completion and Conditional Certificate of Completion.*

(a) If the Site Remediation Section determines that a participant has completed a voluntary cleanup approved under this subchapter, the Commission shall certify that the action has been completed by issuing the participant a certificate of completion.

(b) The certificate of completion shall:

(1) acknowledge the protection from liability provided by §4.445 of this title (relating to Persons Released from Liability);

(2) indicate the proposed future land use;

(3) include a legal description of the site and the names of the site's surface and mineral owners and mineral operators at the time the application to

participate in the voluntary cleanup program was filed; and

(4) include an Affidavit of Completion on a form prescribed by the Commission. The affidavit of completion is a sworn statement made by the participant that is attached to and becomes part of the certificate of completion issued by the Commission. The affidavit shall:

(A) identify the site and its surface and mineral owners and mineral operators;

(B) identify the response actions performed including, if appropriate, any reliance on engineering or institutional controls;

(C) declare that the degree of inquiry used in determining the appropriate response actions, the response actions, and reporting were consistent with industry standards; and

(D) state that the certificate of completion has not been acquired by fraud, misrepresentation, or knowing failure to disclose material information.

(c) If the Site Remediation Section determines that the participant has substantially completed a voluntary cleanup approved under this subchapter, and that oversight and maintenance of controls and remediation systems provide a strong likelihood of success with minimal maintenance and reporting, the Commission may issue a conditional certificate of completion. The conditional certificate of completion shall:

(1) acknowledge the protection from liability provided by §4.445 of this title (relating to Persons Released from Liability);

(2) indicate the proposed future land use;

(3) include a legal description of the site and the names of the site's surface and mineral owners and mineral operators at the time the application to participate in the voluntary cleanup program was filed;

(4) identify the oversight and maintenance activities and results the person must perform, reach, and maintain for the conditional certificate to remain in force;

(5) include a schedule of activities;

(6) identify responses in case of remedy failure; and

(7) include an Affidavit of Response Action Implementation. The Affidavit of Response Action Implementation is a sworn statement made by the participant and that is attached to and becomes part of the conditional certificate of completion issued by the commission. In addition to all of the elements identified in subsection (b)(4) of this section, the Affidavit of Response Action Implementation shall include a schedule the participant's post closure monitoring activities and reporting to the Railroad Commission of Texas with an estimated date of completion, and identify contingencies that the participant is obligated to

to implement if any response action fails in whole or in part.

(d) If the Site Remediation Section determines that the participant has not completed a voluntary cleanup approved under this subchapter, the Assistant Director shall so notify the participant, the current surface and mineral owners and the mineral operators of the site that is the subject of the cleanup.

*The provisions of this §4.440 adopted to be effective June 10, 2002, 27 TexReg 4936.*

#### *§4.445. Persons Released from Liability.*

(a) A person who is not a responsible person, as that term is defined in §4.405 of this title (relating to Definitions), at the time the person applies to participate in a voluntary cleanup does not become a responsible person solely because the person signs the application or the voluntary cleanup agreement.

(b) A participant who is not a responsible person at the time the Commission issues a certificate of completion under §4.440 of this title (relating to Certificate of Completion and Conditional Certificate of Completion) is released, as of the date of the certificate, from all liability to the state for cleanup of contaminants specified in the voluntary cleanup agreement for areas of the site covered by the certificate, except for releases and consequences that the participant causes.

(c) The release from liability provided by this subchapter does not apply to a person who:

(1) caused or contributed to the contamination at the site covered by the certificate;

(2) acquires a certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information;

(3) knows at the time the person acquires an interest in the site for which the certificate of completion was issued that the certificate was acquired by fraud, misrepresentation, or knowing failure to disclose material information; or

(4) changes the land use from the use specified in the certificate of completion if the new use may result in increased risks to human health or the environment.

*The provisions of this §4.445 adopted to be effective June 10, 2002, 27 TexReg 4936.*

#### *§4.450. Federal, State, or Local Permits.*

(a) A state or local permit is not required for a voluntary cleanup under this subchapter. A participant shall coordinate a voluntary cleanup with ongoing federal and state waste programs.

(b) Any participant conducting a voluntary cleanup shall comply with any state or federal standard, requirement, criterion, or limitation to which the

response action would otherwise be subject if a state or federal permit were required.

*The provisions of this §4.450 adopted to be effective June 10, 2002, 27 TexReg 4936.*

## **SUBCHAPTER F. OIL AND GAS NORM**

### *§4.601. Purpose.*

(a) This subchapter establishes requirements for the identification of equipment contaminated with oil and gas Naturally Occurring Radioactive Material (NORM), and the disposal of oil and gas NORM waste for the purpose of protecting public health, safety, and the environment.

(b) The provisions of this subchapter do not supersede other Commission regulations relating to oil and gas waste management, including disposal.

(c) The provisions of this subchapter do not supercede the applicable rules of the Texas Department of Health (TDH), including but not limited to 25 TAC §289.202 (relating to Standards for Protection Against Radiation from Radioactive Material) and 25 TAC §289.259 (relating to Licensing of Naturally Occurring Radioactive Material (NORM)).

*The provisions of this §4.601 adopted to be effective March 3, 2003, 28 TexReg 1838.*

### *§4.602. Exclusions and Exemptions.*

(a) Exclusions. Activities involving the recycling of oil and gas NORM waste; the decontamination of equipment and facilities that are contaminated with oil and gas NORM waste as a result of activities other than disposal of oil and gas NORM waste; the possession, use, transfer, transport, and/or storage of oil and gas NORM waste; and worker protection standards associated with such activities are under the jurisdiction of the TDH.

(b) Exemptions. The following activities are exempt from the requirements of this subchapter:

(1) disposal of produced water by injection into a well permitted under §3.9 of this title (relating to Disposal Wells) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs);

(2) disposal of produced water by discharge to surface waters and in accordance with a discharge permit issued under §3.8 of this title (relating to Water Protection); and

(3) disposal of equipment that has been decontaminated in accordance with a license issued by the TDH and that meets the exemption criteria of 25 TAC §289.259(d) (relating to Licensing of Naturally Occurring Radioactive Material (NORM)).

*The provisions of this §4.602 adopted to be effective March 3, 2003, 28 TexReg 1838.*

*§4.603. Definitions.* The following words and terms, when used in this subchapter, shall have the following

meanings, unless the context clearly indicates otherwise.

(1) Background radiation--Radiation at the ground surface from:

(A) cosmic sources;

(B) non-technologically enhanced naturally occurring radioactive material, including radon, except as a decay product of source or special nuclear material; or

(C) global fallout as it exists in the environment from the testing of nuclear explosive devices. "Background radiation" does not include sources of radiation from radioactive materials regulated by the TDH.

(2) Commission--The Railroad Commission of Texas or its designee.

(3) Disposal--Engaging in the act of discharging, depositing, injecting, dumping, spilling, leaking, or placing of any oil and gas NORM waste into or on any land or water, or causing or allowing any such act, so that such waste, or any constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including subsurface waters. For purposes of this subchapter, disposal of oil and gas NORM waste includes its management at the site (e.g., lease, unit, or facility) where disposal will occur when undertaken for the explicit purpose of facilitating disposal at that site. The term does not include decontamination activities, except for in-place mixing of oil and gas NORM waste to remedy historical contamination of the land surface and decontamination of equipment and facilities that become contaminated solely through disposal operations. In addition, the term does not include activities, including processing or treatment, that occur at a location other than the disposal site.

(4) Equipment--Oil and gas equipment used for production or disposal, including but not limited to pipes (tubulars), tanks, vessels, pumps, valves, flow lines, and connectors such as tees and elbows, provided that such equipment is or has been in contact with oil and gas waste or produced fluids or substances.

(5) Microroentgens per hour ( $\mu\text{R/hr}$ )--A measurement of exposure from x-ray and gamma ray radiation in air.

(6) NORM--Naturally occurring radioactive material.

(7) NORM-contaminated equipment--Equipment that, at any accessible point, exhibits a minimum radiation exposure level greater than 50  $\mu\text{R/hr}$  including background radiation level.

(8) Oil and gas waste--Oil and gas waste as defined in §3.8 of this title (relating to Water Protection).

(9) 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:

(A) in its natural physical state spontaneously emits radiation;

(B) is discarded or unwanted;

(C) constitutes, is contained in, or has contaminated oil and gas waste; and

(D) prior to treatment or processing that reduces the radioactivity concentration, exceeds exemption criteria specified in 25 TAC §289.259(d) (relating to Licensing of Naturally Occurring Radioactive Material (NORM)).

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

(11) Picocuries per gram ( $\text{pCi/g}$ )--A measure of the radioactivity in one gram of a material. One picocurie is that quantity of radionuclide(s) that decays at the rate of  $3.7 \times 10^{-2}$  disintegrations per second.

(12) Radiation survey instrument--An instrument used to detect and measure radiation exposure levels from 1  $\mu\text{R/hr}$  through at least 500  $\mu\text{R/hr}$ .

*The provisions of this §4.603 adopted to be effective March 3, 2003, 28 TexReg 1838.*

#### *§4.605. Identification of Equipment Contaminated with NORM.*

(a) Except as provided in subsection (b) of this section, within two years of the effective date of this rule, each person who owns or operates equipment used for production or disposal including each person who owns or operates equipment associated with a commercial facility, as defined in §3.78 (relating to Fees and Financial Security Requirements), shall identify NORM-contaminated equipment with the letters "NORM" by securely attaching a clearly visible waterproof tag or marking with a legible waterproof paint or ink. Employers whose employees speak languages other than English may add to the tag the translation of the acronym "NORM" in those languages as long as the acronym "NORM" is also on the tag.

(b) Within six months of the effective date of this rule, each person whom the Commission has notified that the person owns or operates NORM-contaminated equipment shall, on each lease that is the subject of the Commission notice, identify NORM-contaminated equipment with the letters "NORM" by securely attaching a clearly visible waterproof tag or marking with a legible waterproof paint or ink. Employers whose employees speak languages other than English may add to the tag the translation of the acronym "NORM" in those languages as long as the acronym "NORM" is also on the tag.

(c) For an interconnected equipment system such as a wellhead, flowline, or facility piping system, the owner or operator of the system may identify the system as a whole with tags or markings that provide notice to workers on that system that the equipment in the system may be NORM-contaminated. The owner or operator shall identify NORM-contaminated equipment that is removed from an interconnected equipment system:

(1) as individual pieces of equipment as provided in subsection (a) of this section, or

(2) as groups of equipment that are kept in a common container or are wrapped, bound or tied securely together. Grouped equipment shall be tagged or marked to provide notice that any piece of equipment in the group may be NORM-contaminated.

(d) Radiation survey instruments used to determine whether equipment is NORM-contaminated shall comply with regulations adopted by the TDH in 25 TAC §289.259(e) (relating to Licensing of Naturally Occurring Radioactive Material (NORM)).

*The provisions of this §4.605 adopted to be effective March 3, 2003, 28 TexReg 1838; amended to be effective November 24, 2004, 29 TexReg 10732.*

**§4.608. Worker Protection Standards.** Any employer of persons engaged in activities involving the disposal of oil and gas NORM waste shall comply with applicable provisions, as determined by TDH, of 25 TAC §289.202 (relating to Standards for Protection Against Radiation from Radioactive Material) adopted effective October 1, 2000, including but not limited to:

(1) implementing a radiation protection program as provided in 25 TAC §289.202(e);

(2) controlling the occupational dose to all employees as provided in 25 TAC §289.202(f) - (m);

(3) conducting surveys and monitoring as provided in 25 TAC §289.202(p) and (q);

(4) assuring respiratory protection and implement controls to restrict internal exposure in restricted areas as provided in 25 TAC §289.202(v) - (x);

(5) posting signs and labels as provided in 25 TAC §289.202(z) - (dd);

(6) keeping records of radiation protection programs and of special exposures as provided in 25 TAC §289.202(ll) - (nn), (pp) - (rr), and (vv); and

(7) keeping reports as provided in 25 TAC §289.202(ww) - (zz) and (aaa).

*The provisions of this §4.608 adopted to be effective March 3, 2003, 28 TexReg 1838.*

**§4.611. Prohibited Disposal.** No person may dispose of oil and gas NORM waste except as provided in this subchapter. Disposal of oil and gas NORM waste other than produced water by discharge to surface or

subsurface waters, as defined in §3.8 of this title (relating to Water Protection), shall be prohibited. Disposal of oil and gas NORM waste by spreading on public or private roads also shall be prohibited.

*The provisions of this §4.611 adopted to be effective March 3, 2003, 28 TexReg 1838.*

**§4.614. Authorized Disposal Methods.**

(a) Purpose. This section authorizes the methods for disposing of oil and gas NORM waste without a permit.

(b) Disposal in plugged and abandoned well. A person may dispose of oil and gas NORM waste by placing it between plugs in a well that is being plugged and abandoned, provided that:

(1) No person may dispose of oil and gas NORM waste at a lease or unit other than the lease or unit where the oil and gas NORM waste was generated unless prior to commencement of disposal operations, the surface owner of the lease or unit where the disposal occurs provides written consent for the disposal.

(2) The oil and gas NORM waste shall be placed in the well at a depth at least 250 feet below the base of usable quality water in compliance with §3.14 of this title (relating to Plugging).

(3) If the oil and gas NORM waste is encased in a tubing string, the tubing shall be:

(A) placed, not dropped, in the well; and

(B) left with an assembly that allows ready retrieval, if the string is not secured in cement.

(4) A cement plug shall be set immediately above the oil and gas NORM waste and the plug shall be either:

(A) above a cement retainer;

(B) above a cast iron bridge plug; or

(C) tagged to locate its position.

(5) The cement of the surface plug shall be color dyed with red iron oxide.

(6) A permanent marker that shows the three-bladed radiation symbol specified in 25 TAC §289.202(z) (relating to Standards for Protection Against Radiation from Radioactive Material), adopted effective October 1, 2000, without regard to color, shall be welded to the steel plate at the top of the well casing.

(7) The operator shall state on Form W-3A, Intent to Plug and Abandon:

(A) the physical nature (such as pipe scale, contaminated soil, basic sediment, equipment, pipe, pumps, or valves) of the oil and gas NORM waste;

(B) the volume of oil and gas NORM waste;

(C) the radioactivity level of the oil and gas NORM waste (in pCi/g of Radium-226 combined with Radium-228 and any other NORM radionuclides for soil or other media (such as pipe scale,

contaminated soil, basic sediment, etc.), or in  $\mu\text{R}/\text{hr}$  for equipment (such as pipes, pumps and valves);

(D) the operator(s) of the lease, unit, or facility at which oil and gas NORM waste was generated; and

(E) the source(s), if known, of the oil and gas NORM waste by Commission district; field; lease, unit, or facility; and producing formation.

(8) If the oil and gas NORM waste is encased in tubing, the operator shall state on Form W-3A, Intent to Plug and Abandon:

(A) the size, grade, weight per foot, and outside diameter of the tubing;

(B) the subsurface depth of both the top and bottom of the tubing;

(C) the diameter of the retrieval assembly; and

(D) whether the tubing is free in the hole or is secured by cement, a bridge plug, or a cement retainer.

(9) The operator shall submit Form W-3A to the Commission's district office for the location of the oil and gas NORM waste disposal site.

(c) Burial. Except as otherwise provided in this subsection, a person may dispose of oil and gas NORM waste by burial at the same site where the oil and gas NORM waste was generated, provided that, prior to burial, the oil and gas NORM waste has been treated or processed such that the radioactivity concentration does not exceed 30 pCi/g Radium-226 combined with Radium-228 or 150 pCi/g of any other NORM radionuclide within the treated or processed waste. Such treatment or processing, if it occurs at the disposal site, is considered to fall within the definition of disposal because it is necessary to facilitate disposal. This subsection does not authorize any person to bury NORM-contaminated equipment.

(d) Landfarming. A person may dispose of oil and gas NORM waste at the same site where the oil and gas NORM waste was generated by applying it to and mixing it with the land surface, provided that after such application and mixing the radioactivity concentration in the area where the oil and gas NORM waste was applied and mixed does not exceed 30 pCi/g Radium-226 combined with Radium-228 or 150 pCi/g of any other radionuclide.

(e) Disposal at a licensed facility. A person may dispose of oil and gas NORM waste at a facility that has been licensed by the United States Nuclear Regulatory Commission, the State of Texas, or another state if such facility is authorized under its license to receive and dispose of such waste.

(f) Injection. Injection of oil and gas NORM waste that meets exemption criteria of 25 TAC §289.259 (relating to Licensing of Naturally Occurring Radioactive Materials (NORM)), as a result of

treatment or processing at a facility licensed by the TDH (hereinafter referred to as a "specifically licensed facility") into a well permitted under §3.9 of this title (relating to Disposal Wells) is authorized under this section, provided that the requirements of this subsection are met.

(1) Prior to injecting treated or processed oil and gas NORM waste, the operator of the injection well shall notify the Commission in writing that the operator plans to inject oil and gas NORM waste that meets the exemption criteria of 25 TAC §289.259 as a result of treatment or processing at a specifically licensed facility. The operator shall include a copy of the TDH license for each facility where oil and gas NORM waste that will be injected is treated or processed in order to meet the exemption criteria of 25 TAC §289.259.

(2) Prior to injecting oil and gas NORM waste that has been treated or processed to meet the exemption criteria of 25 TAC §289.259, the injection well operator shall verify that the waste meets the exemption criteria by obtaining from the specifically licensed facility documentation regarding NORM surveys or other analyses conducted to ensure that the treated or processed oil and gas NORM waste meets the exemption criteria of 25 TAC §289.259.

*The provisions of this §4.614 adopted to be effective March 3, 2003, 28 TexReg 1838.*

#### *§4.617. Permit for Injection.*

(a) Applicability. With the exceptions of produced water and oil and gas NORM waste that meets the exemption criteria of 25 TAC §289.259 (relating to Licensing of Naturally Occurring Radioactive Material (NORM)) as a result of treatment or processing at a facility specifically licensed by the TDH, no person may dispose of oil and gas NORM waste by injection into a well without a permit issued under §3.9 of this title (relating to Disposal Wells) that specifically allows disposal of oil and gas NORM waste. The provisions of this section apply in the case of oil and gas NORM waste disposal permits issued under §3.9.

(b) Standards for permit issuance. The Commission shall issue a permit to dispose of oil and gas NORM waste under §3.9 of this title (relating to Disposal Wells) only if the Commission determines that the subject oil and gas NORM waste will be disposed of in a manner that protects public health, safety, and the environment. Any permit to dispose of oil and gas NORM waste issued pursuant to §3.9 shall contain construction and operating requirements that are reasonably necessary to protect public health, safety, and the environment.

(c) NORM information. In addition to the application requirements of §3.9 of this title (relating to Disposal Wells), an applicant for a permit to inject oil and gas NORM waste shall include the information

specified in this subsection. The Commission may require the applicant to provide any such additional information as may be necessary to show that the proposed disposal protects public health, safety, and the environment.

(1) The applicant shall describe the physical nature (such as pipe scale, contaminated soil, or basic sediment) of the oil and gas NORM waste to be disposed of;

(2) The applicant shall state the total volume of oil and gas NORM waste to be disposed of or the proposed rate of oil and gas NORM waste disposal; and

(3) The applicant shall state the maximum measured radioactivity level of the oil and gas NORM waste (in pCi/g of Radium-226 combined with Radium-228, and any other NORM radionuclide) that will be disposed of.

(d) Notice requirements. An applicant for a permit to inject oil and gas NORM waste under §3.9 of this title (relating to Disposal Wells) shall provide notice as required in that section and shall include in such notice the information required in subsection (c) of this section.

*The provisions of this §4.617 adopted to be effective March 3, 2003, 28 TexReg 1838.*

#### *§4.620. Permit for Surface Disposal.*

(a) Applicability. Except in the case of onsite disposal that meets the requirements of §4.614(c) and (d) of this title (relating to Authorized Disposal Methods), no person may dispose of oil and gas NORM waste by burying it or by applying it to and mixing it with the land surface without first obtaining a permit under §3.8 of this title (relating to Water Protection). The provisions of this section apply in the case of permits for such surface or near-surface disposal methods.

(b) Standards for permit issuance. The Commission shall issue a permit to dispose of oil and gas NORM waste under §3.8 of this title only if the Commission determines that the subject oil and gas NORM waste will be disposed of in a manner that protects public health, safety, and the environment. Any permit to dispose of oil and gas NORM waste issued pursuant to §3.8 of this title shall contain construction and operating requirements that are reasonably necessary to protect public health, safety, and the environment. In addition, the Commission shall issue a permit for burial of oil and gas NORM waste only if, prior to burial, the oil and gas NORM waste has been treated or processed so that the radioactivity concentration does not exceed 30 pCi/g Radium-226 combined with Radium-228 or 150 pCi/g of any other NORM radionuclide. The Commission shall issue a permit to dispose of oil and gas NORM waste by applying it to and mixing it with the land surface only if, after such application and

mixing, the radioactivity concentration in the area where the oil and gas NORM waste was applied and mixed will not exceed 30 pCi/g Radium-226 combined with Radium-228 or 150 pCi/g of any other NORM radionuclide.

(c) NORM information. In addition to the application requirements of §3.8 of this title, an applicant for surface or near-surface disposal of oil and gas NORM waste shall include the information specified in this paragraph. The Commission may require the applicant to provide any such additional information as may be necessary to show that the proposed disposal will protect public health, safety, and the environment.

(1) The applicant shall describe the physical nature (such as pipe scale, contaminated soil, basic sediment) of the oil and gas NORM waste to be disposed of.

(2) The applicant shall state the total volume of oil and gas NORM waste to be disposed of or the proposed rate of oil and gas NORM waste disposal.

(3) If the oil and gas NORM waste has been treated or processed to reduce the radioactivity concentration under a specific license issued by the TDH, the applicant shall state the maximum measured radioactivity level (in pCi/g of Radium-226 combined with Radium-228 for soil or other media such as pipe scale, contaminated soil, basic sediment, etc.). If the oil and gas NORM waste will be treated or processed at the disposal site to reduce the radioactivity concentration, the applicant shall state the maximum measured radioactivity level (in pCi/g of Radium-226 combined with Radium-228, and any other NORM radionuclide, for soil or other media such as pipe scale, contaminated soil, basic sediment, etc.).

(4) The applicant shall include the background radioactivity concentration (in pCi/g of Radium-226 combined with Radium-228) of the disposal area.

(5) The applicant shall describe all methods to be used to control dust from the oil and gas NORM waste during disposal.

(6) The applicant shall include written authorization from the surface owner, if different from the applicant, for disposal of oil and gas NORM waste on the surface owner's property.

(d) Notice requirements. The applicant shall give notice of an application for a permit to dispose of oil and gas NORM waste under this section as required in §3.8 of this title and such notice shall include the information required in subsection (c)(1) - (5) of this section.

*The provisions of this §4.620 adopted to be effective March 3, 2003, 28 TexReg 1838; amended to be effective February 3, 2011, 36 TexReg 410.*

§4.623. *Alternatives.* The Commission may approve alternatives to the provisions of §4.617 and §4.620 of this title (relating to Permit for Injection, and Permit for Surface Disposal) for good cause if the applicant demonstrates to the Commission's satisfaction that the alternatives will protect public health, safety, and the environment. An operator requesting to use an alternative method shall submit the request in writing. The Commission shall review the request within 30 days and shall approve or deny the request in writing.

*The provisions of this §4.623 adopted to be effective March 3, 2003, 28 TexReg 1838.*

§4.626. *Recordkeeping.*

(a) Retention period. A person shall retain current records relating to the radiation exposure levels of equipment and the disposal of oil and gas NORM waste for at least five years. Such records shall include the information specified in this section and in §4.605 of this title (relating to Identification of Equipment Contaminated with NORM).

(b) Equipment. The owner or operator of the lease, unit, or facility shall maintain records of the radiation exposure levels of equipment, the date the exposure levels were determined, and the location and identification of the equipment.

(c) Waste generation. The operator of the lease, unit, or facility at which oil and gas NORM waste was generated shall maintain records that include:

(1) the identity of the property where the oil and gas NORM waste was generated, including the Commission district; field; lease, unit, or facility; and producing formation, if known;

(2) the identity of the facility, site, or well where the oil and gas NORM waste was disposed of;

(3) the physical nature (such as pipe scale, contaminated soil, basic sediment, or equipment) of the oil and gas NORM waste;

(4) the volume of oil and gas NORM waste the person disposed of at that facility, site, or well; and

(5) the radioactivity level(s) of the oil and gas NORM waste (in pCi/g of Radium-226 combined with Radium-228 and any other NORM radionuclide for soil and other media such as pipe scale, contaminated soil, basic sediment, etc., or in  $\mu\text{R/hr}$  for equipment).

(d) Disposal. Each person who disposes of oil and gas NORM waste shall maintain records that include the identity of the operator of the lease, unit, or facility at which the oil and gas NORM was generated and the information required under subsection (b) or (c) of this section.

(e) Extension during investigation. Each operator shall retain any documents or records that contain information pertinent to the resolution of any pending Commission enforcement proceeding beyond any time

period specified in this subchapter until the resolution of the proceeding.

(f) Examination and reporting. Any person who keeps records required by this subchapter shall make the records available for examination and copying by the Commission during reasonable working hours. Upon request of the Commission, the person who keeps the records shall file such records with the Commission.

*The provisions of this §4.626 adopted to be effective March 3, 2003, 28 TexReg 1838; amended to be effective February 3, 2011, 36 TexReg 410.*

§4.629. *Inspection.* The Commission shall have access to properties subject to the requirements of this subchapter as provided in Texas Natural Resources Code, Title 3, Subtitle B, Chapter 88, §88.091 and §88.092.

*The provisions of this §4.629 adopted to be effective March 3, 2003, 28 TexReg 1838.*

§4.632. *Penalties and Certificate of Compliance.* A person who violates any requirement in this subchapter may be subject to the penalties and remedies specified in the Texas Natural Resources Code, Title 3, and subject to revocation of the certificate of compliance for any well as provided in §3.73 of this title (relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance).

*The provisions of this §4.632 adopted to be effective March 3, 2003, 28 TexReg 1838; amended to be effective November 24, 2004, 29 TexReg 10732.*

§4.635. *Memorandum of Understanding between the Railroad Commission of Texas (RRC) and the Texas Department of State Health Services (DSHS) Regarding Radiation Control Functions.*

(a) Purpose. The purpose of this Memorandum of Understanding (MOU) is to delineate areas of respective jurisdiction and to coordinate the respective responsibilities and duties of the DSHS and the RRC in the regulation of sources of radiation in accordance with Texas Health and Safety Code (HSC), §401.414, to provide a consistent approach and to avoid duplication. Nothing in this MOU shall be construed to reduce the statutory authority of either agency.

(b) Definitions. The words and terms used in this section shall have the same meaning as defined in HSC, §401.003, unless the context clearly indicates otherwise. Oil and gas NORM (naturally occurring radioactive material) waste is defined in HSC, §401.003(27), as solid, liquid, or gaseous material or combination of materials, excluding source material, special nuclear material, and by-product material, that:

(1) in its natural physical state spontaneously emits radiation;

(2) is discarded or unwanted;

(3) is not exempt by DSHS rule adopted under HSC, §401.106; and

(4) constitutes, is contained in, or has contaminated oil and gas waste as that term is defined in Texas Natural Resources Code, §91.1011.

(c) General agency jurisdiction. The jurisdictional authority for each agency is as follows.

(1) RRC jurisdiction. In accordance with HSC, §401.415 (relating to Oil and Gas Naturally Occurring Radioactive Material (NORM) Waste), the RRC has sole authority:

(A) to regulate and issue licenses, permits, and orders for the disposal of oil and gas NORM waste; and

(B) in order to protect public health and safety and the environment, to require the owner or operator of oil and gas equipment used in exploration, production, or disposal to determine whether the equipment contains or is contaminated with oil and gas NORM waste and identify any equipment determined to contain or be contaminated with oil and gas NORM.

(2) DSHS jurisdiction. The DSHS has jurisdiction to regulate and license the possession, receipt, use, handling, transfer, transport, and storage of all radioactive material in accordance with HSC, §401.003(3)(A). The DSHS has sole jurisdiction to regulate and register or license the use or service of electronic products as defined in HSC, §401.003(9). HSC, §401.106, gives the DSHS the authority, through rulemaking by the executive commissioner of the Texas Health and Human Services Commission, to exempt a source of radiation or a kind of use or user from licensing or registration requirements.

(d) Jurisdiction over specific activities and wastes. Each agency has the following responsibilities.

(1) Disposal activities. The RRC has jurisdiction over the disposal of oil and gas NORM waste. For purposes of this MOU, disposal is defined in §4.603(3) of this title (relating to Definitions) as "engaging in the act of discharging, depositing, injecting, dumping, spilling, leaking, or placing of any oil and gas NORM waste into or on any land or water, or causing or allowing any such act, so that such waste, or any constituent thereof, may enter the environment or be emitted into the air or discharged into any waters, including subsurface waters. For purposes of this subchapter, disposal of oil and gas NORM waste includes its management at the site (e.g., lease, unit, or facility) where disposal will occur when undertaken for the explicit purpose of facilitating disposal at that site. The term does not include decontamination activities, except for in-place mixing of oil and gas NORM waste to remedy historical contamination of the land surface and decontamination of equipment and facilities that become contaminated solely through disposal operations. In addition, the term does not include

activities, including processing or treatment, that occur at a location other than the disposal site."

(2) Decontamination activities. The DSHS has jurisdiction over decontamination activities, except for in-place mixing of oil and gas NORM waste to remedy historical contamination of the land surface and decontamination of equipment and facilities that become contaminated solely through disposal operations.

(3) Transportation activities. The DSHS has jurisdiction over the transportation of oil and gas NORM waste.

(4) Radioactive logging tools. The DSHS has jurisdiction over radioactive logging tools used during normal operations by the licensee. The RRC and the DSHS have jurisdiction over radioactive logging tools that are abandoned down hole.

(5) Radioactive tracers. The DSHS has jurisdiction over radioactive tracers used in normal operations by the licensee. The RRC has jurisdiction over Class II injection wells into which well logging screen out wastes (well returns) may be disposed in accordance with 25 TAC §289.253(u)(3) (relating to Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies).

(6) NORM contaminated equipment. The DSHS has jurisdiction over NORM-contaminated equipment, except as stated in subsection (c)(1) of this section, and with respect to the RRC requirements for identification of equipment contaminated with oil and gas NORM in §4.605 of this title (relating to Identification of Equipment Contaminated with NORM).

(7) Recycling/scrap yards. The RRC has jurisdiction over the disposal of NORM-contaminated scale from oil and gas equipment that is managed at a pipe yard, scrap yard, or recycling facility. However, the decontamination of NORM-contaminated pipe and other equipment at any facility is under the jurisdiction of the DSHS. A DSHS-specific license is required to perform the removal of NORM-contaminated scale on the ground at a pipe yard, scrap yard, or recycling facility in accordance with 25 TAC §289.259(i) (relating to Licensing of Naturally Occurring Radioactive Material (NORM)). The removed NORM waste requires disposal in accordance with RRC regulations.

(e) Coordination of regulatory activities. The DSHS and the RRC shall coordinate with each other in the following activities.

(1) The DSHS and the RRC each agree to work together to ensure that complete regulation is maintained for radioactive materials and other sources of radiation associated with oil and gas exploration, development, and production operations. The DSHS and the RRC each agree to coordinate rulemaking

activities between the two agencies and the Texas Radiation Advisory Board (TRAB) to ensure consistency of regulation in accordance with HSC, 401.020. In addition, the RRC agrees to coordinate with the DSHS in the preparation of the annual evaluation and report to the Legislative Budget Board as required under the Texas Government Code, §2110.006 and §2110.007. The DSHS and the RRC each agree to seek, and consider, advice from the TRAB on issues that involve management or disposal of NORM waste generated in connection with oil or gas exploration, development, or production operations.

(2) The DSHS and the RRC each agree to coordinate rulemaking activities that pertain to the requirements of the agreement between the State of Texas and the United States Nuclear Regulatory Commission, as amended, and to ensure that rules and guidelines are compatible with federal regulatory programs. Each agency agrees to coordinate with the other by providing information on any proposed legislation relating to the regulation of radioactive substances.

(3) The DSHS and the RRC each agree to meet as needed to discuss possible changes in this MOU and to encourage increased communication between the agencies.

(4) The DSHS and the RRC each agree to coordinate with the other agency with respect to activities involving radioactive sources that are lodged, abandoned, or lost down hole. Prior to approving abandonment procedures, tool recovery, well re-entry, and corrective action when a radioactive source has been breached or radiation otherwise escapes the source, the RRC will assure coordination with and concurrence from DSHS.

(f) Coordination of enforcement and incident response activities. The DSHS has responsibility for enforcement of the conditions of its licenses and rules. The RRC has jurisdiction for enforcement of the conditions of its permits and rules. Each agency will refer to the other agency any complaints received that are the responsibility of the other agency. When deemed appropriate by both agencies, the RRC and the DSHS may jointly enforce permit and license terms and conditions, make joint inspections and incident investigations, and cooperate on enforcement actions. Each agency shall retain the authority to undertake separate enforcement or legal actions.

(g) Mutual assistance. The DSHS and the RRC may each request from the other agency short-term assistance of personnel or resources when there is need for such assistance, such as for performing training, environmental or public health or safety monitoring, or technical reviews. Each agency will provide the requested assistance to the extent possible without disrupting its own required activities.

(h) Miscellaneous.

(1) The RRC and the DSHS agree to revise their respective rules and procedures as needed to implement this MOU.

(2) If any provision of this MOU is held to be invalid, the remaining provisions shall not be affected.

(i) Effective date. This MOU will take effect after approval by both agencies and 20 days after the date on which it is filed in the Office of the Secretary of State in accordance with the provisions of Texas Government Code, §2001.036. This MOU will remain in effect until rescinded by either agency.

*The provisions of this §4.635 adopted to be effective January 2, 2012, 36 TexReg 9323.*