

## **Chapter 33 ENVIRONMENTAL PROTECTION**

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### **ARTICLE I. IN GENERAL**

SECTION 33-1. Citizen's Environmental Advisory Committee.

a. The Citizen's Environmental Advisory Committee (CEAC) is hereby established.

b. Definitions.

The following terms, words, and abbreviations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular words in the singular, include the plural, and the use of any gender shall be applicable to all genders. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined herein shall be given their common and ordinary meaning, except that technical words and terms used in the environmental engineering industry shall be given the meaning common to that industry.

1. "Chairperson" means the Chairperson of the Citizen's Environmental Advisory Committee where the context clearly indicates that the chairperson of a committee is intended.
2. "Committee" means the Citizen's Environmental Advisory Committee, as established by this Ordinance.
3. "Communications Officer" means the Environmental Manager or his designee.

c Membership, Term of Office, Method of Appointment, and Ex-officio Memberships.

1. The members of the Committee shall include nine (9) members who shall be a resident of the City of Laredo, appointed by the City Council.
2. All members shall serve a term concurrent with that of the mayor or council member appointing them, and they shall continue in office until their successors are duly appointed, so long as this does not exceed eight years.
3. If a committee member's position becomes vacant due to death, discontinuance of the committee member's eligibility to serve, or his/her incapacity or unwillingness to serve for any reason, the Council shall fill the vacancy for the un-expired term, by appointment.
4. A member shall be entitled to serve more than one term so long as that term does not exceed eight years.
5. The Environmental Manager shall serve, ex-officio, as non-voting member of the Committee, but may not serve as Chairperson of the Committee.

d. Chairperson and Other Officers, Committees.

1. The Chairperson shall be elected annually by majority vote, and shall serve for a calendar year, and shall be eligible for re-election.
2. The Committee may establish such other officer's, as the Committee may deem necessary.
3. The Committee may establish by motion such sub-committee's, as it deems necessary. The Chairperson shall appoint the members and chairpersons of all such sub-committees.

e Environmental Manager.

An environmental manager shall be appointed by the City Manager and shall serve as staff of the Committee.

f. General Authority.

1. The Committee shall have authority to request inquiries, surveys, investigations, and the like; to receive testimony of witnesses; hold public hearings; and may require any permittee or co-permittee to produce and submit any documents, papers, books of account, or other records pertaining to the environmental ordinances, regulations or policies of the City.
2. The Committee shall prepare and submit reports and recommendations to the City Manager or to the City Council, at its discretion.
3. The Committee shall advise the Environmental Manager or any permittee or co-permittee concerning any matter pertaining to environmental ordinances, regulations or policies of the City, including state and federal environmental laws.
4. The Committee shall have authority to seek advice or opinion of any city officer or department, including the City Attorney, regarding any question of law, fact or administrative procedure.

g. Duties with Regard to Environmental Protection.

1. The Committee shall ensure compliance with all provisions of local ordinances and state law and shall report any violations of failures of compliance to the City Council.
2. The purview of the Committee shall include all aspects of the environment including water, air, soil, watershed, wildlife, wetlands and native vegetation as they are affected by industrial, commercial and residential development; operations of manufacturing or packaging facilities; operations of transportation and storage facilities; waste disposal; and any other action that has an impact on the environment.
3. As deemed necessary, the Committee shall conduct surveys of the general population of the City, by such methods and procedures as the Committee may devise, to ascertain the public's interest, convenience, and need for environmental protection and similar environmental issues; and shall report the findings of such surveys to the City Council, with recommendations, if any, for action by the Council.

4. The Committee shall prepare and submit reports to the Council for use in the performance evaluation. Said reports shall contain information concerning the permittee or co-permittee's performance according to the provisions of local environmental ordinances, state and federal environmental laws; and such other matters as the Committee deems would warrant the Council's attention; and such recommendations as the Committee wishes to place before the Council. Said reports shall be submitted not less than thirty (30) days before the scheduled performance evaluation. Further, the Chairperson of the Committee shall appear during the performance evaluation, and shall present orally the significant findings of the Committee, and shall be prepared to answer the questions of the Council or the permittee or co-permittee.
  5. The Committee shall from time to time conduct technical tests, by such methods and procedures as the Committee may devise, to ascertain if the permittee's or co-permittee's operations meet all current federal, state and local environmental laws and standards.
  6. The Committee shall receive complaints and grievances from citizens, concerning any matter relating to the operations of any permittee or co-permittee; shall advise the permittee and co-permittee on steps that may be taken to resolve such complaints, and shall report in summary form to the City Council on all complaints or grievances received and their resolutions.
  7. The committee shall also meet and rule on appeals according to section 33-54.
  8. The committee shall follow the adopted "Priority Procedures for the Mayor and City Council Laredo, Texas" for all the meetings.
- h. Budget.
- a. The Committee may solicit and acquire funds from diverse sources to support its various purposes. The Committee may seek grants from public agencies and private sources, subject to approval of the City Council.
  - b. All funds received by the commission from whatsoever source shall be transmitted to the City Finance Department. No disbursement shall be made except according to the annual budget as approved by City Council or for the specific purpose specified by the grantor.
- i. Meetings.
- a. The Committee shall meet not less than once each month at such time and place, as the Chairperson shall designate. Notice of each meeting shall be

- posted pursuant to the Texas Open Meetings Act.
- b. The Committee shall elect officers at its first meeting and then at its first meeting in January of every year thereafter. First officers may include a chairperson, vice-chairperson, and such other officers.
  - c. A quorum for any meeting shall be four members (not including any ex-officio non-voting member of the Committee).
  - d. All meetings shall be conducted according to Robert's Rules of Order. All members will familiarize themselves with Robert's Rules of Order so that the meeting can be conducted in an orderly and efficient manner.
  - e. The agenda for each meeting shall be established by the Chairperson in consultation with the Environmental Manager. Any member of the committee voting or non-voting shall have the right to place any proper items of business on the agenda, by so requesting of the Chairperson before notice of the meeting is published.
  - f. Attendance at regular and special called meetings of the Committee is mandatory. Any member who knows in advance that he or she will be unable to attend a meeting shall so notify the Chairperson. Any member who is absent with prior notice shall notify the Chairperson at the earliest possible time of the reason or the absence. The Committee shall determine the reasonableness and acceptability of any absence, and shall excuse any absence it considers unavoidable or reasonable.
  - g. The agenda for each regular meeting shall include Citizen Communications, and at the time reserved for this purpose any person may come before the committee. The Chairperson may limit the time allotted to each speaker, but not less than three minutes per speaker, and not in a manner that discriminates against any person.
  - h. A member may be removed from office before the end of his or her term by action of the City Council for any good cause, and in particular for any of the following causes:
    - (1) Failure to attend three or more regularly scheduled meetings of the Committee, without giving notice in advance of his intended absence (except when an emergency arises that makes the giving of notice impracticable), and without having an adequate excuse acceptable to the Committee;
    - (2) Having a vested interest in a permittee or co-permittee, whether or not such interest existed at the time of appointment, or having any other conflict of interests such as to render his or her service on the

Committee illegal or improper;

- (3) Failure to attend properly to the duties of the Committee, to comply with the provisions of this Ordinance. If a member is removed from office, the office shall be filled in the manner provided above.

(Ord. No. 97-332, § 1, 1-5-98; Ord. No. 2001-O-040, § 1(Ex. A), 2-20-01)

**Sec. 33-2. Federal statutes and regulations adopted.**

References to federal statutes and regulations which are specifically cited in this chapter are hereby adopted and incorporated by reference as fully and completely as if set forth herein.

(Ord. No. 97-332, § 1, 1-5-98)

**Secs. 33-3--33-15. Reserved.**

## **ARTICLE II. STORAGE, HANDLING AND TRANSFER OF HAZARDOUS MATERIALS**

### DIVISION 1. GENERALLY

**Sec. 33-16. Purpose.**

The purpose of this chapter is to protect the health, safety, welfare, resources and property of the general public through prevention and control of unauthorized discharges of hazardous materials. This article is also meant to ensure the suitable and secure storage of hazardous materials and for the protection and safety of emergency response personnel of the city.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-17. Scope of application.**

This article shall apply within the limits of the city.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-18. Exemptions.**

The provisions of this article shall not apply to the following:

- (1) *Retail products.* Hazardous materials when contained solely in consumer products packaged for distribution to, and used by, the general public or commercial products used at the facility solely for janitorial or minor maintenance purposes.
- (2) *Feed.* Hazardous materials when contained in a substance intended for use as animal feed.
- (3) *Work station.* Hazardous materials located at a work station in a quantity reasonably required for use in such work as determined by the Environmental Director or his/her designee under the circumstances.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-19. Professional designs, studies and test.**

The Environmental Director or his/her designee may reasonably require persons or entities subject to this article to do the following at the said person's or entity's sole expense as proof of compliance with this article:

- (1) Conduct tests or provide test reports by an approved testing laboratory or other approved agency.
- (2) Submit designs, studies, specifications, engineering plans, or technical opinions of an approved qualified independent engineer legally registered under the laws of this state regulating the practice of engineering who shall affix his/her official seal on the said item.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-20. Definitions.**

For the purposes of this article II and article III only, the following terms, words and phrases, and their derivations, shall have the meanings set forth below, except where the context clearly indicates a different meaning:

*Abandoned*, when referring to a storage facility, means out of service and not safeguarded in compliance with this article.

*City* means the City of Laredo, Texas.

*CEAC* means the City of Laredo Citizens' Environmental Advisory Committee.

*CFR* means the United States Code of Federal Regulations.

*Disposal Facility Contractor* means a Hazardous Waste Treatment, Storage, and

Disposal Facility.

*EPA* means the United States Environmental Protection Agency.

*EPA identification number* means the number used by the state and federal government to keep track of handlers of hazardous waste.

*EPA ID* means the EPA Identification Number

*ERP* means an emergency response plan.

*Environmental Services Department* means the City of Laredo Environmental Services Department.

*Environmental Director* means the administrative head of the city Environmental Services Department and or his authorized representative.

*Existing long term storage facility* means a long term storage facility in existence as of the effective date of the ordinance from which this article derives or for which a building permit was issued prior to the effective date of the ordinance from which this article derives.

*Fire chief* means the administrative head of the city fire department or his authorized representative(s).

Fire department means the City of Laredo Fire department.

*Conditionally Exempt Small Quantity Generator* means a facility that generates less than 220 pounds (100 kilograms) of hazardous waste or less than 2.2 lbs (1 kg) of acute hazardous waste per month or less than 220 pounds of spill residue per month.

*CESQG* means conditionally exempt small quantity generator.

*Hazard class* means the category of hazard assigned to a hazardous material under the definitional criteria of 49 CFR part 173 and the provisions of the table included at 49 CFR part 172.101. A material may meet the definition criteria for more than one (1) hazard class but is assigned to only one (1) hazard class.

*Hazardous materials* means any substance or product collectively or individually which:

- (1) Has been determined by the U.S. Secretary of Transportation to be capable of posing an unreasonable risk to health, safety and property when transported in commerce, and which has been so designated;
- (2) Is a hazardous substance;



- (3) Is a hazardous waste;
- (4) Is a marine pollutant;
- (5) Is an elevated temperature material as defined in 49 CFR § 171.8;
- (6) Is designated as hazardous under the provisions of 49 CFR part 172.101;
- (7) Meets the defining criteria for hazard classes and divisions in 49 CFR part 173;
- (8) Is listed on the list of EPA pollutants, 40 CFR part 141.15, as amended;
- (9) Is listed in 40 CFR § 261.4, as amended;
- (10) Is classified by the National Fire Protection Association (NFPA) or under the Fire Code as either a flammable liquid, a class II combustible liquid or a class IIIA combustible liquid;
- (11) Has been determined to be hazardous based upon any appraisal or assessment by or on behalf of the party storing this material in compliance with the requirements of the EPA, or which should have been, but was not, determined to be hazardous due to the deliberate failure of the party storing the material to comply with the requirements of the EPA;
- (12) Has been designated by the Occupational Safety and Health Administration to be hazardous or for which an MSDS is required to be prepared and maintained; or
- (13) Has been determined by the party storing it, through testing or other objective means, to be likely to create a significant potential or actual hazard to public health, safety or welfare.

*Hazardous Materials Transportation Act* shall have the same meaning as that given in 49 CFR.

*Hazardous substance* shall mean any material, including its mixtures and solutions, that is listed in 49 CFR part 172.101, Appendix A; is in a quantity which meets and/or exceeds the reportable quantity listed in 49 CFR part 172.101, Appendix A; or is mixed in solution in concentrations which meet or exceed the following:

Reportable Quantities in lbs. (Kgs.)	Concentration by Weight
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	Percent	PPM
5000 (2270)	10	100,000
1000 (454)	2	20,000
100 (45.4)	0.2	2,000
10 (4.54)	0.02	200
1 (0.454)	0.002	20

*Hazardous waste* means any material, substance, byproduct, spent, obsolete or used chemical or chemical compound which meets the standards for classification of a hazardous waste or acutely hazardous waste as those terms are defined in 40 CFR part 261 et seq. and any appendices thereto. Further, for the purposes of this article, "hazardous waste" shall mean any material that is subject to the hazardous waste manifest requirements of the U.S. Environmental Protection Agency specified in 40 CFR part 262 and 49 CFR part 171, as amended.

*Hazard Code* means the hazardous characteristics of the hazardous material or hazardous waste.

*Hazard zone* means one (1) of four (4) levels of hazard (hazard zones A through D) assigned to gases, as specified in 49 CFR part 173.116(a), and one (1) of two (2) levels of hazards (hazard zones A and B) assigned to liquids that are poisonous by inhalation, as specified in 49 CFR part 173.133(a). A hazard zone is based on the LC50 value for acute inhalation toxicity of gases and vapors, as specified in 49 CFR part 173.133(a).

*Hazmat employee* means any person who is employed by a hazmat employer and who, in the course of employment, directly affects hazardous materials. This term includes an individual, including a self-employed or employed by contract individual who, during the course of employment:

- (1) Loads, unloads, offers for transportation, or handles hazardous materials and/or wastes;
- (2) Tests, reconditions, repairs, modifies, marks or otherwise represents containers, drums or packaging as qualified for use in the transportation and/or storage of hazardous materials or waste;

- (3) Prepares hazardous materials and/or wastes for transportation and/or storage;
- (4) Is responsible for the safe handling, use, storage and transportation of hazardous materials and/or wastes;
- (5) Operates a vehicle used to handle and/or transport hazardous materials and/or waste; or
- (6) Handles or otherwise performs tasks directly related to the treatment, storage or disposal of hazardous wastes.

*Hazmat employer* means any person or entity who uses one (1) or more of its employees or contractors in connection with:

- (1) Handling, use, storage and transportation of hazardous materials and/or wastes;
- (2) Testing, reconditioning, repairing, modifying, marking or otherwise representing containers, drums or packaging as qualified for use in the transportation and/or storage of hazardous materials or waste;
- (3) Loading, unloading, offering for transportation, or handling hazardous materials and/or wastes;
- (4) Preparation of hazardous materials and/or wastes for transportation and/or storage;
- (5) Responsibility for the safe handling, use, storage and transportation of hazardous materials and/or wastes;
- (6) Operation of a vehicle used to handle and/or transport hazardous materials and/or waste; or
- (7) Operation of any facility, equipment or site which treats, stores, disposes or otherwise processes any hazardous wastes.

*HMIS* means a hazardous materials inventory statement.

*HMMP* means a hazardous materials management plan.

*HWIS* means a hazardous waste inventory statement.

*HWMP* means a hazardous waste management plan.

*Incidental to transportation* refers to any storage or handling which may occur between the time a hazardous material is offered for transportation to a carrier until it reaches its intended destination and is accepted by the consignee. This includes storage or handling of a hazardous materials shipment during this time period at a carrier's terminal, consolidation, or storage facility, on a dock area waiting for loading, in a parked vehicle or at any time storage or handling is incidental to transportation. If a shipment is offered for transportation, then any storage or handling between offering and delivery to the end user is considered incidental to transportation. If the shipment is consigned by the offeror to a consignee which is a storage facility rather than to an end user, then the shipment is out of transportation once received and unloaded at the storage facility and this storage is not considered to be incidental to transportation even though it will be offered for transportation again at a future date.

*Large Quantity Generator* means a facility that generates 2,200 pounds (1000 kilograms) or more of hazardous waste or more than 2.2 pounds (1 kilogram) of acute hazardous waste per calendar month.

*Long term minimal storage facility* means a long term storage facility where the quantity of each hazardous material or mixture containing a hazardous material stored or handled in an aggregate quantity for the facility at any one (1) time during a reporting year is five hundred (500) pounds or less for solids, fifty-five (55) gallons or less for liquids, or two hundred (200) cubic feet or less at STP for compressed gases.

*Long term storage facility* means a storage facility containing hazardous materials no longer under active shipping papers or is not stored or handled incidental to transportation.

*LQG* means large quantity generator.

*Marking* means a descriptive name, identification number, instructions, cautions, weight, specification, placards, labels or UN marks, or combinations thereof as defined in 49 CFR part 171.

*MSDS* means material safety data sheet.

*New long term storage facility* means a long term storage facility where construction begins after the date of enactment of this article.

*Officer* means the employee assigned by the Environmental Director or his/her designee to administer this article.

*Permit* means any hazardous materials storage permit issued pursuant to this article as well as any additional approvals thereto.

*Permit quantity limit* means the maximum amount of hazardous material that can be stored in a storage facility.

*Permittee* means any person or entity to whom a permit is issued pursuant to this article and any authorized representative, agent or designee of such person or entity.

*Person or entity* means an individual, firm, co-partnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, or government, Indian tribe, agency or instrumentality of any government or Indian tribe, but such term does not include:

- (1) The United States Postal Service; or
- (2) For the purposes of 49 USC 5123 and 5124, any agency or instrumentality of the federal government.

*Pipes* means pipeline systems which are used in connection with the storage of hazardous materials exclusively within the confines of a facility and which are not intended to transport hazardous materials in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

*Primary containment* means the first level of containment, i.e. the inside portion of that container which comes into immediate contact on its inner surface with the hazardous material being contained.

*Product-tight* means impervious to the hazardous material which is contained, or is to be contained, so as to prevent the seepage of the hazardous material from the primary containment. To be product-tight, the container shall be made of a material that is not subject to physical or chemical deterioration by the hazardous material being contained.

*Recordable unauthorized discharge* means an unauthorized discharge which meets all of the following criteria:

- (1) The unauthorized discharge is from a primary containment to a secondary containment or to a rigid aboveground surface covering capable of containing the discharge until cleanup of the hazardous material is completed;
- (2) The permittee is able to adequately clean up the unauthorized discharge before it escapes from a secondary containment or a rigid aboveground surface covering and it does not require more than four (4) hours for cleanup; and
- (3) There is no increase in the hazard of fire or explosion, nor is there any production of a flammable or poisonous gas, nor is there any deterioration of the secondary containment or rigid aboveground surface covering.

*Reportable quantity* means the quantity specified in column 3 of the appendix to

49 CFR part 107.101 for any material identified in column 1.

*RSPA* means the Research and Special Programs Administration of the U.S. Department of Transportation.

*Secondary containment* means the level of containment external to and separate from the primary containment.

*Segregation of hazardous materials* shall have the same meaning as given in 49 CFR § 177.848 and any table or appendix thereto.

*Short term storage facility* means a storage facility containing hazardous materials that are incidental to transportation.

*Single-walled* means construction with walls made of but one (1) thickness of material. Laminated, coated, or clad materials shall be considered as single-walled.

*Small Quantity Generator* means a facility that generates *less than 2200 pounds* (1000 kilograms) but *more than 220 pounds* (100 kilograms) of hazardous waste per calendar month

*SQG* means small quantity generator.

*STP* means standard temperature and pressure (60° F and 14.65 p.s.i.).

*Storage facility* means any building or buildings, appurtenant structures, equipment, pipe or pipeline, well, pit, pond lagoon impoundment, ditch, landfill, vehicle, storage container, or any site or area and surrounding land area used by a person or entity, at a single location or site, for the use, storage, placement, consumption, management, disposal, handling, on-site transfer and on-site transportation of hazardous materials.

*Storage system* means any one (1) or combination of tanks, sumps, wet floors, waste treatment facilities, pipes, vaults or other portable or fixed containers, used or designed to be used, for the storage of hazardous materials at a facility.

*Sump* means a pit or well in which liquids collect.

*TCEQ* means the Texas Commission on Environmental Quality, which will replace the TNRCC after September 1, 2002.

*Temporary storage facility* means any storage facility containing hazardous materials for a limited time period and are not stored or handled incidental to transportation. Temporary storage facilities include, but are not limited to, such activities as construction sites, emergency remediation sites, and other sites where hazardous materials activities may be conducted for periods of limited duration. A "temporary

storage facility" does not mean any vehicle which contains hazardous materials covered by active shipping papers.

*Texas Solid Waste Registration Number* means an identification number issued to hazardous waste generators by the TNRCC/TCEQ, after generators notify the state of waste generation activities.

*TNRCC* shall mean the Texas Natural Resources and Conservation Commission.

*Transporter* means the transporter of hazardous waste  
*TSDF* means a Hazardous Waste Treatment, Storage, and Disposal Facility.

*Unauthorized discharge* means any release or emission of any hazardous material in a manner which is not in accordance with this article, the regulations of the TNRCC/TCEQ or EPA, a national pollutant discharge elimination system permit, or the waste discharge requirements established by local sewer pretreatment requirements for publicly owned treatment works.

*Wet floor* means a floor which is used to routinely collect, contain or maintain standing liquids or to transmit standing liquids on a more or less continuous basis.

*Work station* means the limited location within the reaching distance of a single worker who is producing a service or product.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-21. Hazardous materials records.**

(a) *Hazardous materials management permit office to create records system.* The hazardous materials management permit office shall create a system to collect and maintain all information required to be submitted by this article, all reports, all approvals, all permits issued and any condition attached thereto in an orderly manner.

(b) *Environmental Services Department\_ to create indexing system.* The Environmental Services Department shall devise an indexing system which will list, according to street addresses, all the permitted storage facilities, the permittee name for the particular storage facility, the company name for the business located at the address and the particular storage facility's ERP.

(c) *Copies to city departments.* The hazardous materials management permit office shall immediately make available a copy of each hazardous materials permit issued pursuant to this article if a copy is requested by any City of Laredo department director or his/her authorized representative(s).

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-22. Public records.**

(a) All information required by this chapter shall be subject to public disclosure pursuant to the Texas Open Records Act or if disclosure is ordered by a court of competent jurisdiction.

(b) The availability of information about hazardous materials used by a private permittee and the plant design, layout and the volume and location of the materials used by the permittee may be excepted from disclosure pursuant to Texas Attorney General Open Records Decision No. 554 if the facts are applicable and if allowed by law.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-23. Environmental Services Department to notify other agencies.**

The Environmental Services Department shall notify the department of transportation of any violations of federal transportation laws or regulations discovered during the course of any inspection or emergency response to any short term storage facility.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-24. Disclaimer of liability.**

(a) The degree of protection required by this article is considered reasonable for regulatory purposes. The standards set forth herein are minimal standards and this article does not imply that the compliance will ensure that there will be no unauthorized discharge of hazardous material. This article shall not create liability on the part of the city, any officer or employee thereof for any damages that result from reliance on this article or any administrative decision lawfully made there under. All entities handling, storing, using, processing, and disposing of hazardous materials within the city are advised to determine to their own satisfaction the level of protection in addition to that required by this article necessary or desirable to ensure that there is no unauthorized discharge of hazardous materials.

(b) This article is not intended to create any different standard or obligation for the storage of carcinogens than is imposed for the storage of other hazardous materials.

(c) Nothing in this article shall be construed to hold the city or any officer, employee or representative of the city responsible for any damage to persons or property by reason of making an inadequate or negligent inspection or by reason of any



failure to make an inspection or reinspection.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-25. Guidelines.**

Guidelines for this article shall be drafted by the Environmental Services Department and shall be maintained in the office of the city clerk. Such guidelines shall serve as an interpretation of this article.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-26. Duties are discretionary.**

Subject to the limitations of due process, notwithstanding any other provision of this Code, whenever the words "shall" or "must" are used in establishing a responsibility or duty of the city, its elected or appointed officers, employees, or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-27. Conflicts with other laws.**

Notwithstanding any other provision of this article:

- (1) A storage facility or vehicle regulated by any state or federal agency will be exempt from any conflicting provisions of this article.
- (2) Whenever any provision of this article conflicts with the fire code as adopted by the city, the stricter provision shall prevail.
- (3) Effective the date of enactment of this article, whenever any provision of this article conflicts with any provision set forth by the TNRCC/TCEQ, EPA, or DOT or any regulation adopted pursuant thereto, the state law and/or federal regulation shall control.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-28--33-40. Reserved.**

DIVISION 2. PERMITS

*Subdivision I. In General*

**Sec. 33-41. Required.**

It shall be unlawful for any person or entity to use, store, place, consume, manage, dispose, transfer or handle any hazardous material in, on or about a storage facility without first obtaining and maintaining a current hazardous materials storage and handling permit with the applicable classification of the facility from the Environmental Services Department in accordance with the particular subdivision and this article.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-42. Number required.**

(a) Each storage facility subject to this article shall have at least one (1) permit for each single location or site.

(b) The Environmental Services Department may require a person or entity to have additional permits for a single location or site depending on the following factors:

- (1) Layout and size of the storage facility or site;
- (2) Different classifications of the storage facility(s);
- (3) Complexity of the types of storage;
- (4) Proximity of the storage buildings and storage systems;
- (5) Enforcement; or
- (6) Emergency response considerations.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-43. Fees.**

(a) *Generally.* A person or entity applying for or renewing a permit according to this article shall pay at the hazardous materials management permit office an annual permit fee of five hundred dollars (\$500.00) in a cashier's check or money order made payable to the city. Any further administrative fees shall be as set forth in the schedule of fees established by ordinance of the city council.

(b) *Submittal.*

- (1) *First time applicant.* Each applicant not renewing an annual permit shall pay the permit fee at the time the application is submitted to the hazardous materials management permit office.

- (2) *Renewal applicant.* Each permittee shall pay an annual permit fee at the time the renewal application is submitted to the hazardous materials management permit office no later than thirty (30) days before the expiration of the permit.

(c) *Fund.*

- (1) *Created.* The city manager is hereby authorized to create and implement a hazardous materials management permit fund.
- (2) *Deposits.* All fees collected shall be deposited into the hazardous materials management permit fund.
- (3) *Use.* Any amount deposited into the hazardous materials management permit fund shall be used for the purpose of administering and enforcing the provisions of this article and for the purpose of planning and development of hazardous materials emergency response measures.
- (4) *Authorization for implementation in city budgets.* The city manager is hereby authorized to incorporate and implement the hazardous materials management permit fund into the current and future city annual budgets.

(d) *Delinquent fees.* All fees delinquent for thirty (30) days or more shall be subject to a \$200.00 late penalty.

(e) *Refund.* No refund or rebate of a permit fee shall be allowed by reason of the fact that the permit is denied or the permittee discontinues the activity or use of a facility prior to the expiration of the term or that the permit is suspended or revoked prior to the expiration of the term.

(Ord. No. 97-332, § 1, 1-5-98; Ord. No. 98-011, §§ 1--4, 1-19-98)

**Sec. 33-44. Application required.**

(a) *Submittal.* All persons or entities requiring a new, renewed or temporary hazardous materials storage and handling permit, a variance from a secondary containment, an additional approval or a permit transfer shall submit an application to the hazardous materials management permit office, on the form provided by the Environmental Services Department

(b) *Requirements.* Each application shall include the following in addition to the information required on the application form:

- (1) *HMMP.* A hazardous materials management plan or, if applicable, a short form HMMP as required from a long term storage facility and a temporary storage facility according to section 33-79, 33-121, or if applicable, section

33-80.

- (2) *HMIS*. A hazardous materials inventory statement as required from certain storage facilities according to section 33-83, 33-106 or 33-121.
- (3) *Construction plans*. Long term storage facilities must submit construction plans conforming to the requirements of subdivision II of this division.
- (4) *Closure plans*. If it is anticipated that the long term storage facility will be closing within the duration of the permit, a closure plan must be submitted according to section 33-191.
- (5) *Employee training certification*. A signed and notarized document certifying that the storage facility employer has properly trained its employees as required according to section 33-82, 33-104 or 33-121.
- (6) *ERP*. An emergency response plan as required according to section 33-81, 33-105 or 33-121.
- (7) *Permit quantity limit*. Specify the permit quantity limit requested to be permitted for each storage facility.
- (8) *Permit fee*. No application shall be accepted unless and until the required application fee has been paid.
- (9) *Insurance*. Proof of comprehensive liability insurance for hazardous materials handling for a minimum of fifty thousand dollars (\$50,000.00) with a clause requiring that the hazardous materials management permit office be notified thirty (30) days prior to the cancellation of said insurance.
- (10) *HWMP* A hazardous waste management plan is required from facilities that generate hazardous waste.
- (11) *HWIS* A hazardous waste inventory statement is required from facilities that generate hazardous waste.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-45. Investigation.**

(a) Upon receipt of an application for a permit, a variance from a secondary containment, an additional approval or permit transfer the Environmental Services Department shall review the application and may make such investigation of the applicant and the proposed storage facility or change in the current storage facility as such officer deems necessary to carry out the purposes of this article.

(b) All installations, constructions, repair or modification, closure and removal of storage facilities and storage systems shall be performed to the satisfaction of the Environmental Services Department.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-46. Time for determinations.**

The Environmental Director or his/her designee shall make a determination to grant or deny a permit, a variance from secondary containment, an additional approval, or permit transfer within thirty (30) days from the date an application has been submitted. This time limit may be further extended by mutual agreement between the Environmental Director or his/her designee and the applicant.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-47. Temporary permits.**

If the Environmental Director or his/her designee finds that a temporary permit applicant's proposed storage facility is temporary and will not exceed thirty (30) days or occur no more than every six (6) months, the Environmental Director or his/her designee may approve a temporary permit for a temporary classification if the storage facility is in compliance with section 33-121.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-48. Issuance and approvals.**

(a) *Permit restrictions.* The Environmental Director or his/her designee shall not approve any kind of hazardous materials storage and handling permit for any quantity of hazardous materials, a variance from a secondary containment, an additional approval or a permit transfer until he/she is satisfied that:

- (1) The applicant has met the requirements of this article;
- (2) The applicant has complied with all city ordinances, rules and regulations, including but not limited to the zoning ordinance, the building and fire codes, health and sanitation ordinances; and
- (3) The applicable fee(s) have been paid.

(b) *Issuance.* Upon the approval of any kind of hazardous materials storage and

handling permit or amendment to a permit, the Environmental Director or his/her designee shall issue and deliver a hazardous materials storage and handling permit to the applicant.

(c) *Contents.* Such permit shall contain the following information:

- (1) The permit number;
- (2) The name and address of the permittee for purposes of notice and service of process;
- (3) The company name for the business located at the particular storage facility;
- (4) The address of the storage facility for which the permit is issued;
- (5) The type of permit issued (i.e. full, provisional, or temporary);
- (6) Classification of the storage facility;
- (7) Authorization and description of the kind of storage system(s) approved under the permit, the permit quantity limit(s) and the approved hazard class or classes for the storage facility(s);
- (8) The date the permit is effective;
- (9) The date of expiration;
- (10) Any special conditions of the permit;
- (11) That additional approvals may be required;
- (12) The procedures in the event of an unauthorized discharge including indemnification; and
- (13) A signature line for the permittee accepting the terms and conditions of the permit.

(d) *Records.* The Environmental Services Department shall keep a record of all approvals and permits issued and all conditions attached thereto.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-49. Additional approvals for changes after issuance.**

(a) *Required.* Any permittee who substantially modifies, connects, installs, constructs, repairs, or removes any storage facility or storage system, not including

minor repairs, contrary to the terms, plans and specifications of the issued permit or prior approvals, or proposes to store a new and different hazardous material not in accordance with either a prior approval or subsection (b) below, shall apply to the hazardous materials management permit office for additional approvals prior to such change.

(b) *Certain hazardous materials changes.* Subsection (a), above, does not apply to a permittee who stores a new or different hazardous material with the same hazard class as approved prior or as stated on the existing permit and where such storage does not increase the hazard of fire or explosion or the hazard of the production of flammable or poisonous gas, but the permittee shall within thirty (30) days apply for additional approvals for storing the new or different materials.

(c) *Emergency repairs.* Subsection (a), above, does not apply to emergency repairs which may be made to a storage facility or storage system in advance of seeking an additional approval whenever an immediate repair is required to prevent or contain an unauthorized discharge or to protect the integrity of the containment. However, within five (5) working days after such emergency repairs have been started, the permittee shall seek approval from the Environmental Services Department.

(d) *Application required.* Each permittee shall apply for and obtain additional approvals on a form provided by the Environmental Services Department and by submitting drawings or other information adequate to describe the changes to the hazardous materials management permit office.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-50. Term and effective date.**

(a) *Term.* A hazardous materials storage and handling permit may be issued for a term of one (1) year, except for provisional permits which may be issued for any period of time up to six (6) months and temporary permits which may be issued for no longer than thirty (30) days.

(b) *Effective date.* No hazardous materials storage and handling permit shall become effective until the permit has been signed and accepted by the permittee. Where the permittee is a company, firm or corporation, the acceptance must be signed by a person having the legal authority to bind the permittee.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-51. Renewal.**

Applications for a hazardous materials storage and handling permit renewal or a provisional permit extension shall be made at least thirty (30) days prior to the expiration date of such permit. If a timely application for renewal has been submitted, the permit shall remain in effect until the Environmental Director or his/her designee has made a

determination pursuant to sections 33-46 and 33-48 and until all administrative appeals under section 33-54 have been exhausted.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-52. Transfers.**

A hazardous materials storage and handling permit may be transferred to new owners of the same storage facility only if the new owners accept responsibility for all obligations under this article and the permit at the time of the transfer of the storage facility and document such transfer on an application form provided by the Environmental Services Department within thirty (30) days after the transfer of ownership of the storage facility. All permit transfers shall be subject to the approval of the Environmental Director or his/her designee.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-53. Denial of application.**

(a) *Generally.* If the Environmental Director or his/her designee to whom application for a hazardous materials storage and handling permit, a variance from secondary containment, an additional approval or a permit transfer has been made has cause to deny the application and determines that the applicant is not eligible for a provisional permit, then the Environmental Director or his/her designee shall deny the application.

(b) *Grounds.* A hazardous materials storage and handling permit, a variance from secondary containment, an additional approval or a permit transfer shall be denied if the applicant fails to demonstrate adequate conformity to the provisions of this article and is in compliance with all city ordinances. In addition, a permit can be denied for any of the grounds upon which the permit would be subject to remedial action pursuant to section 33-55.

(c) *Notification.* The applicant shall be notified that his/her application has been denied and that no permit, variance, additional approval or permit transfer will be issued, setting forth the findings upon which the decision is based. Notice shall be mailed to the applicant at the address shown on the application form, or the applicant's last known address.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-54. Appeals.**

(a) Any person aggrieved by the action or decision of the Environmental Director or his/her designee to deny an application for a hazardous materials storage and handling permit, a variance from secondary containment, an additional approval or a



permit transfer, or to suspend or revoke a permit obtained under this article, not including provisional permits, shall have the right to appeal the action or decision to the CEAC within thirty (30) days from the date of deposit of the decision in the mail to the last known address shown on the permit application.

(b) An appeal may be taken by filing at the hazardous materials management permit office a written statement setting forth with particularity the ground or grounds for the appeal.

(c) The Environmental Director or his/her designee shall set an appeal hearing before the CEAC not later than thirty (30) days after the date of receipt of the appellant's written statement.

(d) Notice of the time and place of the hearing shall be sent to the appellant by certified mail, postage prepaid, to the appellant address given for purposes of notice on the application or permit or by personal service in accordance with the Texas Rules of Civil Procedure.

(e) The decision of the CEAC on the appeal shall be final and binding on all parties concerned.

(f) In any hearing under this section, all parties involved shall have the right to offer testimonial, documentary, and tangible evidence hearing on the issues, to be represented by counsel, and to confront and cross-examine any witnesses against them. Any hearing under this section may be continued by the person conducting the hearing for a reasonable time upon a showing of good cause.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-55. Remedial action.**

(a) *Cause.* A permittee may be subject to remedial action for any of the following causes, arising from the acts or omissions by the permittee, either before or after a permit is issued:

- (1) Fraud, willful misrepresentation, or any willful inaccurate or false statement when applying where required;
- (2) Fraud, willful misrepresentation, or any willful inaccurate or false statement in any report, plan or document required by this article;
- (3) Failure to abate, correct or rectify any noncompliance within the time specified in the notice of noncompliance;
- (4) Failure to correct conditions constituting an unreasonable risk of an unauthorized discharge of hazardous materials within a reasonable time

after notice from a governmental entity other than the city;

- (5) Failure to abide by the remedial action imposed by the Environmental Director or his/her designee;
- (6) If the permittee refuses to allow any authorized representative(s) of the Environmental Services Department access into any facility or onto any premises for which a hazardous materials permit is requested or authorized, or otherwise willfully obstructs inspections of the facility or premises;
- (7) If there have been more than two (2) violation(s) of this section within any six-month period.

(b) *Notice of noncompliance.*

- (1) *Requirement.* Unless the Environmental Director or his/her designee finds that an immediate suspension under subsection (d), below, is necessary to protect the public health or safety from imminent danger, the Environmental Director or his/her designee shall issue a notice of noncompliance to a permittee for the failure to comply with the provisions of this article, any permit condition or any provisions of the HMMP before instituting remedial action.
- (2) *Service.* The notice of noncompliance shall be sent by certified mail to the permittee's last known address.
- (3) *Contents.* The notice of noncompliance shall include the following:
  - a. The statement, "You may request a meeting regarding this matter with the person sending you this letter or his/her designee prior to his/her decision to take remedial action. This request must be in writing and it must be submitted to the Environmental Director at the hazardous materials management permit office within ten (10) days of the post-marked date on this noncompliance notice";
  - b. The ground(s) upon which the possible remedial action will be based;
  - c. The pertinent ordinance section(s), permit condition(s), or portion of the HMMP;
  - d. A brief statement of the factual matters in support thereof; and
  - e. The possible remedial actions the permittee is subject to.

- (4) Environmental Services Department *action*. If no request for a meeting is submitted to the Environmental Services Department by the permittee after ten (10) days from the date the noncompliance notice is mailed, the Environmental Director or his/her designee shall review the noncompliance and determine what remedial action shall be taken.
- (5) Environmental Services Department *action after meeting*. If a request for a meeting is submitted within the time limit, the Environmental Director or his/her designee shall not make a final determination of what remedial action to take until after the meeting.

(d) *Suspension prior to meeting*. Whenever the Environmental Director finds that suspension of a permit prior to a decision for remedial action is necessary to protect the public health or safety from imminent danger, the Environmental Director or his/her designee may immediately suspend any hazardous materials storage and handling permit. The Environmental Director or his/her designee shall immediately notify the permittee of such suspension by having a written notice of the suspension personally served on the permittee or sent by certified mail. The permittee may appeal the suspension decision according to section 33-54.

(e) *Possible remedial action*. If the Environmental Director or his/her designee finds that cause exists for remedial action, the Environmental Director or his/her designee shall impose upon the permittee one (1) or more of the following:

- (1) A warning;
- (2) An order to correct the particular noncompliance specified in the notice within a certain time;
- (3) Suspension of the permit for the storage facility for a specified period not to exceed six (6) months;
- (4) Modification or addition of conditions to the permit;
- (5) Revocation of the permit with no reapplication allowed by the permittee for a specified period not to exceed five (5) years;
- (6) If the grounds for remedial action are based on subsection (a)(3), (4) or (5), above, and if such grounds are limited to one (1) storage facility, the remedial action taken shall be limited to that storage facility.

(f) *Transmittal of decision*. The Environmental Director or his/her designee shall render a written decision, stating the findings upon which the decision is based and the action taken, if any.

(g) *Authority after suspension, revocation or expiration*. The suspension,

revocation or expiration of a permit issued under this article shall not prevent any proceedings to investigate such permit, any remedial action against such permittee or any proceeding against such permittee.

(h) *Return of permit.* In the event that a permit is issued under the provisions of this article is suspended or revoked, the permittee shall forward it to the issuing officer not later than the end of the third business day after notification of such suspension or revocation.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec 33-56 Hazardous Waste Management Plans**

(a) *Submittal.* All storage facilities shall have a current written plan which must be filed with the permit application to be known as a hazardous waste management plan (HWMP) which shall demonstrate the safe disposal of hazardous wastes.

(b) *Amendments.* The HWMP may be amended at any time with the consent of the Environmental Services Department to keep the plan current.

(c) *Approval.* Approval of the HWMP shall not mean that the Environmental Services Department or the city has made an independent determination of the adequacy of that which is described in the HWMP.

(d) *Contents.* The HWMP shall include the following:

- (1) *General information.* The HWMP shall contain the name and address of the storage facility and business phone number of the applicant, the name and titles and emergency phone numbers of the primary response person and an alternate. This will also identify the status of the storage facility as CESQG, SQG, or LQG and Texas Solid Waste Registration Number and/or EPA Identification Number if applicable.
- (2) *Disposal Facility Contractor Information.* Shall contain the name and address of the disposal facility contractor, business phone number, name and titles of contact persons, Texas Solid Waste Registration Number and/or EPA Identification Number.
- (3) *HW Transporter Information:* Shall contain the name and address of the transporter, business phone number, name and titles of contact persons, Texas Solid Waste Registration Number and/or EPA Identification Number.
- (4) *Inventory statement.* A hazardous materials inventory statement.

### **Sec 33-57 Hazardous Waste Inventory Statements**

- (1) *Inventory statement* shall contain the chemical or common name of the waste; the amount and units of waste generated per month as well as per year; and the

hazard code of the waste. HWIS will also identify the status of the storage facility as CESQG, SQG, or LQG and Texas Solid Waste Registration Number and/or EPA Identification Number if applicable. Additionally, HWIS must be kept current via online submittal, or if no internet service is available, through a large, metal, U.S. Postmaster approved mailbox which is clearly labeled in a marked area accessible to the Environmental Services Department.

**Secs. 33-58--33-70. Reserved.**

*Subdivision II. Long Term Storage Facilities*

**Sec. 33-71. Permit classification.**

(a) *Generally.* A hazardous materials storage and handling permit with a long term storage facility permit classification is for all long term storage facilities where any hazardous material as defined in section 33-20 is placed in, on or about the storage facility.

(b) *Requirements.* Persons or entities subject to a long term storage facility classification must meet and maintain the requirements of this subdivision.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-72. New long term storage facility standards.**

All new long term storage facilities shall meet and maintain the following standards:

- (1) *Monitoring systems.* Hazardous materials which are liquid or solid at standard temperature and pressure (STP) shall be stored with a monitoring system capable of detecting that the hazardous material stored in the primary containment has entered the secondary containment and according to the following:
  - a. Visual inspection of the primary containment is the preferred monitoring method. However, other monitoring devices which must include attention-getting visual and/or audible alarms may be required by the Environmental Services Department ;
  - b. Where the secondary containment may be subject to the intrusion of water, a means of monitoring for such water shall be required.
- (2) *Containment.* Hazardous materials which are liquid or solid at STP shall be stored in a primary and secondary level of containment which shall be installed and maintained according to the following:

- a. All primary containment shall:
  - 1. Be product-tight;
  - 2. Have overfill protection which may include an overfill prevention device and/or an attention-getting high level alarm.
  
- b. The secondary containment shall be:
  - 1. Constructed of materials of sufficient thickness, density, and composition so as not to be structurally weakened as a result of contact with the discharged hazardous materials and so as to be capable of containing hazardous materials discharged from a primary container for a period of time equal to or longer than the maximum anticipated time sufficient to allow recovery of the discharged hazardous material;
  - 2. Where only one (1) primary container is installed, large enough to contain at least one hundred ten (110) percent of the volume of the primary container;
  - 3. Where multiply primary containers are installed in a secondary containment, large enough to contain one hundred fifty (150) percent of the volume of the largest primary container placed in it, or ten (10) percent of the aggregate internal volume of all primary containers in the secondary containment, whichever is greater;
  - 4. If the secondary containment is open to rainfall, then it must be able to additionally accommodate the volume of a twenty-four-hour rainfall as determined by a twenty-five-year storm history.
  
- c. Laminated, coated, or clad materials shall be considered single-walled and shall not be construed to fulfill the requirements of both primary and secondary containment.
  
- d. A person or entity may apply to the hazardous materials management permit office on a form provided by the Environmental Services Department for a variance from the secondary containment requirements and the applicant must demonstrate all of the following:
  - 1. The requirement of secondary containment creates an

unusual and particular hardship;

2. An equivalent degree of protection is provided by the proposed alternative; and
  3. The proposed alternative has been appropriately certified as providing an equivalent degree of protection by an independent engineer retained in accordance with section 33-19.
- e. The Environmental Director or his/her designee may grant a variance from a secondary containment requirement based only on the special circumstances of the storage facility and not on a class or category of storage facilities. The decision of the Environmental Director or his/her designee shall be according to sections 33-45, 33-46 and 33-48.
  - f. A variance from a secondary containment requirement may be denied according to section 33-53, but the applicant may appeal the decision according to section 33-54.
- (3) *Separation of materials.* Materials that in combination may cause a fire or explosion, or the production of a flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container shall be separated in both the primary and secondary containment so as to avoid intermixing.
- (4) *Drainage systems.* Drainage shall be installed and maintained according to the following:
- a. All precipitation shall be controlled in a manner as to prevent hazardous materials from being discharged;
  - b. All drainage systems shall be such that the flow of the drain can be controlled;
  - c. All storage facilities shall contain a means of removing the water by the owner or operator;
  - d. Any water removal system shall also provide for a means of analyzing the removed water for hazardous substance contamination and a means of disposing of the water, if so contaminated, at an authorized disposal facility.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-73. Existing long term storage facility standards.**

(a) All existing long term storage facilities shall meet and maintain the standards set forth in section 33-72.

(b) Exception.

(1) *Provisional permit.* If the Environmental Director or his/her designee finds that an applicant with an existing long term storage facility is unable to immediately meet the standards set forth in section 33-72, instead of denying the application, he/she may approve a provisional permit, subject to conditions to be imposed by this article and the Environmental Services Department, for a period of six (6) months from the date of issuance to allow the permittee to meet the required standards set forth in section 33-72.

(2) *Extension.* A provisional permit may be extended for a consecutive period not to exceed six (6) months from the date the previous provisional permit was issued, if necessary.

(3) *Standards.* The Environmental Director or his/her designee shall not approve a provisional permit or an extension to a provisional permit if the applicant has not met and maintained the requirements of this subdivision, not including section 33-72, or the following standards:

a. *Monitoring systems.* If the storage facility contains hazardous materials which contain liquids or solids at STP, it must also be monitored in accordance with a plan, which may include installation of devices and methods approved by the Environmental Services Department with standards as set forth as follows:

1. *Monitoring plan.* A monitoring plan for each storage system containing hazardous materials which are liquids or solids at STP shall be submitted to the hazardous materials management permit office as part of the HMMP;

2. *Monitoring method.* The monitoring plan shall include visual inspection of the primary containment wherever practical; however, if the visual inspection is not practical, an alternative method of monitoring each storage system on a semiannual or more frequent basis may be approved by the Environmental Services Department;

3. *Alternative monitoring method.* Alternative method(s) of monitoring may include but are not limited to pressure testing of piping systems; groundwater monitoring well(s) which are down gradient and adjacent to the storage facility;



vapor analysis within the well(s) where appropriate; and analysis of soil boring(s) at the time of initial installation of the well(s). The number of well(s), depth of well(s), and sampling frequency shall be approved by the Environmental Services Department.

- b. *Containment.* Hazardous materials which are liquid or solid at STP shall be stored in primary containment which shall as follows:
    - 1. Be product-tight;
    - 2. Have overfill protection which may include an overfill prevention device and/or an attention-getting high level alarm.
  - c. *Separation of materials.* Materials that in combination may cause a fire or explosion, or the production of a flammable, toxic, or poisonous gas, or the deterioration of a primary containment shall be separated in the storage facility so as to avoid intermixing;
  - d. *Drainage systems.* Drainage shall be installed and maintained according to the following:
    - 1. All precipitation shall be controlled in a manner as to prevent hazardous materials from being discharged;
    - 2. All drainage systems shall be such that the flow of the drain can be controlled;
    - 3. All storage facilities shall contain a means of removing the water by the owner or operator;
    - 4. Any water removal system shall also provide for a means of analyzing the removed water for hazardous substance contamination and a means of disposing of the water, if so contaminated, at an authorized disposal facility.
- (4) *Permit conditional.* A provisional permit is conditioned on no unauthorized discharges occurring in, on or about the storage facility, maintenance of the provisional standards and any condition the Environmental Services Department may impose.
- (5) *Continual review.* The Environmental Director or his/her designee may continually review a provisional permit and may revoke the permit if the permit conditions are not met.

- (6) Environmental Services Department *provisional permit reviews*. In determining whether an applicant has met the standards for a provisional permit the Environmental Services Department shall consider the following:
- a. The age of the storage facility and any storage system;
  - b. The methods of containment;
  - c. The methods of monitoring;
  - d. The feasibility of the required retrofit;
  - e. The concentration of the hazardous materials contained;
  - f. The severity of potential unauthorized discharge; and
  - g. The suitability of other long term preventative measures which meet the intent of this article.
- (7) *No provisional replacement*. During the term of a provisional permit, a permittee may not replace any storage facility or storage system not in accordance with the standards of section 33-72.
- (8) *Failure to comply*. All permittees who do not meet the standards of section 33-72 after all provisional permits and extensions have expired shall close the existing long term storage facility within two (2) years of a decision not to issue a hazardous materials storage and handling permit in accordance with sections 33-191 and 33-192.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-74. Maintenance and repair.**

(a) Each permittee shall maintain its long term storage facility for which the permit was issued in a safe and diligent manner.

(b) Each permittee shall obtain additional approvals for certain changes after a permit is issued in accordance with section 33-49.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-75. Handling.**

(a) All dispensing and mixing of hazardous materials at a long term storage facility must be done so that there is no substantial increase in the risk of an

unauthorized discharge.

(b) When hazardous materials are moved into or out of a long term storage facility, they shall remain in the travel path only for the time reasonably necessary to move the hazardous material and such movement shall be in a manner which will not result in an unauthorized discharge.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-76. Secured facilities.**

All long term storage facilities shall be secured by means of fences and/or locks which shall be securely locked when unattended.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-77. Emergency equipment.**

Emergency equipment at a long term storage facility shall be easily accessible on the premises which is reasonable and appropriate for potential emergencies presented by the stored hazardous materials. Such equipment shall be regularly tested and adequately maintained.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-78. Posting of emergency procedures.**

(a) All long term storage facilities shall have a current copy of the permittee's HMMP, HMIS and ERP in a large, metal, U.S. Postmaster approved mailbox which is clearly labeled in a marked area accessible to the Environmental Services Department.

(b) Simple emergency procedures shall be posted conspicuously in locations within the storage facility where hazardous materials are stored.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-79. Hazardous materials management plans.**

(a) *Submittal.* All long term storage facilities shall have a current written plan which must be filed with the permit application to be known as a hazardous materials management plan (HMMP) which shall demonstrate the safe storage and handling of hazardous materials.

(b) *Amendments.* The HMMP may be amended at any time with the consent of the Environmental Services Department to keep the plan current.

(c) *Approval.* Approval of the HMMP shall not mean that the Environmental Services Department or the city has made an independent determination of the adequacy of that which is described in the HMMP.

(d) *Contents.* Unless the storage facility is a long term minimal storage facility under section 33-80, the HMMP shall include the following:

- (1) *General information.* The HMMP shall contain the name and address of the storage facility and business phone number of the applicant, the name and titles and emergency phone numbers of the primary response person and an alternate, the number of employees, number of shifts, hours of operation, and principal business activity.
- (2) *General site plan.* The HMMP shall contain a map drawn at a legible scale and in a format and detail determined by the Environmental Services Department, which shall include, but not be limited to, the location of all building and exterior storage facilities, permanent access ways, evacuation routes, chemical loading areas, parking lots, internal roads, equipment cleaning areas, storm and sanitary sewer accesses, emergency equipment, and adjacent property uses. The exterior storage areas shall be identified with the hazard classes and the maximum quantity per hazard class of hazardous material stored. The Environmental Services Department may also require information as to the location of wells, flood plains, surface water bodies, and/or general land uses (schools, hospitals, institutions, residential areas) within one (1) mile of the facility boundaries.
- (3) *Building floor plan.*
  - a. The HMMP shall contain a building floor plan drawn at a legible scale which shall include, but not be limited to, the location of each hazardous materials storage facility or storage system, including all interior, exterior, and underground storage systems, and shall indicate rooms, doorways, corridors, exits, fire related assemblies with their hourly rating, location of liquid tight rooms, and evacuation routes. In addition, the plan shall indicate the location of emergency equipment related to each storage facility, and the general purpose of the other areas within each facility. For each storage facility, the map shall contain the following information which shall be identified in a coded manner (together with its key):
    1. A floor plan to scale and the permit quantity limit;
    2. For each nonwaste hazardous material which is stored or handled in a quantity greater than the quantities specified in the definition for a long term minimal storage facility, the

general chemical name, common/trade name, major constituents for mixtures, United Nations (UN) number, CAS number and physical state. For each waste hazardous material stored in any quantity within the storage facility, the presence of wastes shall also be indicated;

3. For all hazardous materials, including wastes, stored in each storage facility, the hazard class or classes and the quantity range for each such class, aggregated within each storage facility, in the following ranges:

Quantity Range Number	Range Amounts
1	Less than 500 pounds for solids Less than 55 gallons for liquids Less than 200 cubic feet at STP for compressed gases
2	Between 500 and 4,999 pounds for solids Between 55 and 549 gallons for liquids Between 200 and 1,999 cubic feet at STP for compressed gases
3	Between 5,000 and 24,999 pounds for solids Between 550 and 2,749 gallons for liquids Between 2,000 and 9,999 cubic feet at STP for compressed gases
4	Between 25,000 and 49,999 pounds for solids Between 2,750 and 5,499 gallons for liquids Between 10,000 and 19,999 cubic feet at STP for compressed gases

5	50,000 pounds or more for solids 5,500 gallons or more for liquids 20,000 cubic feet or more at STP for compressed gases
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4. For materials not regulated under this section, but regulated under the International Fire Code, such as radioactives or cryogens, the Environmental Services Department may require that the hazard class or classes and the quantity range of each such hazard class, using the quantity ranges listed in subsection 3. above, be provided;
  5. For tanks, the capacity limit of each tank, and the hazardous material contained in each tank by general chemical name, common/trade name, major constituents for mixtures, United Nations (UN) or North America (NA) number, if available, and physical state.
- b. The storage facility map shall be updated annually or whenever an additional approval is required for the facility or whenever the HMIS is required to be amended pursuant to section 33-83.
- (4) *Inventory statement.* A hazardous materials inventory statement prepared in accordance with section 33-83.
  - (5) *Separation of materials.* A description of the methods to be utilized to ensure separation and protection of stored hazardous materials from factors which may cause a fire or explosion, or the production of a flammable, toxic, or poisonous gas, or the deterioration of the primary or secondary containment shall be submitted.
  - (6) *Monitoring program.* A description of the location, type, manufacturer specifications (if applicable), and suitability of monitoring methods to be used in each storage facility storing hazardous materials which are liquids, solids or gases at STP shall be submitted. It shall also specify the frequency of inspections of storage facilities which will be conducted by the permittee.
  - (7) *Record keeping forms.* An inspection check sheet or log designed to be used in conjunction with routine inspections shall be submitted. The check sheet or log shall provide for the recording of the date and time of inspection and, for monitoring activity, the date and time of any corrective action taken, the name of the inspector, and the countersignature of the designated safety manager for the facility or the responsible official as

designated in the HMMP.

- (8) *Emergency equipment.* A description of the emergency equipment availability, testing, and maintenance shall be submitted.
- (9) *Variation in information.* The Environmental Services Department may require additional information for the HMMP where such information is reasonably necessary to meet the intent of this article.

(e) *HMMP alternative.* Whenever permittee has submitted a plan which includes substantially the same information as is required for any component(s) of the HMMP to any other public agency regulating hazardous materials, such plan may be submitted to the hazardous materials management permit office in lieu of such components. The Environmental Services Department may give deference to any approval of such plan by the other public agency.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-80. Short form HMMP for long term minimal storage facilities.**

(a) *Submittal.* An applicant applying for a permit concerning a long term minimal storage facility may opt to submit the short form HMMP.

(b) *Contents.* A short form HMMP shall include the following:

- (1) *General information.* The HMMP shall contain the name and address of the storage facility and business phone number of the applicant, the name and titles and emergency phone numbers of the primary response person and an alternate, the number of employees, number of shifts, hours of operation, and principal business activity.
- (2) *Line drawing.* A simple line drawing of the storage facility showing the location of the actual storage and indicating the hazard class or classes and physical state of the hazardous materials being stored and whether any of the material is a waste shall be submitted.
- (3) *Description of storage.* Information describing how the hazardous materials will be stored in a suitable manner and will be appropriately contained, separated and monitored shall be submitted.
- (4) *Equipment.* A description of emergency equipment to be maintained shall be submitted.
- (5) *Disposal.* An assurance that the disposal of any hazardous materials will

be in an appropriate manner.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-81. Emergency response plans.**

(a) *Submittal.* Unless the permit concerns a long term minimal storage facility or a farm, all long term storage facilities which may contain hazardous materials or a mixture containing hazardous materials which have a quantity greater than that allowed in long term minimal storage facilities shall establish and implement a current written emergency response plan (ERP) which must be filed with the permit application and must be maintained at the long term storage facility for inspection. The ERP shall demonstrate safe emergency response to a release or threatened release of a hazardous material.

(b) *Contents.* The ERP shall include the following:

- (1) A description of the emergency response plans and procedures the long term storage facility intends to take in the event of a reportable release or threatened release of a hazardous material which shall include, but not be limited to, the following:
  - a. Immediate notification to the city Environmental Services Department.
  - b. Reserved.
- (2) A description of the procedures for the mitigation of a release or threatened release to minimize any potential harm or damage to persons, property, or the environment.
- (3) A description of evacuation plans and procedures for persons at the long term storage facility which shall at least include immediate audible notice and warning to all persons on the site.

(c) *Alternative.* Any applicant required to file a pipeline operations contingency plan in accordance with the regulations of the department of transportation, found in 49 CFR part 195, may file a copy of those plans with the hazardous materials management permit office instead of filing the ERP.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-82. Employee training.**



(a) *Training required.* All new employees within ninety (90) days from the date of hire or contract, and all other employees shall be trained annually and by refresher courses by the permit applicant if the employee will be working at the permitted long term storage facility.

(b) *Training curriculum.* The employee training shall at least include the following:

- (1) The safety procedures to be utilized in the event of a release or threatened release of a hazardous material;
- (2) Content and familiarity with the ERP;
- (3) The technical and managerial responsibilities of each employee;
- (4) Training which is in compliance with the Hazard Communication Standard as provided in 29 CFR 1910.1200 et seq.;
- (5) All process and workplace safety programs required by OSHA for the workplace hazards specific to the permitted facility.

(c) *Additional training.*

- (1) All hazmat employees engaged in the handling of nonwaste hazardous materials or substances as defined in subsection (2) below, and which do not engage in hazardous waste or emergency response operations, must receive training which complies with the training requirements specified in 49 CFR 172.700 et seq., subpart H.
- (2) All hazmat employees engaged in hazardous waste operations and/or emergency response as defined in 29 CFR 1910.120 must receive training which complies with the training requirements specified in 29 CFR 1910.120 et seq. and 29 CFR 1926.65 et seq., as that training applies to hazardous waste operations and emergency response.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-83. Hazardous materials inventory statement.**

(a) *Submittal.* Unless the permit concerns a long term minimal storage facility, all long term storage facilities which may contain hazardous materials or a mixture containing hazardous materials which have a quantity greater than that allowed in long term minimal storage facilities shall have a current hazardous materials inventory statement (HMIS) which must be filed with the permit application. Additionally, HMIS must be kept current via online submittal, or if no internet service is available, through a large, metal, U.S. Postmaster approved mailbox which is clearly labeled in a marked

area accessible to the Environmental Services Department.

(b) *Contents.* The HMIS shall include the following:

- (1) For nonwastes: The general chemical name, common trade name, major constituents for mixtures, the manufacturer, United Nations (UN), Chemical Abstract Services Number, and the hazard class or classes and the material safety data sheet (MSDS) or equivalent information as required by the Environmental Services Department.
- (2) For wastes: The storage facility must file a HWIS.
- (3) A listing of the chemical name and common names of every other hazardous material or mixture containing a hazardous material handled by the permittee which is not otherwise listed pursuant to subsection (1) or (2) above.
- (4) The maximum amount of each hazardous material or mixture containing a hazardous material disclosed in subsection (1), (2) or (3), above, which is handled at any one (1) time by the permittee over the course of the year.
  - a. *Alternative.* The HMIS may report the amount of hazardous material under this section by ranges, rather than a specific amount, pursuant to subsection 33-79(d)(3)a.3., as long as those ranges provide the information necessary to meet the needs of emergency rescue personnel, to determine the potential hazard from a release of the materials, and meets the purposes of this article.
  - b. *Reserved.*
- (5) Sufficient information on how and where the hazardous materials disclosed in subsection (1), (2) or (3), above, are handled by the permittee to allow city personnel to prepare adequate emergency response to potential releases of the hazardous materials.
- (6) The Standard Industrial Classification (SIC) code number of the permittee, if applicable.
- (7) The name and twenty-four-hour phone number(s) of the person representing the permittee who is able to assist emergency personnel in the event of an emergency involving the long term storage facility during non-business hours.

(c) *Amendments.* All long term storage facilities shall amend the HMIS within thirty (30) days of any of the following occurring:

- (1) The storage or handling of any hazardous material not listed on the HMIS, but required to be listed;
- (2) An increase of one hundred (100) percent or more in the quantity of a previously disclosed material;
- (3) An increase in the quantity range; or
- (4) A change in business address, ownership, or business name.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-84. Permittee inspections and records.**

(a) *Inspections by permittee.* All long term storage facilities shall be regularly inspected by the responsible permittee to assure compliance with this article and shall maintain logs or file reports in accordance with its HMMP. The inspector conducting such inspection shall be qualified to conduct such inspections.

(b) *Special inspections.* If the permittee does not have an inspector who has the technical expertise to assure compliance with this article, the Environmental Services Department may require the permittee to periodically employ a special inspector to conduct an audit or assessment of the permittee's facility to make a hazardous material safety evaluation and to determine compliance with the provisions of this article.

- (1) The special inspector shall be a qualified person or firm who shall demonstrate expertise to the satisfaction of the Environmental Services Department.
- (2) The special inspection report shall include an evaluation of the facilities and recommendations consistent with the provisions of this article where appropriate. A copy of the report shall be filed with the Environmental Services Department at the same time that it is submitted to permittee.
- (3) Permittee shall, within thirty (30) days of said report, file with hazardous materials management permit office a plan to implement all recommendations or shall demonstrate to the satisfaction of the Environmental Services Department why such recommendations shall not be implemented.

(c) *Substitute inspections.* An inspection by an employee of a state or federal public agency who is trained to inspect hazardous material storage facilities may be deemed by the Environmental Services Department as a substitute for requirements in subsection (a) or (b) above.

(d) *Maintenance of records.* The permittee shall maintain all inspection records for a period not less than three (3) years. The permittee shall make the inspection records available to the Environmental Services Department during normal working hours and upon reasonable notice.

(Ord. No. 97-332, § 1, 1-5-98)

**Secs. 33-85--33-100. Reserved.**

*Subdivision III. Short Term Storage Facilities*

**Sec. 33-101. Permit classification.**

(a) *Classification.* A hazardous materials storage and handling permit with a short term storage facility classification is for all short term storage facilities where any hazardous material as defined for this subdivision in subsection (c), below, is placed in, on or about the storage facility.

(b) *Requirements.* Persons or entities subject to a short term storage facility classification must meet and maintain the requirements of this subdivision.

(c) *Hazardous materials defined.* For use in this subdivision only and when referring to hazardous materials in the context of being contained in a short term storage facility, "hazardous material" means any substance or product which:

- (1) Is designated by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce;
- (2) Is a hazardous substance;
- (3) Is a hazardous waste;
- (4) Is a marine pollutant;
- (5) Is an elevated temperature material as defined in 49 CFR § 171.8;
- (6) Is designated as hazardous under the provisions of 49 CFR part 172.101 including mixtures and solutions listed in 49 CFR Appendix A to § 172.101 in a quantity which meets or exceeds the reportable quantity listed in 49 CFR Appendix A to § 172.101 or is mixed in solution in concentrations which meet or exceed the reportable quantity (RQ) established for that substance;
- (7) Meets the defining criteria for hazard classes and divisions in 49 CFR part 173; or

- (8) Is designated as a hazardous waste as that term is defined in 40 CFR part 261 et seq. and any appendices thereto and 49 CFR part 171 and any appendices thereto.

(d) *Forty-eight-hour rule.* A short term storage facility will lose its short term storage facility classification and will need to meet the requirements for long term storage facilities on the current and future permits if at any time during the reporting year the permittee receives a hazardous materials shipment to its short term storage facility and does not forward it to the consignee within forty-eight (48) hours of its receipt or does not do one (1) of the following:

- (1) Place the shipment in suitable storage as defined by the department of transportation or as defined by the Environmental Protection Agency when shipments involve hazardous wastes. Suitable storage of explosives shall include at least an appropriate isolation distance to be established under the conditions of the permit and the Environmental Services Department.
- (2) Return the shipment to the consignor.
- (3) Dispose of the shipment in a manner consistent with the department of transportation's rules and regulations.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-102. Shipping papers, packaging and placarding.**

(a) *Vehicle placarding.* All vehicles loading or unloading hazardous materials at a short term storage facility shall be placarded in conformance with 49 CFR part 172 subpart F and 49 CFR part 177.817.

(b) *Packaging.*

- (1) All packages, containers, drums and storage devices used for shipment, handling, transfer or storage of hazardous materials or wastes at a short term storage facility shall meet the performance, integrity and certification standards established for such containers in 49 CFR part 173 et seq.
- (2) All packages, containers, drums or other storage devices that are used for the shipment, handling or transfer of hazardous materials and/or wastes at short term storage facilities shall be labeled in conformance with 49 CFR part 172, subpart E.

(c) *Shipping papers.* All vehicles engaged in the transportation of hazardous materials or wastes shall have proper shipping papers, manifests or bill(s) of lading as required under 49 CFR part 172, subpart C. Copies of all such papers required under

49 CFR part 172, subpart C, to be maintained by facilities covered under this article shall be made available for inspection by applicable local, state and federal enforcement agencies.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-103. Standards.**

All short term storage facilities shall meet and maintain the following standards:

- (1) *Safe handling.* All loads of hazardous materials or wastes loaded, unloaded, stored at or leaving the premises shall meet all standards established under 49 CFR parts 100 through 199 for the safe packaging, storage, loading, unloading and transportation of said materials.
- (2) *Separation of materials.* All loads of hazardous materials shall be properly segregated as provided in 49 CFR part 177.848 and its appendices and tables.
- (3) *Equipment.* All equipment and facilities used for loading, transporting and handling hazardous materials, including but not limited to, dock plates, pallet jacks, fork trucks, lifts, hoist or other material handling devices be maintained in proper working condition at all times.
- (4) *OSHA requirements.* Routine inspections and certification programs as required by the Occupational Safety and Health Administration (OSHA) for such equipment and facilities as listed in subsection (3), above, shall be developed and maintained as part of the facilities operating records and shall be made available for inspection at all times.
- (5) *Drainage systems.* Pursuant to the Federal and Texas Clean Water Act requirements to control all point source and nonpoint source discharges of chemical contamination, all interior floor and/or sewage drains and exterior storm water drains located in the short term storage facility shall be blocked, plugged or otherwise be made capable of isolation to prevent the flow of any released, spilled or discharged hazardous materials or waste to any storm water discharge point or direct discharge to any sewer connection.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-104. Employee training.**

(a) *Required.* All employees shall be trained by the permit applicant if the employee will be working at the permitted short term storage facility.

(b) *Curriculum.* The applicant's employees shall be trained as follows:

- (1) All hazmat employers as defined in section 33-20 shall ensure that all hazmat employees are provided with proper training in accordance with 49 CFR part 172, subpart H, and 49 CFR part 177.800.
- (2) In addition to the training requirements of 49 CFR parts 172 and 177.800, no carrier may transport, or cause to be transported, a hazardous material unless each hazmat employee who will operate a motor vehicle has been trained in the applicable requirements of 49 CFR parts 390 through 397 and the procedures necessary for the safe operation of that motor vehicle.
- (3) In addition to the training requirements set forth in 49 CFR parts 172, 177 and 390 through 397, all owners/ operators of facilities covered under this subdivision shall provide all employee safety training as required under 29 CFR 1910.1200 et seq., including but not limited to, hazard communication and emergency response training.

(c) *Records.* All short term storage facilities shall create and maintain employee training records in accordance with applicable state and federal requirements. All such employee training records shall be made available for inspection if requested by the Environmental Services Department.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-105. Emergency response plans.**

(a) *Submittal.* All short term storage facilities shall establish and implement a current written emergency response plan which must be filed with the permit application and available at the short term storage facility for inspection.

(b) *Content.* The ERP shall include the following:

- (1) Requirements as set forth under 49 CFR part 172, subpart G, and 49 CFR part 177 et seq.;
- (2) A description of the emergency response plans and procedures the short term storage facility intends to take in the event of a reportable release or threatened release of a hazardous material which shall include, but not be limited to, the following:
  - a. Immediate notification to the Environmental Services Department;
  - b. Reserved;
- (3) A description of the procedures for the mitigation of a release or threatened release to minimize any potential harm or damage to persons,

property, or the environment;

- (4) A description of evacuation plans and procedures for persons at the short term storage facility which shall at least include immediate audible notice and warning to all persons on the site.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-106. Hazardous materials inventory statement.**

(a) *Submittal.* All short term storage facilities which may contain hazardous materials shall have a current hazardous materials inventory statement (HMIS) which must be filed with the permit application.

Additionally, HMIS must be kept current via online submittal, or if no internet service is available, through a large, metal, U.S. Postmaster approved mailbox which is clearly labeled in a marked area accessible to the Environmental Services Department.

(b) *Contents.* The hazardous materials inventory statement shall be the same as that required under the Emergency Planning and Community Right to Know Act (EPCRA), 42 USC section 11000 et seq.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-107. Posting of emergency procedures.**

All short term storage facilities shall have a current copy of the permittee's HMIS and ERP in a large, metal, U.S. Postmaster approved mailbox which is clearly labeled in a marked area accessible to the Environmental Services Department.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-108. Subdivision construction.**

Nothing in this subdivision shall be construed to conflict with, impede, interfere with, or relieve the requirements of state and federal regulations.

(Ord. No. 97-332, § 1, 1-5-98)

**Secs. 33-109--33-120. Reserved.**

*Subdivision IV. Temporary Storage Facilities*



## **Sec. 33-121. Permit classification.**

(a) *Classification.* A hazardous materials storage and handling permit with a temporary storage facility classification is for all temporary storage facilities where any hazardous materials may be placed in, on or about the storage facility.

(b) *Requirements.* Persons or entities subject to a temporary storage facility classification must meet and maintain the following requirements:

- (1) *Containment.* Hazardous materials which are liquid or solid at STP shall be stored in a primary and secondary level of containment which shall be installed and maintained according to the following:
  - a. All primary containment must be product-tight;
  - b. All secondary containment shall be as follows:
    1. Where only one (1) primary container is installed, the secondary containment shall be large enough to contain at least one hundred ten (110) percent of the volume of the primary container; and
    2. Where multiply primary containers are installed in a secondary containment, the secondary container shall be large enough to contain one hundred fifty (150) percent of the volume of the largest primary container placed in it, or ten (10) percent of the aggregate internal volume of all primary containers in the secondary containment, whichever is greater.
- (2) *HMMP.* A short form HMMP shall be prepared and submitted to the hazardous materials management permit office and shall include the information required in subsection 33-80(b).
- (3) *ERP.* An ERP shall be prepared and submitted to the hazardous materials management permit office and shall include the information required in subsection 33-81(b).
- (4) *Employee training.* Employees shall be trained according to the requirements in section 33-82.
- (5) *HMIS.* A HMIS shall be prepared and submitted to the hazardous materials management permit office and shall include the information required in subsection 33-83(b).
- (6) *Inspection and records.* Permittee inspection and records shall be done

according to section 33-84.

(Ord. No. 97-332, § 1, 1-5-98)

**Secs. 33-122--33-140. Reserved.**

*Subdivision V. Underground Petroleum Storage Tanks\**

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\***Editor's note**--Ord. No. 97-332, § 1, adopted Jan. 5, 1998, added Subdiv. V.,  
Underground Petroleum Storage Tanks, with the intent to reserve the subdivision for  
future use.  
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**Secs. 33-141--33-160. Reserved.**

DIVISION 3. UNAUTHORIZED DISCHARGES

**Sec. 33-161. Report to fire department.**

If a person or entity has good reason to believe that there has been an unauthorized discharge, the person or entity shall immediately report it to the city fire department .

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-162. Report if the discharge is at a long term storage facility or a temporary storage facility.**

(a) *Unauthorized discharges of liquids and solids at STP.* As soon as any person in charge of a long term storage facility or a temporary storage facility or the person responsible for emergency response at such storage facility could reasonably know about an unauthorized discharge in a state of liquid or solid at STP, such person shall immediately notify the fire department if the discharge is more than just a recordable unauthorized discharge.

(1) *Recordable unauthorized discharges.* All recordable unauthorized discharges shall be contained and safely disposed of in an appropriate manner by the permittee and such occurrence and the response thereto shall be recorded in the permittee's monitoring records.

a. *Exception.* A recordable unauthorized discharge does not have to be recorded in the permittee's monitoring records if the unauthorized discharge is not the result of the deterioration or

failure of the primary container and the quantity discharged is less than one (1) ounce by weight and can be cleaned up within fifteen (15) minutes.

b. *Reserved.*

(b) *Unconfirmed unauthorized discharge by inventory loss.*

- (1) *Inventory loss.* Whenever a material balance or other inventory record, employed as a monitoring technique under the HMMP, indicates a loss of hazardous material, and no unauthorized discharge has been confirmed by other means, the person or entity in charge of the storage facility shall have five (5) working days to determine whether or not there has been unauthorized discharge by conducting tests or other reliable studies.
- (2) *Results.* If before the end of five (5) days it is determined that there has been no unauthorized discharge, an entry explaining the occurrence shall be made in the person or entity's monitoring records. If there has been a confirmed unauthorized discharge, the person or entity shall report it according to subsection (a) above. Where the person or entity is unclear whether there has been no/an unauthorized discharge, the person or entity shall do additional tests as follows: Whenever any test results suggest a possible unauthorized discharge, and no unauthorized discharge has been confirmed by other means, the person or entity shall have five (5) working days to retest. If second test results obtained within that period establish that there has been no unauthorized discharge, the results of both tests shall be recorded in person or entity's monitoring records. If it has not been established within such period that there has been no unauthorized discharge, an unauthorized discharge is deemed confirmed and permittee shall report it according to subsection (a) above.

(c) *Gases at STP.* Any person in charge of a long term storage facility or a temporary storage facility or responsible for emergency response at such storage facility who could reasonably know of any unauthorized discharge in a state of gas at STP shall notify the city fire department if such unauthorized discharge presents a threat of imminent danger to public health and safety.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-163. Report if the discharge is at a short term storage facility.**

(a) In the event of a hazardous materials incident at a short term storage facility, all transporters shall comply with the notification requirements set forth in 49 CFR part 171.15.

(b) In the event of a hazardous materials incident at a short term storage facility,

all transporters shall complete and file a detailed incident report as required by 49 CFR part 171.16. A copy of the incident report shall be forwarded to the fire department within thirty (30) days of the incident and a copy shall be maintained and made available for inspection at the facility.

(c) In addition to the emergency response and reporting requirements set forth in 49 CFR parts 171, 172 and 177, all short term storage facilities must also report as follows.

- (1) *Unauthorized discharges of liquids and solids at STP.* As soon as any person in charge of a short term storage facility or the person responsible for emergency response at such storage facility could reasonably know about an unauthorized discharge in a state of liquid or solid at STP, such person shall immediately notify the fire department if the discharge is more than just a recordable unauthorized discharge.
  - a. *Recordable unauthorized discharges.* All recordable unauthorized discharges shall be contained and safely disposed of in an appropriate manner by permittee and such occurrence and the response thereto shall be recorded in the permittee's monitoring records.
    1. *Exception.* A recordable unauthorized discharge does not have to be recorded in the permittee's monitoring records if the unauthorized discharge is not the result of the deterioration or failure of the primary container and the quantity discharged is less than one (1) ounce by weight and can be cleaned up within fifteen (15) minutes.
    2. *Reserved.*
  - b. *Gases at STP.* Any person in charge of a short term storage facility or responsible for emergency response at such storage facility who could reasonably know of any unauthorized discharge in a state of gas at STP shall notify the city fire department if such unauthorized discharge presents a threat of imminent danger to public health and safety.

(2) *Reserved.*

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-164. Report information.**

Whenever a reporting party from a storage facility shall report an unauthorized discharge to the fire department, such party shall provide the following information

about the unauthorized discharge:

- (1) The ability of the permittee to contain and dispose of the hazardous material;
- (2) The estimated time it will take to complete containment and disposal; and
- (3) The degree of hazard that was created.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-165. Discharger action and remediation.**

(a) *Instant response.* A person or entity responsible for storing hazardous materials shall take the necessary steps to ensure the expedient discovery, containment and clean up of any unauthorized discharge.

(b) *Remedy.* Any person or entity responsible for storing hazardous materials shall institute and complete all actions necessary to remedy the effects of any unauthorized discharge, whether sudden or gradual.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-166. Hazardous waste generated during clean up operations.**

All materials used to contain, absorb or otherwise remediate a release, spill or discharge of hazardous materials shall be considered hazardous waste, until otherwise determined by appropriate testing methods as specified in 40 CFR 261 et seq.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-167. City action and remediation.**

(a) *fire department action.* Upon notification that there has been an unauthorized discharge, the city fire department shall determine whether the hazardous material is being contained or disposed of properly and assess the potential risks to the health and safety of the persons located near the discharge location.

(b) *fire department remediation.*

- (1) The fire department, at any time upon a determination that a person or entity or permittee is not adequately containing and disposing of such hazardous material, shall have the power and authority to undertake and direct an emergency response in order to protect the public health and safety.

- (2) The fire department shall undertake actions to remedy the effects of such unauthorized discharge itself, only if it determines that it is reasonably necessary under the circumstances for it to do so.

(c) *fire department follow-up investigation.* After an unauthorized discharge, the fire department shall investigate the person or entity's or permittee's storage facility, and notify the Environmental Services Department for noncompliance of this article.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-168. Responsibility for cost of remediation.**

(a) The person or entity responsible for an unauthorized discharge and/or the permittee with the storage facility where the unauthorized discharge occurred shall be responsible for all costs associated with remedying the effects of such unauthorized discharge.

(b) The person or entity responsible for the unauthorized discharge and/or the permittee with the storage facility where the unauthorized discharge occurred shall be liable to reimburse the city for all costs incurred by the city in remedying the effects of such unauthorized discharge, including the cost of fighting fires to the extent allowed by law. The responsibility to the city is not conditioned upon evidence of willfulness or negligence of the party storing the hazardous material in causing or allowing such discharge.

(c) Any party who under takes action to remedy the effects of an unauthorized discharge shall not be barred by this article from seeking to recover appropriate costs and expenditures from other responsible parties except where the hazardous material is considered a hazardous waste according to section 33-166.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-169. City charges.**

(a) *Generally.* The city shall charge for the actual cost incurred by the city in remedying the effects of an unauthorized discharge which may include, but not be limited to, the cost of removal, containment and clean up of hazardous material from or on private property, public right-of-way or city easement, including the cost of fighting fires to the extent allowable by law.

(b) *Statement sent.* If the city incurs expenses in remedying the effects of an unauthorized discharge, the hazardous materials management permit office shall send an itemized bill to the person or entity responsible for the unauthorized discharge or the permittee with the storage facility where the unauthorized discharge occurred where the hazardous material should have been contained.

(c) *Payment of charges.*

- (1) The person or entity or permittee shall pay the charges owed to the city within thirty (30) days of receipt of the statement.
- (2) No new or renewed permits, additional approvals or transfers of permits shall be approved until all charges owed to the city are paid in full.
- (3) Any late payment after (60) days will incur an additional charge of \$200.00.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-170. Indemnification.**

The permittee shall indemnify, hold harmless and defend the city against any claim, cause of action, disability, loss, liability, damage, cost or expense, howsoever arising, which occurs by reason of an unauthorized discharge in connection with the permittee's operations under its permit, except as arises from the city's sole willful act or sole active negligence.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-171. Contractor to notify city.**

It shall be unlawful for any emergency response hazardous material clean up contractor to commence clean up of a hazardous material at a location of an unauthorized discharge without first notifying the fire department and the Environmental Services Department.

(Ord. No. 97-332, § 1, 1-5-98)

**Secs. 33-172--33-190. Reserved.**

DIVISION 4. OUT OF SERVICE STORAGE FACILITIES

**Sec. 33-191. Closure approval required.**

(a) *Approval for partial facility closures.* A person or entity shall apply for and obtain approval from the Environmental Services Department to close a portion of a storage facility or storage system not less than thirty (30) days prior to the termination of the storage of hazardous materials at the portion of the storage facility or storage system.

(b) *Approval for total facility closure.* A person or entity shall apply for and obtain approval from the Environmental Services Department to totally close a storage facility not less than ninety (90) days prior to the termination of the storage of hazardous materials at the total storage facility.

(c) *Application required.* Each person or entity requiring additional approvals for a facility closure shall apply according to the procedures set forth in division 2 of this article II.

(d) *Standards for closures.*

(1) A partial closure of a storage facility or system shall be in a manner that:

- a. Minimizes the need for further maintenance;
- b. Eliminates any substantial risk to the public health or safety or to the environment from residual hazardous materials in the storage facility or storage system; and
- c. The hazardous materials that were stored in the storage facility or storage system are removed, disposed of, neutralized or reused in an appropriate manner.

(2) A total closure of a storage facility shall be in a manner that:

- a. The hazardous materials that were stored in the storage facility are removed, disposed of, or neutralized in an appropriate manner; and
- b. The facility is not contaminated as a result of the storage of hazardous materials.

(e) *Requirement of a closure plan.* Each applicant for a partial or total closure of a storage facility or storage system shall prepare and submit a closure plan with the application.

(f) *Content of closure plan.* A closure plan shall contain the following:

- (1) The names and addresses of the parties responsible for the closure application and closure plan; and
- (2) A description of the procedures the applicant intends to make to meet the closure standards.

(g) *Continued notification.* The responsible parties set forth in the closure plan shall notify the hazardous materials management permit office of any address change



which occurs within one (1) year of the effective date of the closure of the facility.

(h) *Public notification.* Any party may request a courtesy notice of a pending total facility closure. Such request shall be in the form of a filed written request with the hazardous materials management permit office for notification of closure pursuant to this section. Such request shall include five (5) self-addressed, stamped envelopes for each party requesting notification. When the five (5) included envelopes have been used for notification, the requesting party shall provide the hazardous materials management permit office with additional envelopes for notification. Parties who have filed such written request of any closure shall be notified within ten (10) working days of notification to the Environmental Services Department of such closure. Notification shall be made in writing and mailed. Any such request shall be valid from the date filed with the hazardous materials management permit office until the next July first. A renewal of request for such mailed notice shall be filed in writing on or before July first of each year in the manner specified above for such request to remain valid.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-192. Unlawful to abandon; closure plans.**

(a) *Unlawful to abandon.* It shall be unlawful for any person or entity, which may include a lessee or sublessee, to allow, maintain or cause a storage facility where hazardous materials were stored or are being stored to be abandoned without being in compliance with this division.

(b) *Closure plans.* All storage facilities subject to subsection (a), above, shall be closed in accordance with section 33-191 which includes having a closure plan submitted to the hazardous materials management permit office and approved by the Environmental Services Department prior to the closure.

(c) *Submittal of plans.* Any person or entity having an interest, including a leasehold interest, in real property with an abandoned storage facility located upon such property shall submit to the Environmental Services Department a plan for the closing or removing or the upgrading and permitting of such storage facility and shall file it within ninety (90) days of its discovery.

(Ord. No. 97-332, § 1, 1-5-98)

### **Sec. 33-193. Temporarily out of service storage facilities.**

(a) Long term storage facilities or storage systems which are temporarily out of service, and are intended to be returned to use, must continue to be monitored and inspected.

(b) Any storage facility or storage system which is not being monitored and inspected on a regular plan to be submitted to the Environmental Services Department

must be closed or removed according to section 33-191.

(Ord. No. 97-332, § 1, 1-5-98)

**Secs. 33-194--33-210. Reserved.**

DIVISION 5. INSPECTION AND ENFORCEMENT

**Sec. 33-211. Environmental Services Department inspections.**

The Environmental Services Department may inspect or cause to be inspected any storage facility for the purpose of ascertaining compliance with this chapter. The officer shall ascertain if there is a deficiency in the storage facility which needs to be corrected because it would constitute a violation of this article.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-212. Right of entry.**

Whenever necessary for the purpose of investigating or enforcing the provisions of this article or whenever any enforcement officer has reasonable cause to believe that there exists in any structure or upon any premises, any condition which constitutes a violation of this article, said officers may enter such structure or premises at all reasonable times to inspect the same, or to perform any duty imposed upon any of said respective officers by law; provided that if such structure or premises is occupied, the officer shall first present proper credentials and request entry, and further provided, that if such structure or premises is unoccupied, the officer shall first make a reasonable attempt to contact a responsible person from such firm or corporation and request entry, except in emergency circumstances. If such entry is refused, the officer seeking entry shall have recourse to every remedy provided by law to secure entry.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-213. Enforcement applicable to all facilities.**

The enforcement provisions set forth in this division are applicable to all facilities, activities covered by this article to the extent allowable by law.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-214. Violation and penalties.**

(a) *Criminal penalties.*

(1) Violations of the provisions shall be treated as an infraction, and shall,

upon conviction, be punishable by a fine of not more than two thousand dollars (\$2,000.00) per violation per day. Each day may constitute as a separate offense.

- (2) In determining the penalty, the court shall consider all relevant circumstances, including but not limited to the following:
  - a. The extent of harm or potential harm caused by the violation;
  - b. The nature and persistence of the violation;
  - c. The length of time over which violation occurred;
  - d. The frequency of past violations;
  - e. The permittee's record of maintenance;
  - f. Corrective action, if any, taken by the permittee.

(b) *Civil penalties.* In addition to any criminal enforcement, the city or any individual may pursue any available civil remedies deemed appropriate and necessary.

(c) *Violation of state law.* In addition to the civil and criminal penalties stated in this section, persons found to be in violation of the provision(s) of the state law(s) governing protection of the environment may be prosecuted and/or fined to the maximum extent allowable by law.

(Ord. No. 97-332, § 1, 1-5-98)

**Sec. 33-215. Remedies not exclusive.**

Remedies under this section are in addition to and do not supersede or limit any and all other remedies, civil or criminal, provided by law.

(Ord. No. 97-332, § 1, 1-5-98)

**Secs. 33-216--33-232. Reserved.**