TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGENDA ITEM REQUEST

for Rulemaking Adoption

AGENDA REQUESTED: January 30, 2013

DATE OF REQUEST: January 11, 2013

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Charlotte Horn, (512) 239-0779

CAPTION: Docket No. 2012-1530-RUL. Consideration of the adoption of amendments to Sections 305.50, 305.64, 305.69, and 305.122; and new Section 305.176 of 30 TAC Chapter 305, Consolidated Permits; amendments to Sections 324.1 - 324.4, 324.6, 324.7, and 324.11 - 324.16; and the repeal of Section 324.5 of 30 TAC Chapter 324, Used Oil Standards; and amendments to Sections 335.1, 335.2, 335.10 - 335.13, 335.19, 335.24, 335.61, 335.62, 335.69, 335.76, 335.78, 335.111, 335.112, 335.151, 335.152, 335.155, 335.168, 335.170, 335.213, 335.222, 335.251, 335.431, and 335.504; and new Section 335.79 of 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.

The adoption will establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country; establish an alternative set of generator requirements applicable to laboratories owned by eligible academic entities and address the specific nature of hazardous waste generation and accumulation in these laboratories; incorporate a number of technical corrections to the hazardous waste regulations in numerous final rules previously published in the *Federal Register*, such as typographical errors, incorrect or outdated citations, and omissions; remove "saccharin and its salts" from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded; incorporate technical corrections to 40 Code of Federal Regulations Part 262, Subpart K; include corrections to existing Used Oil Rules in 30 TAC Chapter 324; include corrections to existing Manifest Rules in 30 TAC Chapter 335; include corrections to previously adopted language from Checklists: 208, 213, 214, and 215; and require a new permit owner to provide acceptable financial assurance by the date of a permit transfer. The proposed rules were published in the October 5, 2012, issue of the *Texas Register* (37 TexReg 7871). (Cynthia Palomares, P.G., P.E., Susan White) (Rule Project No. 2012-038-335-WS)

Brent Wade
Deputy Director

Earl Lott
Division Director

Charlotte Horn
Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality
Interoffice Memorandum

To: Commissioners **Date:** January 11, 2013

Thru: Bridget C. Bohac, Chief Clerk
Zak Covar, Executive Director

From: Brent Wade, Deputy Director
Office of Waste

Docket No.: 2012-1530-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 305, Consolidated Permits
Chapter 324, Used Oil Standards
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
RCRA Authorization for Federal Rule Clusters XIX - XXI and Financial Assurance, Used Oil, and Manifest Revisions
Rule Project No. 2012-038-335-WS

Background and reason(s) for the rulemaking:
In order for the State of Texas to be consistent with certain federal solid and hazardous waste requirements and to maintain its Resource Conservation and Recovery Act (RCRA) authorization, TCEQ must incorporate specific United States Environmental Protection Agency (EPA) federal rule changes into state rules. The reason for this adopted rulemaking is to incorporate new federal rule changes relating to solid and hazardous waste into 30 TAC Chapters 305, 324, and 335.

Scope of the rulemaking:
A.) Summary of what the rulemaking will do:
Parts of EPA federal rule changes in Rule Clusters XIX - XXI are included in this adopted rulemaking, amending Chapters 305 and 335. Additionally, revisions to Chapters 305, 324, and 335 are included in this rulemaking to make corrections to existing rule language in response to specific recommendations by EPA. Furthermore, revisions to the Financial Assurance (FA) requirements in Chapter 305 for transfer of a hazardous waste permit are included in this rulemaking to ensure that there is no lapse in FA for a permitted facility and to ensure that FA requirements are consistent among TCEQ programs.

B.) Scope required by federal regulations or state statutes:
This rulemaking updates Chapter 305 and Chapter 335 to include federal rule changes that are both mandatory and optional and that are set forth in parts of RCRA Clusters XIX - XXI. Each cluster contains one or more checklists, and each checklist explains specific rule language changes.

The one adopted rule change that is mandatory, Checklist 222, establishes notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country.

The adopted rule changes that are optional include Checklists 220, 223, 225, and 226.

Adopted rule changes in Checklist 220 establish an alternative set of generator requirements applicable to laboratories owned by eligible academic entities and address the specific nature of hazardous waste generation and accumulation in these laboratories. EPA has created new 40 Code of Federal Regulations (CFR) Part 262, Subpart K to establish these standards. This amendment is of special interest to Texas universities with laboratories.

Adopted rule changes in Checklist 223 make a number of technical corrections to the hazardous waste regulations in numerous final rules previously published in the *Federal Register*, such as typographical errors, incorrect or outdated citations, and omissions. Adopting these changes into the state rules avoids confusion by both TCEQ and regulated entities.

Adopted rule changes in Checklist 225 remove "saccharin and its salts" from the lists of hazardous constituents and commercial chemical products which are hazardous wastes when discarded or intended to be discarded. No action is required to revise the state rule for this Checklist because the hazardous waste definition and any subsequent amendments were previously adopted by reference.

Adopted rule changes in Checklist 226 incorporate technical corrections to 40 CFR Part 262, Subpart K, which is included in Checklist 220 of this rulemaking. The corrections are adopted concurrently to avoid confusion by the academic laboratories which are subject to the rule.

In addition, this rulemaking includes corrections to existing Used Oil Rules in Chapter 324 (Checklists 203, 208, and 214), existing Manifest Rules in Chapter 335 (Checklist 207), and previously adopted language from Checklists: 208, 213, 214, and 215. These changes revise language and correct typographical errors, revise incorrect or outdated citations, and incorporate omissions as recommended by EPA.

C.) Additional staff recommendations that are not required by federal rule or state statute:

The adopted rulemaking also revises §305.64(g) to require the new permit owner to provide acceptable FA by the date of a permit transfer. Current state and federal rules allow for up to six months after a change in ownership or operational control for the new owner to comply with the FA requirements. Current rules contemplate uninterrupted FA, meaning the prior permittee continues its FA for the benefit of the new permittee; however, this is problematic. Specific mechanisms, such as insurance policies, create significant risk. Once the permit is transferred, insurance companies have stated there is no longer an insurable interest and they have refused to pay. Other mechanisms, such as the financial test, do not lend themselves to being continued for the new permittee. Also, there has been a situation where a new permittee is unable and/or unwilling to provide any FA. This rule change makes the state rule more stringent than the federal rule; however,

this change makes the FA requirements consistent with other permitting and licensing programs at TCEQ and reduces the likelihood of any financial burden for potential corrective action by the State of Texas.

Statutory authority:

- Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and
- Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

Effect on the:

A.) Regulated community:

The regulated community that is affected by this adopted rulemaking includes industry and other entities involved in the generation, transportation, treatment, storage, and disposal of hazardous waste under the RCRA.

B.) Public:

Members of the general public that are located near these regulated entities should not be affected.

C.) Agency programs:

By adoption of these rules, the TCEQ RCRA program will have expanded authorization to administer the RCRA program.

Stakeholder meetings:

No stakeholder meetings have been held.

Public comment:

The comment period closed on November 5, 2012. No comments were received.

Significant changes from proposal:

No changes from rule proposal have been made.

Potential controversial concerns and legislative interest:

No controversial matters are anticipated from this adopted rulemaking.

Will this rulemaking affect any current policies or require development of new policies?

No policy issues are affected.

Re: Docket No. 2012-1530-RUL

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?
If the mandatory amendments in this rulemaking are not adopted, the State of Texas hazardous waste program may not maintain equivalency to EPA's federal hazardous waste program. If equivalency is not maintained, Texas may lose RCRA authorization status, as well as the federal grant funds issued to administer this program in Texas.

Key points in the proposal rulemaking schedule:
***Texas Register* proposal publication date:** October 5, 2012
Anticipated *Texas Register* publication date: February 15, 2013
Anticipated effective date: February 21, 2013
Six-month Texas Register filing deadline: April 4, 2013

Agency contacts:
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Attachments

cc: Chief Clerk, 2 copies
Executive Director's Office
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Office of General Counsel
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The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§305.50, 305.64, 305.69, 305.122; and new §305.176.

Amended §§305.50, 305.64, 305.69, 305.122, and new 305.176 are adopted *without changes* to the proposed text as published in the October 5, 2012 issue of the *Texas Register* (37 TexReg 7871), and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards

of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations periodically to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under the RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, October 18, 1999, September 11, 2000, June 14, 2005 (Clusters III - X), March 5, 2009 (Clusters XI - XV), and May 7, 2012 (Clusters IX and XV - XVIII).

The commission adopts in this rulemaking parts of RCRA Rule Clusters XIX - XXI that implement revisions to the federal hazardous waste program, which were made by EPA between July 1, 2008 and June 30, 2011. Both mandatory and optional federal rule changes in these clusters are adopted. Adoption of one of the federal rule changes is mandatory in order to maintain RCRA authorization. Although not necessary in order to maintain authorization, EPA also recommends that the optional federal rule changes be incorporated into the state rules. In addition, the commission adopts revisions to parts of previously adopted Clusters XIV - XVII that implement revisions requested by

EPA to maintain authorization. Establishing equivalency with federal regulations will enable the State of Texas to operate all aspects of the federal hazardous waste program in lieu of the EPA.

The commission also adopts revisions to Chapter 305 to clarify requirements for financial capability reviews in conjunction with permit issuances, amendments, transfers, extensions, and renewals for hazardous waste management facilities and also to revise the timing of financial assurance submittals by new owners in conjunction with permit transfers for hazardous waste management facilities.

All adopted rule changes are discussed further in the Section by Section Discussion portion of this preamble. Two corresponding rulemakings are published in this issue of the *Texas Register* and include changes to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste and 30 TAC Chapter 324, Used Oil Standards.

Section by Section Discussion

The commission adopts administrative changes throughout the rulemaking to reflect the agency's current practices and to conform to *Texas Register* and agency guidelines. These adopted changes include correcting typographical, spelling, and grammatical errors.

§305.50, Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order

The commission adopts an amendment to §305.50, by reorganizing existing requirements for financial assurance in subsection (a)(4)(B) - (D) into subsection (a)(4)(B). The reorganization will make it easier to understand the information requirements for financial capability reviews. Existing subparagraphs (E) - (G) are relettered to reflect the elimination of subparagraphs (C) and (D).

§305.64, Transfer of Permits

The commission adopts an amendment to §305.64(g), to require new owners and operators of hazardous waste management facilities to provide acceptable financial assurance before the date that a permit modification is issued authorizing the transfer of the permit to the new owner or operator. This change is adopted to reduce the potential for the State of Texas to have to take on the obligation to pay for proper closure, post-closure or corrective action for a site lacking financial assurance. Existing rules require a new permittee to provide financial assurance within six months of a change in ownership or operational control with the previous owner maintaining financial assurance until the new permittee does so. This requirement does not change. An additional requirement is added that the new owner or operator must provide acceptable financial assurance before the modification transferring the permit will be issued. Collectability under certain financial assurance mechanisms is not assured once

a permit has been transferred. For example, insurance companies have claimed that a transferor has no insurable interest once a facility has been sold and the permit transferred. In addition, prior owners of hazardous waste management facilities sometimes rely on TCEQ to aggressively pursue recalcitrant new owners to provide financial assurance in order to obtain release of the old owner's financial assurance mechanism rather than establishing a remedy in the sales contract.

This adopted change will make the timing requirements regarding new financial assurance for hazardous waste management facilities more consistent with other programs at TCEQ. For instance, financial assurance for underground injection control (UIC) wells must be provided by the date of the permit transfer. Since many underground injection control wells are owned in combination with hazardous waste management facilities, transfer of a portion of the financial assurance is already provided by the date of the permit transfer. In addition, language is being revised to clarify that the previous owner or operator must submit a request to the executive director in order for the executive director to allow termination of the financial assurance mechanism.

§305.69, Solid Waste Permit Modification at the Request of the Permittee

The commission adopts an amendment to §305.69(d)(2) to correct the reference to the title of 30 TAC §39.11 to *Text of Public Notice.*

The commission also adopts §305.69(d)(7) to clarify that the notice requirements of §305.69 do not apply to industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

In addition, the commission adopts an amendment to §305.69(k), Appendix I (C)(6) to correct a reference from §335.164(10) to §335.164(8). Due to renumbering of §335.164 in a previous rulemaking, the correct citation is §335.164(8).

Furthermore, the commission adopts an amendment to §305.69(k), Appendix I (C)(7)(b) to correct a reference from §335.165(11) to §335.165(13). Due to renumbering of §335.165 in a previous rulemaking, the correct citation is §335.165(13).

The commission adopts an amendment to §305.69(k), Appendix I (C)(8)(a) to correct a reference from §335.165(9)(B) to §335.165(11)(B). Due to renumbering of §335.165 in a previous rulemaking, the correct citation should be §335.165(11)(B).

§305.122, Characteristics of Permits

The commission adopts §305.122(b) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment will reinstate a missing sentence which was inadvertently omitted by EPA. The adopted rule

will allow certain changes to permits for cause, such as, modification, revocation and reissuance, or termination. It will also allow modification to a permit upon request of a permittee. Such changes must be consistent with applicable federal regulations. The paragraph and subparagraphs in the subsection have been renumbered and relettered accordingly. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain RCRA authorization.

§305.176, Integration with Maximum Achievable Control Technology (MACT) Standards

The commission adopts new §305.176 to increase the options to integrate air quality standards into a RCRA hazardous waste permit. The new language will conform to federal regulations previously promulgated in the October 12, 2005, issue of the *Federal Register* (70 FR 59402). The adopted new section does not set or impose any new air quality standards. The Hazardous Waste Combustion MACT regulations are multi-media regulations at the federal and state level, affecting both air quality and hazardous waste management. The TCEQ has already adopted certain parts of 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE (i.e., the Hazardous Waste Combustion MACT rules) prior to this rulemaking under Chapter 305 and air quality regulations at 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants. This rulemaking will incorporate integration options with MACT standards for hazardous waste incinerators in Chapter 305, Subchapter I. In a previous rulemaking, an amendment regarding the integration options with MACT

standards was adopted into §305.572 for boilers and industrial furnaces. Conforming language is adopted in §305.176 to adopt by reference 40 CFR §270.235, Options for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers and Hydrochloric Acid Production Furnaces to Minimize Emissions from Startup, Shutdown, and Malfunction Events. The addition of §305.176 will provide greater flexibility by allowing operators of incinerators the same integration options with MACT standards as operators of boilers and industrial furnaces in §305.572.

Final Regulatory Impact Determination

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions under 42 United States Code (USC), §6926(g), which already imposes the more stringent federal requirements on the regulated

community under the Hazardous and Solid Waste Amendments of 1984. Likewise, there is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, the changes move forward compliance with financial assurance requirements without changing those requirements, or the regulated community benefits from the greater flexibility and reduced compliance burden. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal rules, equivalent state rules will not cause any adverse effects. There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). First, the rulemaking does not exceed a standard set by federal law. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program. The other changes do not alter substantive requirements although various changes may increase flexibility for the regulated community and

move forward compliance deadlines. Second, although the rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program. Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the waste program. And fourth, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission adopts this rulemaking under Texas Water Code, §5.103 and §5.105 and under Texas Health and Safety Code, §361.017 and §361.024.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, but received no comments relating to this subject.

Takings Impact Assessment

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 applies. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law;

therefore, this action is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the rulemaking is to maintain state RCRA authorization by adopting state hazardous waste rules that are equivalent to the federal regulations. The rulemaking substantially advances this purpose by adopting rules that incorporate and refer to the federal regulations. Promulgation and enforcement of the rules is not a statutory or constitutional taking of private real property. Specifically, the rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules does not burden, restrict, or limit the owner's right to property and does not reduce the value of property by 25% or more. Likewise, the regulated community is not unduly burdened by those revisions providing greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking and found that the rulemaking is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 *et seq*. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the adopted rulemaking will update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules will not violate any applicable provisions of the CMP's stated goals and policies.

The commission invited public comment regarding the consistency of this rulemaking

with the CMP during the public comment period, but received no comments relating to this subject.

Public Comment

The comment period closed on November 5, 2012. No comments were received.

SUBCHAPTER C: APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

§305.50

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), THSC, §361.085 (relating to Financial Assurance and Disclosure by Permit Applicant), and THSC, §361.024 (relating to Rules and Standards) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order.

(a) Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste must meet the following requirements.

(1) One original and three copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided must be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health, and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the State of Texas. For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act (TSWDA) and Chapter 335 of this

title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the TSWDA, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste is subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13 - 270.27 (as amended though July 14, 2006 (71 Federal Register 40254)), except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate <u>and close</u> the facility in a safe manner [and] in compliance with the permit

and all applicable rules as well as [, including, but not limited to,] how an applicant intends to obtain financing for construction of the facility[, and to close the facility properly]. Financial information necessary [submitted] to satisfy this subparagraph shall be as follows: [meet the requirements of subparagraph (C) or (D) of this paragraph.]

(i) For publicly traded entities:

(I) copies of the most recent two Securities and Exchange Commission Form 10-Ks;

(II) a copy of the Securities and Exchange Commission Form 10-Q for the most recent quarter;

(III) a statement signed by an authorized signatory consistent with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage consistent with Chapter 37, Subchapter P of this title (relating to

Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities); and

(IV) estimates of capital costs for expansion and/or construction if the application encompasses facility expansion, capacity expansion, or new construction; or

(ii) For privately held entities with audited financial statements for either of the most recent two fiscal years:

(I) complete copies of the audited financial statements for each of the most recent two fiscal years if audits have been performed in each year. If an audit has not been completed for one of the previous two years, a complete copy of the fiscal year end financial statement and federal tax return may be substituted in lieu of the audit not performed. The tax return must be certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service." Financial statements shall be prepared consistent with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statement, and accountant's opinion letter;

(II) a complete copy of the most current quarterly financial statement prepared consistent with generally accepted accounting principles;

(III) a written statement detailing the information that would normally be found in Securities and Exchange Commission's Form 10-K including descriptions of the business and its operations; identification of any affiliated relationships; credit agreements and terms; any legal proceedings involving the applicant; contingent liabilities; and significant accounting policies;

(IV) estimates of capital costs for expansion and/or construction if the application encompasses facility expansion, capacity expansion, or new construction; and

(V) a statement signed by an authorized signatory consistent with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title; or

(iii) For privately held entities without audited financial statements for either of the two most recent fiscal years, or entities choosing not to provide the information provided in clauses (i), (ii), or (iv) of this subparagraph:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing;

(II) a written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure,

post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided;

(III) a statement addressing how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title; and

(IV) estimates of capital costs for expansion and/or construction if the application encompasses facility expansion, capacity expansion, or new construction; or

(iv) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of this subparagraph:

(I) a statement signed by an authorized signatory consistent with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements

for closure, post-closure, corrective action, and liability coverage consistent with Chapter 37, Subchapter P of this title;

(II) a certified copy of the resolution; and

(III) certification by the governing body of passage of the resolution.

[(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:]

[(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to

Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities);]

[(ii) a certified copy of the resolution; and]

[(iii) certification by the governing body of passage of the resolution.]

[(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph must include the applicable items listed under clauses (i) - (vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:]

[(i) a statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for

closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title;]

[(ii) for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements:]

[(I) audited financial statements for the previous two years; and]

[(II) the most current quarterly financial statement prepared according to generally accepted accounting principles;]

[(iii) for applicants for which audited financial statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements:]

[(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service";]

[(II) financial statements for the previous two years; and]

[(III) additionally, an audited financial statement for the most recent fiscal year;]

[(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;]

[(v) for privately-held companies, written disclosure of the information that would normally be found in Securities and Exchange Commission Form 10-K including, but not limited to, the following:]

[(I) descriptions of the business and its operations;]

[(II) identification of any affiliated relationships;]

[(III) credit agreements and terms;]

[(IV) any legal proceedings involving the applicant;]

[(V) contingent liabilities; and]

[(VI) significant accounting policies;]

[(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction;]

[(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i) - (v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:]

[(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either

finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and]

[(II) written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.]

(C) [(E)] If any of the information required to be disclosed under subparagraph (B) [(D)] of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(D) [(F)] An application for a modification or amendment of a permit that includes a capacity expansion of an existing hazardous waste management facility must also contain information provided by a Texas licensed professional geoscientist or licensed professional engineer delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the United States Environmental Protection Agency [EPA], that:

(i) the fault has not experienced displacement within Holocene time, or if faults have experienced displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(E) [(G)] At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the

information specified in 40 CFR §§270.14 - 270.27. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report prepared by a Texas licensed professional geoscientist or licensed professional engineer documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a Texas licensed professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such releases.

(9) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a solid waste management facility permit to provide for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application must also contain the following:

(A) copies of any relevant land use plans, adopted in accordance with the Texas Local Government Code, Chapter 211, which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

(B) identification of the names and locations of industrial and other waste-generating facilities within 1/2 mile of the facility in the case of an application for a permit for a new on-site hazardous waste management facility, and within one mile of the facility in the case of an application for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(D) [(4)(F)]of this subsection.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land

disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles traveling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles traveling to and from the facility within a minimum radius of 2 1/2 miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 1/2 mile radius;

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant may submit a letter from the relevant agency of the state, county, or municipality which has the authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the facility would not constitute a burden and thus would not require that improvements be made to such roadways. Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case

emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 CFR §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane;

(V) a training program for personnel for response to such emergencies;

(VI) identification of first-responders;

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Commission on Environmental Quality, Texas Parks and Wildlife, General Land Office, Texas Department of State Health Services, and Texas Railroad Commission);

(X) a showing of coordination with the local emergency planning committee and any local comprehensive emergency management plan; and

(XI) any medical response capability which may be available on the facility property; or

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive director to manage a reasonable worst-case emergency

condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

(I) long-term studies using an environmental model which provide the amount of damages for which the facility is responsible; and

(II) costs involved in supplying any of the information included in or satisfying any of the requirements of clause (i)(I) - (XI) of this subparagraph;

(D) if an applicant does not elect to provide its own facilities or secure bonding to ensure sufficient emergency response capabilities in accordance with §335.183 of this title (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities), the applicant must provide prior to the time the facility first receives waste:

(i) documentation showing agreements with the county and/or municipality in which the facility is located, or documentation showing agreements with an adjoining county, municipality, mutual aid association, or other appropriate entity such as professional organizations regularly doing business in the area of emergency and/or disaster response; or

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

(E) a written statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraph (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience in hazardous waste management and in particular the hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that lack of experience.

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed

hazardous waste from transport vehicles (containers, as defined in 40 CFR §266.111) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) and (4)(A) [§305.127(4)(A) and (1)(B)(iii)] of this title (relating to Conditions to be Determined for Individual Permits).

(15) If the executive director concludes, based on one or more of the factors listed in subparagraph (A) of this paragraph that compliance with the standards of 40 CFR Part 63, Subpart EEE alone may not be protective of human health or the environment, the executive director shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The executive director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required. The executive director shall base the evaluation of whether compliance with the standards of 40 CFR Part 63, Subpart EEE

alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(A) particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day-care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(B) identities and quantities of emissions of persistent, bioaccumulative, or toxic pollutants considering enforceable controls in place to limit those pollutants;

(C) identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);

(D) identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(E) presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(F) volume and types of wastes, for example wastes containing highly toxic constituents;

(G) other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(H) adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(I) such other factors as may be appropriate.

(16) If, as the result of an assessment(s) or other information, the executive director determines that conditions are necessary in addition to those required under 40 CFR Part 63, Subpart EEE, Parts 264 or 266 to ensure protection of human health and the environment, including revising emission limits, he/she shall include those terms and conditions in a Resource Conservation and Recovery Act permit for a hazardous waste combustion unit.

(b) An application specifically for a post-closure permit or for a post-closure order for post-closure care must meet the following requirements, as applicable.

(1) An application for a post-closure permit or a post-closure order shall contain information required by 40 CFR §270.14(b)(1), (4) - (6), (11), (13), (14), (18), and (19), (c), and (d), and any additional information that the executive director determines is necessary from 40 CFR §§270.14, 270.16 - 270.18, 270.20, or 270.21, except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §§37.131, 37.141, 335.127, and 335.178 of this title.

(2) An application for a post-closure order shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the post-closure order and all applicable rules. Financial information submitted to satisfy this paragraph shall meet the requirements of Chapter 37, Subchapter P of this title.

(3) An application for a post-closure order or for a post-closure permit must also contain any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the

requirements of the TSWDA and Chapter 335 of this title including, but not limited to, the information set forth in TSWDA, §361.109.

(4) The executive director may require an applicant for a post-closure order to submit information in order to establish conditions under §305.127(4)(A) of this title.

(5) An application for a post-closure order or for a post-closure permit shall also contain the information listed in §305.45(a)(1) of this title (relating to Contents of Application for Permit).

(6) All engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geosciences Practice Act and the licensing and registration boards under these acts.

(7) One original and three copies of an application for a post-closure permit or for a post-closure order shall be submitted on forms provided by, or approved by, the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

SUBCHAPTER D: AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

§305.64, §305.69

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), THSC, §361.085 (relating to Financial Assurance and Disclosure by Permit Applicant), and THSC, §361.024 (relating to Rules and Standards) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

§305.64. Transfer of Permits.

(a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the

secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

(1) the name and address of the transferee;

(2) date of proposed transfer;

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;

(4) a fee of $100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fee);

(5) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and

(6) any other information the executive director may reasonably require.

(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date of the approved transfer. This section is not intended to relieve a transfer or of any liability.

(d) The executive director must be satisfied that proof of any required financial responsibility is sufficient before transmitting an application for transfer to the commission for further proceedings.

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

(f) The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been

entirely met. The commission shall also consider the prior compliance record of the transferee, if any.

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), until the new owner or operator has demonstrated compliance with the requirements of Chapter 37, Subchapter P of this title. The new owner or operator must demonstrate compliance with the requirements of Chapter 37, Subchapter P of this title within six months of the date of the change of ownership or operational control of the facility. <u>Prior to the executive director issuing the permit modification transferring the permit, the new owner or operator must provide proof of financial assurance in compliance with Chapter 37, Subchapter P of this title.</u> Upon

demonstration to the executive director [by the new owner or operator] of compliance with Chapter 37[, Subchapter P] of this title, the executive director shall notify the old owner or operator that he no longer needs to comply with Chapter 37, Subchapter P of this title as of the date of demonstration.

(h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:

(1) the permittee no longer owns the permitted facilities;

(2) the permittee is about to abandon or cease operation of the facilities;

(3) the permittee has abandoned or ceased operating the facilities; and

(4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

(1) the permittee no longer owns or controls the permitted facilities;

(2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;

(3) the permittee has failed or is failing to comply with the terms and conditions of the permit;

(4) the permitted facilities have been or are about to be abandoned;

(5) the permittee has violated commission rules or orders;

(6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;

(7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or

(8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state and/or would minimize the damage to the environment; and

(9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

(k) For standard permits, changes in the ownership or operational control of a facility may be made as a Class 1 modification to the standard permit with prior approval from the executive director in accordance with §305.69(k) [§305.69(l)(a)(7)] of this title.

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

(a) Applicability. This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are

covered in §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(b) Class I modifications of solid waste permits.

(1) Except as provided in paragraph (2) of this subsection, the permittee may put into effect Class 1 modifications listed in Appendix I of subsection (k) of this section under the following conditions:

(A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41 - 305.45 and 305.47 - 305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and

for a Post-Closure Order; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(B) the permittee must send notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and

(C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I of subsection (k) of this section by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (c) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (c)(1) of this section.

(c) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of subsection (k) of this section, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title and §§305.41 - 305.45 and 305.47 - 305.53 of this title;

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the executive director evidence of the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with paragraph (4) of this subsection;

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, subparagraphs (A), (B), (C), (D), or (E) of this paragraph must be met, subject to §50.33 of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization; or

(E) the executive director must notify the permittee that the executive director or the commission will decide on the request within the next 30 days.

(7) If the executive director notifies the permittee of a 30-day extension for a decision, then no later than 120 days after receipt of the modification request, subparagraphs (A), (B), (C), or (D) of this paragraph must be met, subject to §50.33 of this title, as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(8) If the executive director or the commission fails to make one of the decisions specified in paragraph (7) of this subsection by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities). If the commission approves, with or without changes, or denies any modification request during the term of the temporary authorization issued pursuant to paragraph (6) or (7) of this subsection, such action cancels the temporary authorization. The commission is the sole authority for approving or denying the modification request during the term of the temporary authorization. If the executive director or the commission approves, with or without changes, or if the commission denies the modification request during the term of the automatic authorization provided for in this paragraph, such action cancels the automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, if the executive director or the commission has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §39.13 of this title, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(B) unless the executive director or the commission acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in paragraph (9) of this subsection, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in paragraph (13) of this subsection, if the executive director or the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendments) or this section. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title.

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the executive director or the commission in accordance with paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (f) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission or the executive director may change the terms of, and the commission may deny a Class 2 permit modification request under paragraphs (6) - (8) of this subsection for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request

unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(d) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of subsection (k) of this section, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title and §§305.41 - 305.45 and 305.47 - 305.53 of this title; and Subchapter Q of this chapter (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request and evidence of the mailing and publication of the notice shall be provided to the executive director. The notice shall include the following:

(A) all information required by §39.11 of this title (relating to Text of Public [Mailed] Notice);

(B) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(C) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with paragraph (4) of this subsection;

(D) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

(F) identification of the location where copies of the modification request and any supporting documents can be viewed and copied; and

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of Chapter 39 of this title (relating to Public Notice), Chapter 50 of this title (relating to Action on Applications and Other Authorizations), and Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment). When a permit is modified, only the conditions subject to modification are reopened.

(7) Except as otherwise required by Chapter 39 of this title, the notice requirements in this section do not apply to Class 3 modification applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of subsection (k) of this section, the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or

Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I of subsection (k) of this section and the following criteria.

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(f) Temporary authorizations.

(1) Upon request of the permittee, the commission may grant the permittee a temporary authorization having a term of up to 180 days, in accordance with this subsection, and in accordance with the following public notice requirements:

(A) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(B) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in paragraph (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii) - (v) of this subsection and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with the applicable standards of Chapter 335, Subchapter F of this title and 40 Code of Federal Regulations (CFR) Part 264.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §39.13 of this title. This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the applicable standards of Chapter 335, Subchapter F of this title and 40 CFR Part 264; and

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with Chapter 335, Subchapter O of this title (relating to Land Disposal Restrictions), 40 CFR Part 268, or Section 3004 of the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §6924;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has requested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the

authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

(g) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §39.13 of this title within ten working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within ten working days after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The executive director's or the commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the commission's rules and in the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR Part 261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of Chapter 335, Subchapter E of this title, Chapter 335, Subchapter H, Divisions 1 through 4 of this title (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to Section 6921 of the Resource Conservation and Recovery Act Subtitle C (Subchapter III Hazardous Waste Management, 42 United States Code, §§6921 - 6939e); and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR Part 265 groundwater monitoring requirements and with Chapter 37 of this title (relating to Financial Assurance) on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(i) Combustion facility changes to meet 40 CFR Part 63, Maximum Achievable Control Technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of subsection (k) of this section.

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c) that were in effect prior to October 11, 2000, as amended in 40 CFR §270.42(j) through October 12,

2005 (70 Federal Register 59402), before a permit modification can be requested under this section.

(2) If the executive director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The executive director may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

(3) Facility owners or operators may request to have specific RCRA operating and emissions limits waived by submitting a Class 1 permit modification request under L.10. in Appendix I of subsection (k) of this section. The facility owner or operator must:

(A) identify the specific RCRA permit operating and emissions limits which are requested to be waived;

(B) provide an explanation of why the changes are necessary to minimize or eliminate conflicts between the RCRA permit and MACT compliance;

(C) discuss how the revised provisions will be sufficiently protective; and

(D) the executive director shall notify the facility owner or operator whether the Class 1 permit modification has been approved or denied. If denied, the executive director shall provide justification for denial.

(4) To request the modification referenced in paragraph (3) of this subsection in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR §63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the executive director); the owner or operator must:

(A) submit the modification request to the executive director at the same time the test plans are submitted to the executive director; and

(B) the executive director may elect to approve or deny the request contingent upon approval of the test plans.

(j) Military hazardous waste munitions storage, processing, and disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(1) the facility is in existence as a hazardous waste facility, and the facility is already permitted to handle waste military munitions, on the date when waste military munitions become subject to hazardous waste regulatory requirements;

(2) on or before the date when waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or revise the permit provision restricting the receipt of off-site waste munitions; and

(3) the permittee submits a Class 2 modification request within 180 days of the date when the waste military munitions become subject to hazardous waste regulatory requirements.

(k) Appendix I. The following appendix will be used for the purposes of this subchapter which relates to industrial and hazardous solid waste permit modification at the request of the permittee.

Figure: 30 TAC §305.69(k)

Modifications Class
A. General Permit Provisions
1. Administrative and informational
changes.....1

2. Correction of typographical errors.....1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls).....1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:
a. To provide for more frequent monitoring, reporting, sampling, or maintenance.....1
b. Other changes.....2
5. Schedule of compliance
a. Changes in interim compliance dates, with prior approval of the executive director.....1[1]
b. Extension of final compliance date.....3
6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director.....1[1]
7. Changes in ownership or operational control of a facility, provided the procedures of §305.64(g) of this title (relating to Transfer of Permits) are followed.....1[1]
8. Six months or less extension of the construction period time limit applicable to commercial hazardous waste management units in accordance with §305.149(b)(2) or (4) of this title (relating to Time Limitation for Construction of Commercial Hazardous Waste Management Units).....2
9. Greater than six-month extension of the commercial hazardous waste management unit construction period time limit in accordance with §305.149(b)(3) or (4) of this title.....3
10. Any extension in accordance with §305.149(b)(3) of this title of a construction period time limit for commercial hazardous waste management units which has been previously authorized under §305.149(b)(2) of this title.....3
11. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility).....1[1]
B. General Facility Standards
1. Changes to waste sampling or analysis methods:
a. To conform with agency guidance or regulations.....1
b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods.....1[1]
c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes.....1[1]
d. Other changes.....2
2. Changes to analytical quality assurance/control plan:

a. To conform with agency guidance or regulations.....1
b. Other changes.....2
3. Changes in procedures for maintaining the operating
record.....1
4. Changes in frequency or content of inspection
schedules.....2
5. Changes in the training plan:
a. That affect the type or decrease the amount of training given
to employees.....2
b. Other changes.....1
6. Contingency plan:
a. Changes in emergency procedures (i.e., spill or release
response procedures).....2
b. Replacement with functionally equivalent equipment, upgrade,
or relocate emergency equipment listed.....1
c. Removal of equipment from emergency equipment list.....2
d. Changes in name, address, or phone number of coordinators
or other persons or agencies identified in the plan.....1
7. Construction quality assurance (CQA) plan:
a. Changes that the CQA officer certifies in the operating record
will provide equivalent or better certainty that the unity
components meet the design specifications.....1
b. Other Changes.....2
Note: When a permit modification (such as introduction of a new unit) requires a change in
facility plans or other general facility standards, that change shall be reviewed under the same
procedures as the permit modification.
C. Groundwater Protection
1. Changes to wells:
a. Changes in the number, location, depth, or design of
upgradient or downgradient wells of permitted groundwater
monitoring system.....2
b. Replacement of an existing well that has been damaged or
rendered inoperable, without change to location, design, or
depth of the well.....1
2. Changes in groundwater sampling or analysis procedures or
monitoring schedule, with prior approval of the executive director.....1[1]
3. Changes in statistical procedure for determining whether a statistically
significant change in groundwater quality between upgradient and
downgradient wells has occurred, with prior approval of the executive
director.....1[1]

4. Changes in point of compliance.....2
5. Changes in indicator parameters, hazardous constituents, or concentration limits (including alternate concentration limits (ACLs)):
a. As specified in the groundwater protection standard.....3
b. As specified in the detection monitoring program.....2
6. Changes to a detection monitoring program as required by §335.164((8)[(10)]) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix.....2
7. Compliance monitoring program:
a. Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title, and §335.165 of this title (relating to Compliance Monitoring Program).....3
b. Changes to a compliance monitoring program as required by §335.165((13)[(11)]) of this title, unless otherwise specified in this appendix.....2
8. Corrective action program:
a. Addition of a corrective action program pursuant to §335.165((11)[(9)])(B) of this title and §335.166 of this title (relating to Corrective Action Program).....3
b. Changes to a corrective action program as required by §335.166(8) of this title, unless otherwise specified in this appendix.....2
D. Closure
1. Changes to the closure plan:
a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director.....1[1]
b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director.....1[1]
c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director.....1[1]
d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director.....1[1]
e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless

otherwise specified in this appendix.....2
f. Extension of the closure period to allow a landfill, surface
impoundment or land treatment unit to receive nonhazardous
wastes after final receipt of hazardous wastes under 40 Code
of Federal Regulations (CFR), §264.113(d) and (e).....2
2. Creation of a new landfill unit as part of
closure.....3
3. Addition of the following new units to be used temporarily for closure
activities:
a. Surface impoundments.....3
b. Incinerators.....3
c. Waste piles that do not comply with 40 CFR §264.250(c).....3
d. Waste piles that comply with 40 CFR §264.250(c).....2
e. Tanks or containers (other than specified below).....2
f. Tanks used for neutralization, dewatering, phase separation, or
component separation, with prior approval of the executive director.....1[1]
g. Staging Pile 2
E. Post-Closure
1. Changes in name, address, or phone number of contact in post-closure
plan.....1
2. Extension of post-closure care
period.....2
3. Reduction in the post-closure care
period.....3
4. Changes to the expected year of final closure, where other permit conditions
are not changed.....1
5. Changes in post-closure plan necessitated by events occurring during the
active life of the facility, including partial and final closure.....2
F. Containers
1. Modification or addition of container units:
a. Resulting in greater than 25% increase in the facility's container
storage capacity, except as provided in F(1)(c) and F(4)(a) of this
appendix.....3
b. Resulting in up to 25% increase in the facility's container storage
capacity, except as provided in F(1)(c) and F(4)(a) of this appendix.....2
c. Or treatment processes necessary to treat wastes that are
restricted from land disposal to meet some or all of the applicable
treatment standards or to treat wastes to satisfy (in whole or in part)
the standard of "use of practically available technology that yields
the greatest environmental benefit" contained in 40 CFR
§268.8(a)(2)(ii), with prior approval of the executive director. This
modification may also involve addition of new waste codes or

narrative descriptions of wastes. It is not applicable to dioxincontaining
wastes (F020, 021, 022, 023, 026, 027, and 028).....1[1]
2. Modification of container units, as follows:
a. Modification of a container unit without increasing the capacity of
the unit.....2
b. Addition of a roof to a container unit without alteration of the
containment system.....1
3. Storage of different wastes in containers, except as provided in F(4) of this
appendix:
a. That require additional or different management practices from
those authorized in the permit.....3
b. That do not require additional or different management practices
from those authorized in the permit.....2
Note: See §305.69(g) of this title (relating to Solid Waste Permit Modification at the
Request of
the Permittee) for modification procedures to be used for the management of newly
listed or
identified wastes.
4. Storage or treatment of different wastes in containers:
a. That require addition of units or change in treatment process or
management standards, provided that the wastes are restricted
from land disposal and are to be treated to meet some or all of the
applicable treatment standards, or that are to be treated to satisfy
(in whole or in part) the standard of "use of practically available
technology that yields the greatest environmental benefit" contained
in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive
director. This modification is not applicable to dioxin-containing
wastes (F020, 021, 022, 023, 026, 027, and 028).....1[1]
b. That do not require the addition of units or a change in the
treatment process or management standards, and provided that the
units have previously received wastes of the same type (e.g.,
incinerator scrubber water). This modification is not applicable to
dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
5. Other changes in container management practices (e.g., aisle space, types
of containers, segregation).....2
G. Tanks
1. Modification or addition of tank units or treatment processes, as follows:
a. Modification or addition of tank units resulting in greater than 25%
increase in the facility's tank capacity, except as provided in G(1)(c),
G(1)(d), and G(1)(e) of this appendix.....3
b. Modification or addition of tank units resulting in up to 25% increase
in the facility's tank capacity, except as provided in G(1)(d) and

G(1)(e) of this appendix.....2
c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.....2
d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.....1[1]
e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxincontaining wastes (F020, 021, 022, 023, 026, 027, and 028).....1[1]
2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit.....2
3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided:.....1
a. The capacity difference is no more than 1,500 gallons;
b. The facility's permitted tank capacity is not increased; and
c. The replacement tank meets the same conditions in the permit.
4. Modification of a tank management practice.....2
5. Management of different wastes in tanks:
a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) of this appendix.....3
b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) of this appendix.....2
c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available

technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027,and 028).....11
d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
Note: See §305.69(g) of this title for modification procedures to be used for the management of
newly listed or identified wastes.
H. Surface Impoundments
1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.....3
2. Replacement of a surface impoundment unit.....3
3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.....2
4. Modification of a surface impoundment management practice.....2
5. Treatment, storage, or disposal of different wastes in surface impoundments:
a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....3
b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR §268.5(h)(2), and provided further that the surface impoundment has previously

received wastes of the same type (for example, incinerator scrubber
water). This modification is not applicable to dioxin-containing
wastes (F020, 021, 022, 023, 026, 027, and 028).....1
6. Modifications of unconstructed units to comply with 40 CFR §§264.221(c),
264.222, 264.223, and 264.226(d)..... .....1[1]
7. Changes in response action plan:
a. Increase in action leakage rate.....3
b. Change in a specific response reducing its frequency or
effectiveness.....3
c. Other Changes.....2
Note: See §305.69(g) of this title for modification procedures to be used for the
management of
newly listed or identified wastes.
I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR
§264.250(c),
modifications are treated the same as for a landfill. The following modifications are
applicable only to waste piles complying with 40 CFR §264.250(c).
1. Modification or addition of waste pile units:
a. Resulting in greater than 25% increase in the facility's waste pile
storage or treatment capacity.....3
b. Resulting in up to 25% increase in the facility's waste pile storage or
treatment capacity.....2
2. Modification of waste pile unit without increasing the capacity of the
unit.....2
3. Replacement of a waste pile unit with another waste pile unit of the same
design and capacity and meeting all waste pile conditions in the
permit.....1
4. Modification of a waste pile management
practice.....2
5. Storage or treatment of different wastes in waste piles:
a. That require additional or different management practices or
different design of the unit.....3
b. That do not require additional or different management practices or
different design of the unit.....2
Note: See §305.69(g) of this title for modification procedures to be used for the
management of
newly listed or identified wastes.
6. Conversion of an enclosed waste pile to a containment building
unit.....2
J. Landfills and Unenclosed Waste Piles
1. Modification or addition of landfill units that result in increasing the facility's
disposal capacity.....3

2. Replacement of a landfill.....3
3. Addition or modification or a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....3
4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....2
5. Modification of a landfill management practice.....2
6. Landfill different wastes:
a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.....3
b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.....2
c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR §268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1
Note: See §305.69(g) of this title for modification procedures to be used for the management of
newly listed or identified wastes.
7. Modifications of unconstructed units to comply with 40 CFR §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304.....1[1]
8. Changes in response action plan:
a. Increase in action leakage rate.....3
b. Change in a specific response reducing its frequency or effectiveness.....3
c. Other changes.....2

K. Land Treatment
1. Lateral expansion of or other modification of a land treatment unit to increase areal extent.....3
2. Modification of run-on control system.....2
3. Modify run-off control system.....3
4. Other modifications of land treatment unit component specifications or standards required in the permit.....2
5. Management of different wastes in land treatment units:
a. That require a change in permit operating conditions or unit design specifications.....3
b. That do not require a change in permit operating conditions or unit design specifications.....2
Note: See §305.69(g) of this title for modification procedures to be used for the management of
newly listed or identified wastes.
6. Modification of a land treatment management practice to:
a. Increase rate or change method of waste application.....3
b. Decrease rate of waste application.....1
7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions.....2
8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops.....3
9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR §264.278(g)(2).....3
10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements.....3
11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements.....2
12. Changes in background values for hazardous constituents in soil and soilpore liquid.....2
13. Changes in sampling, analysis, or statistical

procedure.....2
14. Changes in land treatment demonstration program prior to or during the demonstration.....2
15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received.....1[1]
16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director.....1[1]
17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.....3
18. Changes in vegetative cover requirements for closure.....2
L. Incinerators, Boilers and Industrial Furnaces
1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3
2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....2
3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl2, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance

standards unless this demonstration can be made through other means.....3
4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards.....2
5. Operating requirements:
a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3
b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.....3
c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.....2
6. Burning different wastes:
a. If the waste contains a principal organic hazardous constituent (POHC) that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3
b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.....2
Note: See §305.69(g) of this title for modification procedures to be used for the management of
newly regulated wastes and units.
7. Shakedown and trial burn:
a. Modification of the trial burn plan or any of the permit conditions

applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.....2
b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director.....1[1]
c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director.....1[1]
d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director.....1[1]
8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit.....1
9. Technology changes needed to meet standards under Title 40 CFR Part 63 (Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), provided the procedures of §305.69(i) of this title are followed.....1[1]
10. Changes to Resource Conservation and Recovery Act permit provisions needed to support transition to §113. 620 of this title and 40 CFR Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) provided the procedures of 40 CFR §270.42(k) are followed.....1[1]
M. Corrective Action
1. Approval of a corrective action management unit pursuant to 40 CFR §264.552.....3
2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 CFR §264.553.....2
3. Approval of a staging pile or staging pile operating term extension pursuant to 40 CFR §264.554.....2
N. Containment Buildings
1. Modification or addition of containment building units:
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity.....3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity.....2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.....2
3. Replacement of a containment building with a containment building that meets the same design standards provided:
a. The unit capacity is not increased.....1
b. The replacement containment building meets the same conditions

in the permit.....1
4. Modification of a containment building management
practice.....2
5. Storage or treatment of different wastes in containment buildings:
a. That require additional or different management
practices.....3
b. That do not require additional or different
management practices.....2
O. Burden Reduction
1. Development of one contingency plan based on Integrated
Contingency Plan Guidance pursuant to 40 CFR §264.52(b).....1
2. Changes to recordkeeping and reporting requirements pursuant
to: 40 CFR §§264.56(i), 264.343(a)(2), 264.1061(b)(1) and (d),
264.1062(a)(2), 264.196(f), 264.100(g), and 264.113(e)(5).....1
3. Changes to inspection frequency for tank systems pursuant to
40 CFR §264.195(b) 1
4. Changes to detection and compliance monitoring program
pursuant to 40 CFR §§264.98(d), (g)(2), and (g)(3), 264.99(f), and (g).....1

SUBCHAPTER F: PERMIT CHARACTERISTICS AND CONDITIONS

§305.122

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), THSC, §361.085 (relating to Financial Assurance and Disclosure by Permit Applicant), and THSC, §361.024 (relating to Rules and Standards) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

§305.122. Characteristics of Permits.

(a) Compliance with a Resource Conservation and Recovery Act (RCRA) permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

(1) become effective by statute;

(2) are promulgated under 40 Code of Federal Regulations (CFR) Part 268, restricting the placement of hazardous wastes in or on the land;

(3) are promulgated under 40 CFR Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance programs, monitoring, action leakage rates, and response action plans, and will be implemented through the Class 1 permit modifications procedures of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); or

(4) are promulgated under 40 CFR Part 265, Subparts AA, BB, or CC limiting air emissions, as adopted by reference under §335.112 of this title (relating to Standards).

<u>(b) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §305.62 of this title (relating to Amendments) and §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), or the permit may be modified upon the request of the permittee as set forth in §305.69 of this title.</u>

(c) [(b)] A permit issued within the scope of this subchapter does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the permittee.

(d) [(c)] The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

(e) [(d)] Except for any toxic effluent standards and prohibitions imposed under Clean Water Act (CWA), §307, and standards for sewage sludge use or disposal under CWA, §405(d), compliance with a Texas pollutant discharge elimination system (TPDES) permit during its term constitutes compliance, for purposes of enforcement, with the CWA, §§301, 302, 306, 307, 318, 403, and 405; however, a TPDES permit may be amended or revoked during its term for cause as set forth in §305.62 and §305.66 of this title. [(relating to Amendment; and Permit Denial, Revocation and Suspension.)]

SUBCHAPTER I: HAZARDOUS WASTE INCINERATOR PERMITS

§305.176

Statutory Authority

The new section is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), THSC, §361.085 (relating to Financial Assurance and Disclosure by Permit Applicant), and THSC, §361.024 (relating to Rules and Standards) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted new section implements THSC, Chapter 361.

§305.176. Integration with Maximum Achievable Control Technology (MACT) Standards.

The regulations contained in 40 Code of Federal Regulations §270.235, Options for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers, and Hydrochloric Acid Production Furnaces to Minimize Emissions from

startup, shutdown, and malfunction events, are adopted by reference, as amended and adopted through October 12, 2005 (70 FedReg 59402).

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§324.1 - 324.4, 324.6, 324.7, 324.11 - 324.16; and repeals §324.5.

Amended §§324.1 - 324.4, 324.6, 324.7, 324.11 - 324.16 and the repeal of §324.5 are adopted *without changes* to the proposed text as published in the October 5, 2012 issue of the *Texas Register* (37 TexReg 7887) and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The federal used oil recycling program is authorized under the Used Oil Recycling Act of 1980, Resource Conservation and Recovery Act of 1976 (RCRA), §3014. The United States Environmental Protection Agency (EPA) sets standards for used oil destined for recycling to prevent mismanagement by generators, collection centers, transporters, processors and re-refiners, burners, and marketers. Those federal standards are located in 40 Code of Federal Regulations (CFR) Part 279.

States may obtain authorization from the EPA to administer the used oil recycling program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA used oil recycling program to individual states in lieu of EPA. This process ensures national consistency

and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal used oil recycling program, the State of Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission must adopt new regulations periodically to meet the changing federal regulations.

The commission adopts in this rulemaking revisions to the federal used oil recycling program that were previously adopted by EPA in parts of Clusters XIV - XVII. Establishing equivalency with federal regulations will enable the State of Texas to operate all aspects of the federal used oil recycling program in lieu of the EPA.

All adopted rule changes are further discussed in the Section by Section Discussion portion of this preamble. Two corresponding rulemakings are published in this issue of the *Texas Register* and include changes to 30 TAC Chapter 305, Consolidated Permits and 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.

Section by Section Discussion

The commission adopts administrative changes throughout the rulemaking to reflect the agency's current practices and to conform to *Texas Register* and agency guidelines. These adopted changes include correcting typographical, spelling, and grammatical errors throughout the chapter and also incorporating by reference the typographical, spelling, and grammatical corrections in 40 CFR Part 279. In addition, the commission replaces the phrases "shall be as" and "will be as" with the phrase, "The commission incorporates by reference." This change in phrasing will avoid any ambiguity as to the commission's action to incorporate the federal used oil rules. Finally, the commission adopts substantive changes throughout the chapter such as: removing the requirement to use SW-846 as the testing method to ensure that used oil does not contain significant concentrations of halogenated hazardous constituents, adding clarifying language regarding used oil containing polychlorinated biphenyls (PCBs), and revising tracking requirements for used oil marketers. The changes will make it easier for recyclers to comply with the RCRA regulations.

§324.1, Federal Rule Adoption by Reference

The commission adopts §324.1 to incorporate by reference the federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). Specifically, this amendment will update the "amended through" date to "July 14, 2006 at 71 FedReg 40280." An introductory sentence is added to make clear that recyclers in Texas must comply with federal used oil regulations and with any additional

requirements specified in Chapter 324. The terms "Administrator or Regional Administrator," "Environmental Protection Agency (EPA)," and "Commission" are moved to this section from the definition section in §324.2.

§324.2, Definitions

The commission adopts amended §324.2. First, the commission amends §324.2 to incorporate by reference the federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). Specifically, this amendment will correct the spelling of the word "kerosine" to "kerosene" in the definition for "Petroleum refining facility" found in 40 CFR §279.1. Second, the commission amends §324.2(5), renumbered to §324.2(3), to replace the word "Recycling" with the phrase "Recycling of used oil." This change will clarify that this definition pertains to used oil. Third, the commission adds language to §324.2(7), renumbered to §324.2(5), to revise the definition of "Secondary containment" to add the clause "shall be designed to meet the specifications found in §324.22(d)(3) to retain." This language is integral to the state's program requirements regarding secondary containment for used oil. Fourth, the definitions for "Administrator or Regional Administrator" found in §324.2(2), "Commission" found in §324.2(3), and "Environmental Protection Agency (EPA)" found in §324.2(4) are removed. The terms, "Administrator or Regional Administrator," "Environmental Protection Agency (EPA)," and "Commission" are moved to §324.1 as part of the Federal Rule Adoption by Reference section. The definitions in §324.2 have

been alphabetized and renumbered accordingly. Fifth, the introductory phrase "Most words are as defined" is changed to "The commission incorporates by reference the definitions" to make clear that all definitions in 40 CFR §279.1 are part of the state regulations and enforceable. Furthermore, the commission adopts certain additional definitions as part of §324.2.

§324.3, Applicability

The commission adopts amended §324.3. First, the commission amends §324.3 to adopt by reference the regulations promulgated in the July 30, 2003, issue of the *Federal Register* (68 FR 44665). This amendment will add revised language in 40 CFR §279.10(i) relating to Used Oil Containing PCBs. Specifically, this amendment will clarify when used oil contaminated with PCBs is regulated under the RCRA used oil management standards and when it is not. Second, the commission adopts an amendment to §324.3 to adopt by reference the regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment will remove the requirement in 40 CFR §279.10(b)(1)(ii) relating to Applicability, to use SW-846 as the testing method. This change will ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and will make it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection and use. Third, the commission amends §324.3 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR

40280). This amendment will make grammatical corrections to 40 CFR §279.10(b)(2) relating to Applicability, and will change the language in 40 CFR §279.11 relating to Used Oil Specifications. Fourth, the commission amends §324.3 by adding the phrases "The commission incorporates by reference" and "In addition, the commission adds the following clarifications and requirements:", and removing the phrases "applicability will be as" and "and as clarified here." These revisions will avoid any ambiguity as to the commission's action to incorporate the federal used oil rules and to clarify that there are additional state requirements. Fifth, the commission adopts language added to §324.3(5) which reads "and meet the prohibition requirements found in §324.4 of this title (relating to Prohibitions) to prevent the discharge of hazardous waste into a sanitary sewer." This amendment will clarify that the State of Texas is not allowing the discharge of hazardous waste into a sanitary sewer.

§324.4, Prohibitions

The commission adopts §324.4 by adding the phrases "The commission incorporates by reference the" and "In addition, the commission requires the following:" and removing the phrases "will be as" and "and as specified here." These changes in phrasing will avoid any ambiguity as to the commission's action to incorporate the federal used oil rules and to clarify that there are additional state requirements.

§324.5, Notice by Retail Dealer

The commission adopts the repeal of §324.5 and adds the statement concerning where to obtain a sign to §324.7(1)(A) and (3)(A). The adopted repeal allows the regulated community to find the contact address in the same section where the requirement for signs is placed.

§324.6, Generators

The commission adopts §324.6 to replace the phrase "shall be as" with the phrase "The commission incorporates by reference." This change in phrasing will avoid any ambiguity as to the commission's action to incorporate the federal used oil rules.

§324.7, Collection Centers

The commission adopts amended §324.7. First, the commission amends §324.7 to replace the phrases "Rules for" and "shall be as" with the phrase "The commission incorporates by reference rules for owners or operators of all" in front of the phrase "do-it-yourselfer (DIY) used oil collection centers." This change in phrasing will avoid any ambiguity as to the commission's action to incorporate the federal used oil rules, is consistent with the federal rules and clarifies that the section applies to the owners or operators of these facilities. Second, the commission removes the phrase "and as specified here" and adds the phrase "In addition, the commission requires the following:". This adopted change clarifies that there are additional state requirements that must be followed by collection centers. Third, the commission also amends

§324.7(1)(A) and (3)(A) to add the statement concerning where to obtain a sign. This adopted change will organize all the information on obtaining a sign in one place. The regulated community will no longer have to refer to §324.5 to determine how to obtain a sign that is required to be posted per §324.7(1)(A) and (3)(A). Fourth, the commission also amends §324.7(1)(B) and (3)(B) to remove the mailing address because it is provided on commission cover letters and forms and to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality.

§324.11, Transporters and Transfer Facilities

The commission adopts amended §324.11. First, the commission amends §324.11 by adding the phrase "The commission incorporates by reference" and removing the words "are" and ", and in this section" and adding the phrase "In addition, the commission requires the following:". These changes will avoid any ambiguity as to the commission's actions to incorporate the federal used oil rules and clarify that there are additional state requirements. Second, the commission adopts by reference the federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment will remove the requirement to use SW-846 as the testing method in 40 CFR §279.44(c) relating to Rebuttable Presumption for Used Oil. This amendment will ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and will make it easier for recyclers to comply with the RCRA

regulations by allowing more flexibility in method selection and use. Third, the commission amends §324.11 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment will make grammatical corrections in 40 CFR §279.43(c)(3)(i) and (5) relating to Used Oil Transportation, 40 CFR §279.44(a) and (c)(2) relating to Rebuttable Presumption for Used Oil, and 40 CFR §279.45(a) relating to Used Oil Storage at Transfer Facilities. Fourth, the commission amends §324.11(2) to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality and to remove the mailing address because it is provided on commission cover letters and forms.

§324.12, Processors and Re-refiners

The commission adopts amended §324.12. First, the commission amends §324.12 by adding the phrases "The commission incorporates by reference," "owners and operators of" and "In addition, the commission requires the following:". These additions will require changing the tense of the words "processors" and "re-refiners" to "processing" and "re-refining," and removing the words "are" and "and in this section." These changes will avoid any ambiguity as to the commission's actions to incorporate the federal used oil rules, clarify that the section applies to the owners and operators of these facilities and clarify that there are additional state requirements. Second, the commission amends §324.12(2) and (4) to remove the mailing address because it is

provided on commission instruction letters and forms. Third, the commission amends §324.12 to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Fourth, the commission adopts by reference the federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment will remove the requirement to use SW-846 as the testing method in 40 CFR §279.53(c) relating to Rebuttable Presumption for Used Oil. This amendment will ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and makes it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection and use. Fifth, the commission amends §324.12 to adopt by reference the federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment will make grammatical corrections in 40 CFR §279.52(a) - (b), (b)(1)(ii), (6)(ii) and (iii) relating to General Facility Standards; 40 CFR §279.54(g) relating to Used Oil Management; 40 CFR §279.55(a) and (b)(2)(i)(B) relating to Analysis plan; 40 CFR §279.56(a)(2) relating to Tracking; 40 CFR §279.57(a)(2)(ii) relating to Operating record and reporting; and 40 CFR §279.59 relating to the Management of residues.

Additionally, the commission amends the title of §324.12 from "Processors and Rerefiners" to "Processors and Re-refiners".

§324.13, Burners of Off-specification Used Oil for Energy Recovery

The commission adopts amended §324.13. First, the commission amends §324.13 by adding the phrase "The commission incorporates by reference" and removing the word "are." This change in phrasing will avoid any ambiguity as to the commission's action to incorporate the federal used oil rules. Second, the commission adds the phrase "In addition, the commission requires the following:" and removes the phrase ", and in this section." This change will clarify that there are additional state requirements. Third, the commission amends §324.13(2) to remove the mailing address for the agency because it is provided on commission cover letters and forms and to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Fourth, the commission adopts by reference the federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment will remove the requirement to use SW-846 as the testing method in 40 CFR §279.63(c) relating to Rebuttable Presumption for Used Oil. This amendment will ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and makes it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection and use. Fifth, the commission amends §324.13 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This adopted amendment will make grammatical corrections in 40 CFR §279.63(b)(3) relating to Rebuttable Presumption for Used Oil and 40 CFR §279.64(e) relating to Used Oil Storage.

§324.14, Marketers of Used Oil Fuel

The commission adopts amended §324.14. First, the commission amends §324.14 by adding the phrases "The commission incorporates by reference," "These rules," "In addition" and the word "found" and removing the phrase "and this section." These changes will avoid any ambiguity as to the commission's action to incorporate the federal used oil rules and make the sentence more readable. Second, the commission amends §324.14 to remove the mailing address because it is provided on commission cover letters and forms. Third, the commission amends §324.14 to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Fourth, the commission adopts by reference the federal regulations promulgated in the July 30, 2003, issue of the *Federal Register* (68 FR 44665). This amendment will revise the language in 40 CFR §279.74(b) relating to Tracking. Specifically, the amendment will allow the initial marketer of used oil that meets the used oil fuel specifications in 40 CFR §279.11 to only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. Fifth, the commission amends §324.14 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment will make grammatical corrections in 40 CFR §279.70(b)(1) relating to Applicability.

§324.15, Spills

The commission adopts amended §324.15 by adding the phrase "The commission incorporates by reference" and removing the word "See." This revision will avoid any ambiguity as to the commission's action to incorporate the federal used oil rules. The commission also adopts additional language which will require recyclers to immediately clean up spills that meet the reportable quantity limit. Specifically, the amendment will incorporate federal requirements found in 40 CFR §§279.22(d), 279.43(c), 279.45(h), 279.54(g), and 279.64 regarding Reporting and Managing Spills. The section will continue to require used oil recyclers to comply with 30 TAC Chapter 327 relating to Spill Prevention and Control.

§324.16, Polychlorinated Biphenyls (PCBs)

The commission adopts amended §324.16 by adding the phrase "The commission incorporates by reference" and removing the phrase "shall be as," and restructuring the sentence to make it easier to read. These changes will avoid any ambiguity as to the commission's action to incorporate the federal used oil rules.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not

meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions under 42 United States Code (USC), §6926(g), which already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. Likewise, there is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, or the regulated community benefits from the greater flexibility and reduced compliance burden. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal rules, equivalent state rules will not cause any adverse effects. There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the

rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). First, the rulemaking does not exceed a standard set by federal law because the commission adopts this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program. The other changes do not alter substantive requirements although various changes may increase flexibility for the regulated community and move forward compliance deadlines. Second, although the rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program. Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the waste program. And fourth, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission adopts this rulemaking under Texas Water Code, §5.103 and §5.105 and under Texas Health and Safety Code, §361.017 and §361.024.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, but received no comments relating to this subject.

Takings Impact Assessment

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 applies. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the rulemaking is to maintain state RCRA authorization by adopting state hazardous waste rules that are equivalent to the federal regulations. The rulemaking substantially advances this purpose by adopting rules that incorporate and refer to the federal regulations. Promulgation and enforcement of the rules is not a statutory or constitutional taking of private real property. Specifically, the rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are

already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules does not burden, restrict, or limit the owner's right to property and does not reduce the value of property by 25% or more. Likewise, the regulated community is not unduly burdened by those revisions providing greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements.

Consistency with the Coastal Management Program

The commission reviewed the adopted rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rules are not subject to the Texas Coastal Management Program.

Public Comment

The comment period closed on November 5, 2012. No comments were received.

SUBCHAPTER A: USED OIL RECYCLING
§§324.1 - 324.4, 324.6, 324.7, 324.11 - 324.16

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §371.026 (relating to Registration and Reporting Requirements of Used Oil Handlers, Other than Generators) and THSC, §371.028 (relating to Rules) which authorize the commission to regulate used oil handlers, to implement the used oil recycling program established by THSC, Chapter 371, and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 371.

§324.1. Federal Rule Adoption by Reference.

Person(s) managing used oil must comply with the requirements in this chapter and the [The] requirements in 40 Code of Federal Regulations (CFR)[,] Part 279, Standards for the Management of Used Oil, as amended through July 14, 2006, at 71 FedReg 40280 [May 26, 1998 at 69 FedReg 28556], which are adopted by reference.

For purposes of this chapter, the term "Administrator" or "Regional Administrator" used in 40 CFR Part 279 shall be read to mean "State Administrator, the Executive Director of the Texas Commission on Environmental Quality, or his representative." The term "Environmental Protection Agency" or "EPA" used in 40 CFR Part 279 shall be read to mean "the Texas Commission on Environmental Quality or its successor." [However, requirements in this chapter also apply.]

§324.2. Definitions.

The commission incorporates by reference the definitions [Most words are as defined] in 40 Code of Federal Regulations (CFR) §279.1. However, the following words have these additional meanings:

(1) **Aboveground tank**--A tank used to store or process used oil that is not an underground storage tank as defined in 30 TAC Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(2) **Earthen area**--The active area of the facility is the earthen area at the facility over which any transportation, storage or processing of used oil occurs.

[(2) **Administrator or Regional Administrator**--These terms in 40 CFR Part 279 requirements should be replaced with the "State Administrator, the Executive Director of the Texas Natural Resource Conservation Commission or his representative."]

[(3) **Commission**--The Texas Natural Resource Conservation Commission or its successor.]

[(4) **Environmental Protection Agency (EPA)**--This term in 40 CFR Part 279 Requirements should be replaced with "Commission."]

(3) [(5)] **Recycling of used oil--**

(A) Preparing used oil for reuse as a petroleum product by re-refining [rerefining], reclaiming, or other means;

(B) Using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) Burning used oil for energy recovery.

(4) [(6)] **Re-refining**--Applying processes (other than crude oil refining) to material composed primarily of used oil to produce high-quality base stocks for petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydro treating, or polishing.

(5) [(7)] **Secondary containment**--Dikes, berms, retaining walls, and/or equivalent structures made of a material(s) that is sufficiently impervious to used oil. These structures shall be designed to meet the specifications found in §324.22(d)(3) of this title (relating to Soil Remediation Requirements for Used Oil Handlers) to retain [all] potential spills of used oil from the tanks or containers, plus run-on water, until removal of the spill.

(6) [(8)] **Sufficiently impervious to used oil**--Capable of containing all potential spills of used oil from containers and tanks until removal of the spill.

(7) [(9)] **Synthetic oils**--Oils not derived from crude oil. This includes those from coal, shale, or a polymer-based starting material; and non-polymeric synthetic fluids used as hydraulic or heat transfer fluids. Synthetic oils are generally used for the same purpose as crude oil derived oils and have relatively the same level of contamination after use.

(8) [(10)] **Used oil handler**--A transporter or an owner or operator of a used oil transfer, processing, re-refining [rerefining], or off-specification used oil burning facility.

[(11) **Earthen area**--The active area of the facility is the earthen area at the facility over which any transportation, storage or processing of used oil occurs.]

§324.3. Applicability.

The commission incorporates by reference the Applicability and the Exemptions [exemptions] from Applicability requirements [applicability will be as] in 40 Code of Federal Regulations (CFR) Part 279, Subpart B, §279.10 and §279.11. In addition, the commission adds the following clarifications and requirements: [and as clarified here.]

(1) A used oil contaminated with a listed hazardous waste must be handled under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). United States Environmental Protection Agency [EPA] Hazardous Waste Number "F002" must be used on used oil that is listed hazardous due to halogenated contaminants.

(2) Used oil can be stored in tanks and containers not meeting 40 CFR Part 264 or 265. The requirement in 40 CFR Part 279 that refers to compliance with 40 CFR Part 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in compliance with 40 CFR Part 264 or 265, Subpart K.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10(b) (relating to Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per §335.2 of this title (relating to Permit Required). A waste that is characteristically hazardous for "ignitability only" can be mixed with used oil. However, the resultant mixture cannot exhibit the hazardous ignitability characteristic to manage it under this chapter and 40 CFR Part 279 rather than Chapter 335 of this title. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics. The resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used

oil more amenable for production of fuel oils or products is also a processor subject to 40 CFR Part 279, Subpart F (relating to Standards for Used Oil Processors and Re-refiners) and §324.12 of this title (relating to Processors and Re-refiners [Rerefiners]).

(4) A used oil shall not be regulated until it is a spent material as defined in 40 CFR §261.1(c)(1) and §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

(5) Oily water mixtures to be recycled that are contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or that have been designed for oil-water separation must be managed under this chapter and meet the prohibition requirements found in §324.4 of this title (relating to Prohibitions) to prevent the discharge of hazardous waste into a sanitary sewer. Management of wastes from other tanks, sumps, and grip trap waste management units that are plumbed directly to a sanitary sewer must comply with the requirements in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation) and Chapter 330 of this title (relating to Municipal Solid Waste).

§324.4. Prohibitions.

The commission incorporates by reference the Prohibitions [will be as] in 40 Code of Federal Regulations [CFR] Subpart B, §279.12 [and as specified here]. In addition, the commission requires the following:

(1) A person must not collect, transport, store, burn, market, recycle, process, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare of the environment.

(2) A person commits an offense if the person:

(A) intentionally discharges used oil into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water;

(B) knowingly puts used oil in waste that is to be disposed of in landfills or directly disposes of used oil on land;

(C) knowingly transports, treats, stores, disposes of, recycles, markets, burns, processes, re-refines [rerefines] used oil within the state:

(i) without first complying with the registration requirements of this rule; and/or

(ii) in violation of rules for the management of used oil;

(D) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses;

(E) violates an order of the commission to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity; or

(F) intentionally makes any false representation in any document used for program compliance.

(3) An exception to paragraph (2) of this section [subsection] is if a person knowingly disposes into the environment any used oil that has not been separated by the generator from other solid wastes.

(4) An exception to paragraph (2)(B) of this section [subsection] is if the mixing or commingling of used oil with waste to be disposed of in landfills is the unavoidable result of the mechanical shredding of motor vehicles, appliances or other metals.

§324.6. Generators.

The commission incorporates by reference rules [Rules] for used oil generators [shall be as] in 40 Code of Federal Regulations [(CFR)] Part 279, particularly Subpart C. A person or entity that services equipment involving removal of used oil or changes used oil at a customer's home or business and transports the used oil from the site in quantities less than or equal to 55 gallons may choose to be the generator. If the service company removing the used oil from equipment does not assume generator responsibility, the site owner or operator will remain the generator.

§324.7. Collection Centers.

The commission incorporates by reference rules for owners or operators of all [Rules for] "do-it-yourselfer used oil collection centers" and "used oil collection centers" (as defined in 40 Code of Federal Regulations (CFR) §279.1) [shall be as] in 40 CFR Part 279, particularly Subpart D [, and as specified here]. All appropriate businesses and government agencies are encouraged to serve as "do-it-yourselfer used oil collection centers" or "used oil collection centers." Collection centers collecting used oil from households will be publicized by the commission. In addition, the commission requires the following:

(1) A "Do-it-yourselfer Used Oil Collection Center" must:

(A) post and maintain a durable and legible sign identifying the site as a household used oil collection center. Written requests for signs shall be sent to the Texas Commission on Environmental Quality, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087;

(B) must register each odd numbered year, no later than January 25 following the close of the year, with the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program[, P.O. Box 13087, Austin, Texas 78711-3087] utilizing a commission form. Registrations expire on December 31 in even numbered years. New collection centers must register within 30 days of initial operation;

(C) collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(D) notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of household used oil; and

(E) annually report the amount of household used oil collected by January 25 of each year on a commission form.

(2) Household used oil is not subject to the rebuttable presumption (a requirement to prove that used oil is not hazardous).

(3) A "Used Oil Collection Center" must:

(A) post and maintain a durable and legible sign identifying the site as a household used oil collection center. Written requests for signs shall be sent to the Texas Commission on Environmental Quality, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087;

(B) register each odd numbered year no later than January 25 following the close of the year, with the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program[, P.O. Box 13087, Austin, Texas 78711-3087] utilizing a commission form. Registrations expire on December 31 in even numbered years. New collection centers must register within 30 days of initial operation;

(C) collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(D) notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of household used oil; and

(E) report annually the amount of household and non-household used oil collected by January 25 of each year on a commission form. Mixtures of household used oil and non-household used oil shall be considered non-household used oil.

(4) Household used oil is not subject to the rebuttable presumption (a requirement to prove used oil is not hazardous) unless mixed with non-household used oil.

§324.11. Transporters and Transfer Facilities.

The commission incorporates by reference rules [Rules] for used oil transporters and transfer facilities [are] in 40 Code of Federal Regulations (CFR) Part 279,

particularly Subpart E [, and in this section]. In addition, the commission requires the following:

(1) Underground storage tanks (USTs). USTs [Underground storage tanks] containing used oil are subject to Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 279.

(2) Registration. Transporters must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the United States Environmental Protection Agency (EPA). Transporters must register, through the commission, using EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program [, P.O. Box 13087, Austin, Texas 78711-3087].

§324.12. Processors and Re-refiners [Rerefiners].

The commission incorporates by reference rules [Rules] for owners and operators of used oil processing [processors] and re-refining facilities [rerefiners are] in 40 Code of Federal Regulations (CFR) Part 279, particularly Subpart F [, and in this section.]. In addition, the commission requires the following:

(1) Underground storage tanks. See §324.11(1) of this title (relating to Transporters and Transfer Facilities).

(2) Registration. Processors and re-refiners [rerefiners] must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the United States Environmental Protection Agency (EPA). Processors and re-refiners [rerefiners] must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program [, P.O. Box 13087, Austin, Texas 87811-3087].

(3) Analysis plan. Each facility must prepare an analysis plan. The facility will follow the plan when sampling and analyzing, keeping records, and complying with analytical requirements for documenting that used oil is not listed hazardous and/or the used oil fuel specification has been met. This plan must specify the frequency of sampling and analysis. It must also specify procedures and analysis to assure listed hazardous wastes are not mixed with the used oil received. It must also contain procedures for handling a shipment of contaminated used oil. A facility need not prepare an analysis plan if it:

(A) only processes its own used oil; and

(B) uses adequate process knowledge instead of analysis to prove that the used oil meets rule requirements.

(4) Biennial report. The biennial report required by 40 CFR §279.57(b) covering each odd numbered year must be provided to the commission by December 1 of the odd numbered year if all used oil operations have been completed for that year. If not, you must submit the report by January 25 of the following even numbered year. The information must be entered on a commission form. Mail the report to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program [, P.O. Box 13087, Austin, Texas 78711-3087].

§324.13. Burners of Off-specification Used Oil for Energy Recovery.

The commission incorporates by reference rules [Rules] for burners of off-specification used oil for energy recovery [are] in 40 Code of Federal Regulations (CFR) Part 279, particularly Subpart G [, and in this section]. In addition, the commission requires the following:

(1) Underground storage tanks. See §324.11(1) of this title (relating to Transporters and Transfer Facilities).

(2) Registration. Burners must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the United States Environmental Protection Agency (EPA). Burners must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program [, P.O. Box 13087, Austin, Texas 78711-3087].

§324.14. Marketers of Used Oil Fuel.

The commission incorporates by reference rules [Rules] for marketers of used oil which will be burned for energy recovery. These rules are found in 40 Code of Federal Regulations [CFR] Part 279, [particularly] Subpart H [, and this section]. In addition, marketers [Marketers] must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the United States Environmental Protection Agency (EPA). Marketers must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration

forms to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission], Used Oil Recycling Program [, P.O. Box 13087, Austin, Texas 78711-3087].

§324.15. Spills.

The commission incorporates by reference the Used Oil Spill Prevention, Detection of Releases, and Spill Response requirements in 40 Code of Federal Regulations §§279.22(d), 279.43(c), 279.45(h), 279.54(g), and 279.64. In addition, used oil recyclers shall immediately clean up and properly dispose of any spills of used oil consistent with [See] Chapter 327 of this title (relating to Spill Prevention and Control), particularly §327.4(b)(2) of this title (relating to Reportable Quantities).

§324.16. Polychlorinated Biphenyls (PCBs).

The commission incorporates by reference [Per 40 CFR 279 (Table 1),] the rules for burning used oil containing PCBs [shall be as] in 40 Code of Federal Regulations Part 279 (CFR) (Table 1) and in 40 CFR §761.20(e).

SUBCHAPTER A: USED OIL RECYCLING
§324.5

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §371.026 (relating to Registration and Reporting Requirements of Used Oil Handlers, Other than Generators) and THSC, §361.028 (relating to Rules) which authorize the commission to regulate used oil handlers, to implement the used oil recycling program established by THSC, Chapter 371, and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted repeal implements THSC, Chapter 371.

[§324.5. Notice by Retail Dealer.]

[Written requests for signs should be sent to the Texas Natural Resource Conservation Commission, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087.]

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendments to §§335.1, 335.2, 335.10 - 335.13, 335.19, 335.24, 335.61, 335.62, 335.69, 335.76, 335.78, 335.111, 335.112, 335.151, 335.152, 335.155, 335.168, 335.170, 335.213, 335.222, 335.251, 335.431, and 335.504; and new §335.79.

Amended §§335.1, 335.2, 335.10 - 335.13, 335.19, 335.24, 335.61, 335.62, 335.69, 335.76, 335.78, 335.111, 335.112, 335.151, 335.152, 335.155, 335.168, 335.170, 335.213, 335.222, 335.251, 335.431, and 335.504; and new §335.79 are adopted *without changes* to the proposed text as published in the October 5, 2012 issue of the *Texas Register* (37 TexReg 7895) and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations regularly to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under the RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, October 18, 1999, September 11, 2000, June 14, 2005 (Clusters III - X), March 5, 2009 (Clusters XI - XV), and May 7, 2012 (Clusters IX and XV - XVIII).

The commission adopts in this rulemaking parts of RCRA Rule Clusters XIX - XXI that implement revisions to the federal hazardous waste program which were made by EPA between July 1, 2008 and June 30, 2011. Both mandatory and optional federal rule changes in these clusters are adopted. Adoption of one of the federal rule changes is mandatory in order to maintain RCRA authorization. Although not necessary in order

to maintain authorization, EPA also recommends that the optional federal rule changes be incorporated into the state rules. In addition, the commission adopts revisions to parts of previously adopted Clusters XIV - XVII that implement revisions requested by EPA that are needed to maintain authorization. Establishing equivalency with federal regulations will enable the State of Texas to operate all aspects of the federal hazardous waste program in lieu of the EPA.

All adopted rule changes are discussed further in the Section by Section Discussion portion of this preamble. Two corresponding rulemakings are published in this issue of the *Texas Register* and include changes to 30 TAC Chapter 305, Consolidated Permits and 30 TAC Chapter 324, Used Oil Standards.

Section by Section Discussion

The commission adopts administrative changes throughout the rulemaking to reflect the agency's current practices and to conform to *Texas Register* and agency guidelines. These changes include updating references to Texas State Agencies, updating cross-references, and correcting typographical, spelling, and grammatical errors.

§*335.1, Definitions*

The commission adopts §335.1(39) to conform to federal regulations previously promulgated in the March 4, 2005, issue of the *Federal Register* (70 FR 10776).

Specifically, this amendment will revise the definition of "Designated facility" so that it is consistent with the EPA definition in 40 Code of Federal Regulations (CFR) §260.10. Also, the definition is reorganized to separate the definition of a Texas Class 1 waste designated facility from the definition of a hazardous waste designated facility.

The commission adopts §335.1(59)(B) to conform to federal regulations previously promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). This amendment will clarify the definition of "Facility" for the purpose of implementing corrective action under the authority of a standard permit. Specifically, this amendment will incorporate by reference corrective action authorized by 40 CFR Part 267, Subpart F (Releases from Solid Waste Management Units) to address corrective action under the authority of a standard permit.

The commission adopts §335.1(95) to conform to federal regulations previously promulgated in the March 4, 2005, issue of the *Federal Register* (70 FR 10776). Specifically, this amendment will revise the definition of "Manifest" so that it is consistent with the EPA definition in 40 CFR §260.10.

The commission adopts §335.1(96) to conform to federal regulations previously promulgated in the March 4, 2005, issue of the *Federal Register* (70 FR 10776). Specifically, this amendment will revise the definition of "Manifest tracking number" so

that it is consistent with the EPA definition in 40 CFR §260.10.

The commission adopts §335.1(138)(A)(iv) to conform to federal regulations previously promulgated in the July 28, 2006, issue of the *Federal Register* (71 FR 42928). This amendment will add requirements for notification and recordkeeping to exclude cathode ray tubes (CRTs) that meet the requirements in 40 CFR §261.39 and §261.40 for reuse and recycling from classification as a solid waste. This exclusion is also found in 40 CFR §261.4 which was adopted in a previous rulemaking. This amendment will add additional language from 40 CFR Part 261, Subpart E concerning conditional exclusions and notification and recordkeeping requirements for CRTs. In addition, technical corrections are incorporated by reference to conform to federal regulations previously promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989).

The commission also adopts §335.1(142) to conform to federal regulations previously promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). Specifically, this amendment will revise the definition of "Standard permit" so that it is consistent with the EPA definition in 40 CFR §124.2(a).

§335.2, Permit Required

The commission adopts §335.2(g) to conform to federal regulations previously

promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). Specifically, this amendment will revise the reporting requirements for treatability studies by reducing the amount of information required to be submitted.

§335.10, Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

The commission adopts §335.10 by restructuring to separate Texas Class 1 waste from hazardous waste manifest requirements thereby eliminating confusion between the two programs. The commission incorporates by reference EPA manifest requirements to ensure consistency. Current Class 1 waste manifest requirements are the same as EPA hazardous waste manifest requirements with some minor differences. This rulemaking does not change any of those requirements. The Uniform Hazardous Waste Manifest requirements are incorporated by reference as published in the March 4, 2005, issue of the *Federal Register* (70 FR 10776) and amended through the March 18, 2010, issue of the *Federal Register* (75 FR 12989). These changes will allow generators of hazardous and industrial waste to more readily identify applicable manifest requirements. This adopted amendment will help ensure compliance with manifest requirements including proper completion of the manifest form. Additionally, references to the EPA are changed to the TCEQ and references to the regional director are changed to the executive director.

§335.11, Shipping Requirements for Transporters of Hazardous Waste or Class 1

Waste

The commission adopts §335.11 by restructuring to separate Texas Class 1 waste from hazardous waste manifest requirements thereby eliminating confusion between the two programs. The commission incorporates by reference EPA manifest requirements to ensure consistency. Current Class 1 waste manifest requirements are the same as EPA hazardous waste manifest requirements with some minor differences. This adopted rulemaking will not change any of the manifest requirements. The Uniform Hazardous Waste Manifest requirements are incorporated by reference as published in the March 4, 2005, issue of the *Federal Register* (70 FR 10821) and amended through June 16, 2005, issue of the *Federal Register* (70 FR 35034).

§335.12, Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities

The commission adopts §335.12 by restructuring to separate Texas Class 1 waste from hazardous waste manifest requirements thereby eliminating confusion between the two programs. Manifest requirements for hazardous waste are adopted by reference from EPA rules to ensure consistency. The Uniform Hazardous Waste Manifest requirements are incorporated by reference as published in the March 4, 2005, issue of the *Federal Register* (70 FR 10821) and amended through March 18, 2010, issue of the *Federal Register* (75 FR 12989).

§335.13, Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

The commission adopts §335.13(n) to conform to federal regulations previously promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Specifically, this amendment will make corrections to typographical errors in the CFR.

The commission adopts §335.13(o) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). Specifically, this amendment will implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD), establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country, specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, D.C., and require United States receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment. Because of the federal government's special role in matters of foreign policy, EPA does not authorize states to administer federal import/export functions in any section of the RCRA hazardous waste regulations. Although states do not receive

authorization to administer the federal government's export functions in 40 CFR Part 262, Subpart E, import functions in 40 CFR Part 262, Subpart F, import/export functions in 40 CFR Part 262, Subpart H, or the import/export related functions in any other section of the RCRA hazardous waste regulations, state programs are required to adopt those federal provisions that are more stringent than existing state requirements to maintain their equivalency with the federal program. This amendment is more stringent than the current state rules. Therefore, this amendment is required by EPA to be adopted into state rules, in order to maintain authorization.

§335.19, Standards and Criteria for Variances from Classification as a Solid Waste

The commission adopts §335.19(b) to conform to federal regulations previously promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). Specifically, this amendment will reduce the requirements for requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process.

§335.24, Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

The commission adopts §335.24(c)(1)(A) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). Specifically, this

amendment will implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD, establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country, specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, D.C., and require United States receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment. Because of the federal government's special role in matters of foreign policy, EPA does not authorize states to administer federal import/export functions in any section of the RCRA hazardous waste regulations. Although states do not receive authorization to administer the federal government's export functions in 40 CFR Part 262, Subpart E, import functions in 40 CFR Part 262, Subpart F, import/export functions in 40 CFR Part 262, Subpart H, or the import/export related functions in any other section of the RCRA hazardous waste regulations, state programs are required to adopt those federal provisions that are more stringent than existing state requirements to maintain their equivalency with the federal program. This amendment is more stringent than the current state rules. Therefore, this amendment is required by EPA to be adopted into state rules to maintain authorization.

§335.61, Purpose, Scope and Applicability

The commission adopts §335.61(i) to conform to federal regulations promulgated in the December 1, 2008, issue of the *Federal Register* (73 FR 72912). This amendment adopts exemptions for a specific generator status (i.e., large and small quantity generators and conditionally exempt small quantity generators (CESQGs)) for those eligible academic entities that choose to comply with 40 CFR Part 262, Subpart K (known as the "Academic Laboratories rule"). The Academic Laboratories rule is incorporated by reference in §335.79. The Academic Laboratories rule establishes an alternative set of generator requirements applicable to laboratories owned by eligible academic entities. The alternative requirements are flexible but protective and address the specific nature of hazardous waste generation and accumulation in these laboratories. Further detailed discussion of the Academic Laboratories rule can be found in the Section by Section Discussion in §335.79.

In particular, the amendment to §335.61 will set out exemptions for eligible academic laboratories under different hazardous waste generator statuses. Specifically, this amendment will exempt large and small quantity generators from certain requirements of hazardous waste determination (set out in §335.504) and from the satellite accumulation area rule (set out in §335.69). In addition, this amendment will eliminate exemptions (set out in §335.78) for CESQGs, such as the exemption from regulations

under 40 CFR Parts 124, 262 - 266, and 268, and the notification requirements of RCRA, §3010. However, academic laboratories under CESQG status will be able to take advantage of the benefits of the Academic Laboratories rule. Those benefits include the flexibility to decide when and where on-site hazardous waste determinations are made and the incentive to remove old and expired chemicals from the laboratories.

§335.62, Hazardous Waste Determination and Waste Classification

The commission adopts §335.62 to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment will add a reference to 40 CFR Part 267 which EPA inadvertently omitted after the rule was promulgated in September, 2005. The amendment will add 40 CFR Part 267 to a list of Parts (261, 264 - 266, 268, and 273) to which a hazardous waste generator must refer for possible exclusions or restrictions pertaining to managing specific waste.

§335.69, Accumulation Time

The commission adopts §335.69(a)(4)(B) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). This amendment will correct a limited reference to 40 CFR §268.7(a)(5) which only addresses waste analysis plans. The amendment will apply all applicable requirements under 40 CFR Part 268 (pertaining to Land Disposal Restrictions) to large and small quantity generators.

The commission adopts §335.69(b) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment will clarify that the requirements in §335.69(b), pertaining to hazardous waste accumulation time, apply only to large quantity generators.

The commission adopts §335.69(d) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment will clarify that the satellite accumulation provisions for large quantity generators are also applicable to small quantity generators. The amendment will also add the citation of 40 CFR §261.31 to clarify that this provision applies to acutely hazardous wastes.

The commission adopts §335.69(e) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment will add the citation of 40 CFR §261.31, which was inadvertently omitted after the dioxin listings for acutely hazardous wastes listed under 40 CFR §261.31 were promulgated in 1985.

The commission adopts §335.69(f)(4)(B) to delete "and" to allow the addition of a new subparagraph.

The commission also renumbers §335.69(f)(4)(C) to §335.69(f)(4)(D) to add a new subparagraph, and also adopts an amendment to conform to federal regulations

promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). This amendment will correct a limited reference to 40 CFR §268.7(a)(5) which only addresses waste analysis plans. The amendment will apply all applicable requirements under 40 CFR Part 268 (pertaining to Land Disposal Restrictions) to large and small quantity generators.

The commission adopts §335.69(f)(4)(C) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Subparagraph (C) will add 40 CFR Part 267 to the list of other requirements hazardous waste generators must follow. EPA inadvertently did not include 40 CFR Part 267 in the list after the rule was promulgated in September, 2005.

The commission adopts changes to §335.69(m) by adding paragraphs (1) and (2) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Specifically, the amendment will incorporate requirements for completion of the manifest regarding rejected loads.

The commission adopts §335.69(n) to separate requirements for rejected loads of hazardous waste from Class 1 waste. The commission adopts §335.69(n) with new language addressing Class 1 waste generators. Specifically, this amendment will add requirements for Class 1 waste to alleviate confusion for requirements for each type of

rejected waste.

§335.76, Additional Requirements Applicable to International Shipments

The commission adopts §335.76(a) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment will implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment will clarify that countries belonging to the OECD must comply with the requirements of 40 CFR Part 262, Subpart H (Transfrontier Shipments of Hazardous Waste for Recovery within the OECD).

The commission adopts §335.76(d) to conform to federal requirements promulgated in the March 4, 2005, issue of the *Federal Register* (70 FR 10776) and amended through the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Specifically, the amendment will incorporate requirements for completion of the manifest regarding imports of hazardous waste.

The commission adopts §335.76(f) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment will implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically,

this amendment will clarify that any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements contained in 40 CFR §262.58 (International Agreements).

The commission adopts §335.76(h) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment will implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment will clarify that transfrontier shipments of hazardous waste for recovery within the countries belonging to the OECD must comply with the requirements of 40 CFR Part 262, Subpart H.

§335.78, Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

The commission adopts §335.78(c)(6) to conform to federal regulations promulgated in the December 1, 2008, issue of the *Federal Register* (73 FR 72954). The amendment will remove a period at the end of the paragraph and add the word "or" to allow for an additional paragraph.

The commission adopts §335.78(c)(7) to conform to federal regulations promulgated in the December 1, 2008, issue of the *Federal Register* (73 FR 72912). This amendment

will allow an eligible academic entity to exclude the amount of unused commercial chemical product (listed in 40 CFR Part 261, Subpart D or exhibiting one or more characteristics in 40 CFR Part 261, Subpart C) generated solely during a laboratory clean-out from being counted toward its hazardous waste generator status.

The commission adopts §335.78(j) to conform to federal regulations promulgated in the July 30, 2003, issue of the *Federal Register* (68 FR 44659). The amendment will remove the phrase "if it is destined to be burned for energy recovery." This amendment will clarify recycled used oil management standards for CESQGs.

§335.79, Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities

The commission adopts new §335.79 to conform to federal regulations promulgated in the December 1, 2008, issue of the *Federal Register* (73 FR 72912), as amended through the December 20, 2010, issue of the *Federal Register* (75 FR 79304). This new section will incorporate by reference an alternative set of generator requirements applicable to laboratories owned by eligible academic entities promulgated under 40 CFR Part 262, Subpart K. Eligible academic entities are colleges and universities, as well as teaching hospitals and nonprofit research institutes that are either owned by or formally affiliated with a college or university. The Academic Laboratories rule does not apply to non-

laboratory generated hazardous wastes from other operations of a university or college nor commercial laboratories.

The Academic Laboratories rule will provide a flexible but protective set of regulations that address the specific nature of hazardous waste generation and accumulation in the laboratories owned or operated by academic entities. Specifically, this rule will allow eligible academic entities the flexibility to make hazardous waste determinations in the laboratory; at an on-site central accumulation area; or at an on-site treatment, storage, or disposal facility. Also, this rule will provide incentives for eligible academic entities to clean-out old and expired chemicals that may pose unnecessary risk. Further, this rule will require the development of a Laboratory Management Plan (LMP) which is expected to result in safer laboratory practices and increased awareness of hazardous waste management.

The adopted rule will be optional for eligible academic entities. That is, eligible academic laboratories could choose to comply with 40 CFR Part 262, Subpart K in lieu of the existing generator regulations. In states authorized to implement the RCRA program, such as Texas, 40 CFR Part 262, Subpart K will only be available as an option once it has been adopted by the state in which the eligible academic entity is located.

The commission incorporates by reference six technical corrections to the Academic

Laboratories rule published in the December 20, 2010, issue of the *Federal Register* (75 FR 79304). These changes include correction of errors such as omissions and redundancies as well as removal of an obsolete reference to the now-terminated Performance Track program. These technical corrections will improve the clarity of the state's Academic Laboratories rule. The Academic Laboratories rule and the corrections are recommended by EPA to be adopted into state rules, but are not required to maintain RCRA authorization.

§335.111, Purpose, Scope, and Applicability

The commission adopts §335.111 to make technical corrections.

§335.112, Standards

The commission adopts §335.112(a)(1) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment will implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment will specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, D.C., and will require United States receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit

to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

The commission adopts §335.112(a)(3), (4), and (13) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Revisions to interim standards for owners and operators of hazardous waste treatment, storage, or disposal facilities in 40 CFR Part 265 are adopted by reference under this section. This amendment will correct citations, clarify regulatory requirements, and incorporate conforming changes that were inadvertently omitted by EPA under the interim standards for owners and operators of hazardous waste treatment, storage, or disposal facilities in 40 CFR Part 265. This amendment is as stringent as the current state rules. EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

The commission also adopts §335.112(a)(4), to add language that was inadvertently omitted in a previous rule adoption. Specifically, the new language reinstates the exception to 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77 because these requirements are found elsewhere.

The commission also adopts §335.112(a)(14) to conform to federal regulations previously promulgated in the October 12, 2005, issue of the *Federal Register* (70 FR

59402). This amendment was previously adopted into §335.221 which incorporated final National Emission Standards for Hazardous Air Pollutants for hazardous waste combustors. These standards implemented Federal Clean Air Act, §112(d) by requiring hazardous waste combustors to meet hazardous air pollutants emission standards reflecting the performance of the maximum available control technology. In addition, the commission adopts an amendment to §335.112(a)(14) to include this incorporation by reference.

The commission adopts §335.112(b)(7) to update a cross-reference.

§335.151, Purpose, Scope, and Applicability

The commission adopts §335.151 to make technical corrections.

§335.152, Standards

The commission adopts §335.152(a)(1) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment will implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment will specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington,

D.C., and will require United States receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

The commission also adopts §335.152(a)(4) to add language that was inadvertently omitted in a previous rule adoption. Specifically, the new language reinstates the exception to 40 CFR §§264.71, 264.72, 264.76, and 264.77 because these requirements are found elsewhere.

The commission also adopts §335.152(a)(9) to conform to federal regulations previously promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). Specifically, this amendment will make corrections to typographical errors in the CFR.

Additionally, the commission adopts §335.152(a)(3), (4), (12), and (14) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). This amendment will correct citations, clarify regulatory requirements, and incorporate conforming changes that were inadvertently omitted by EPA under the permitting standards for owners and operators of hazardous waste treatment, storage, or disposal facilities in 40 CFR Part 264. This amendment is as stringent as the current state rules. EPA recommends that this amendment be adopted into state rules, but it is

not required to maintain RCRA authorization.

The commission adopts §335.152(c)(7) to update a cross-reference.

§335.155, Additional Reports

The commission adopts §335.155 to make technical corrections.

§335.168, Design and Operating Requirements (Surface Impoundments)

The commission adopts §335.168(c) to conform to federal regulations previously promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). Specifically, this amendment will make corrections to typographical errors in the CFR.

§335.170, Design and Operating Requirements (Waste Piles)

The commission adopts §335.170(c) to conform to federal regulations previously promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment adopts by reference requirements that reduce the recordkeeping and reporting burden imposed on the regulated community by ensuring that only the information needed and used to implement the hazardous waste program is collected from facilities. In addition, outdated language that references a construction time period will be deleted. This amendment is less stringent than the current state rules, but the reduction in recordkeeping poses minimal risk to human health or the environment.

EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

§335.213, Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users

The commission adopts §335.213 to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment will add a reference to Chapter 335, Subchapter U, Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit, to include applicable requirements in 40 CFR Part 267, which EPA inadvertently omitted after the rule was promulgated in September, 2005.

§335.222, Management Prior to Burning

The commission adopts §335.222(c)(1)(E) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Specifically, subparagraph (E) will add a reference to Chapter 335, Subchapter U to include applicable requirements in 40 CFR Part 267, which EPA inadvertently omitted after the rule was promulgated in September, 2005. Subsequent subparagraph (E) has been relettered accordingly.

§335.251, Applicability and Requirements

The commission adopts §335.251(a) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment will implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment will clarify that entities who transport spent lead-acid batteries in the United States to export them for reclamation in a foreign country or who export spent lead-acid batteries for reclamation in a foreign country are not subject to the requirements of §335.251.

The commission adopts §335.251(b)(1) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment will add a reference to Chapter 335, Subchapter U to include applicable requirements in 40 CFR Part 267, which EPA inadvertently omitted after the rule was promulgated in September, 2005.

The commission adopts §335.251(c) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment will implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment will clarify that entities who transport spent lead-acid batteries in the United States to export them for reclamation in a foreign country or who export spent

lead-acid batteries for reclamation in a foreign country are subject to the requirements of §335.13 and §335.76(h).

§335.431, Purpose, Scope, and Applicability

The commission adopts §335.431(c)(1) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). This amendment will correct errors in two tables: Treatment Standards for Hazardous Wastes (40 CFR §268.40) and Universal Treatment Standards (40 CFR §268.48). This amendment is as stringent as current state rules. EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

§335.504, Hazardous Waste Determination

The commission adopts §335.504(1) to conform to federal regulations previously promulgated in the July 28, 2006, issue of the *Federal Register* (71 FR 42928). This amendment was inadvertently left out of the last RCRA rulemaking and will exclude CRTs that meet the requirements in 40 CFR §261.4(a)(22) for reuse and recycling from classification as a solid waste. This exclusion is currently found in 40 CFR §261.4. This amendment is less stringent than current state rules and encourages recycling of CRTs. EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

The commission also adopts §335.504(1) - (3) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). This amendment will correct typographical errors and citations, and incorporate omissions. This amendment is as stringent as the current state rules. EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions under 42 United States Code (USC), §6926(g), which already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. Likewise,

there will be no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, or the regulated community will benefit from the greater flexibility and reduced compliance burden. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal rules, equivalent state rules will not cause any adverse effects. There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the adopted rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). First, the adopted rulemaking does not exceed a standard set by federal law because the commission adopts this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program. The other adopted changes do not alter substantive requirements although various changes may increase flexibility for the regulated community. Second, although the rulemaking adopts some

requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program. Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the waste program. And fourth, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission adopts this rulemaking under Texas Water Code, §5.103 and §5.105 and under Texas Health and Safety Code, §361.017 and §361.024.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period, but received no comments relating to this subject.

Takings Impact Assessment

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 applies. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the adopted rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4). The

specific purpose of the rulemaking is to maintain state RCRA authorization by adopting state hazardous waste rules that are equivalent to the federal regulations. The rulemaking substantially advances this purpose by adopting rules that incorporate and refer to the federal regulations. Promulgation and enforcement of the rules is not a statutory or constitutional taking of private real property. Specifically, the adopted rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules does not burden, restrict, or limit the owner's right to property and does not reduce the value of property by 25% or more. Likewise, the regulated community is not unduly burdened by those revisions providing greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is to protect, preserve, restore and enhance the diversity, quality, quantity, functions and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 *et seq*. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the rulemaking will update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules will not violate any applicable provisions of the CMP's stated goals and policies.

The commission invited public comment regarding the consistency of this rulemaking with the CMP during the public comment period, but received no comments relating to

this subject.

Public Comment

The comment period closed on November 5, 2012. No comments were received.

SUBCHAPTER A: INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL
§§335.1, 335.2, 335.10 - 335.13, 335.19, 335.24

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

§335.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings.

(1) Aboveground tank--A device meeting the definition of tank in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(2) Act--Texas Health and Safety Code, Chapter 361.

(3) Active life--The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

(4) Active portion--That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion.")

(5) Activities associated with the exploration, development, and <u>production</u> [protection] of oil or gas or geothermal resources--Activities associated with:

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

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

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

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

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

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §1.173;

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

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

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

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

(6) Administrator--The administrator of the United States Environmental Protection Agency or his designee.

(7) Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on site, or to a point of shipment for disposal off site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(8) Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(9) Area of concern--Any area of a facility under the control or ownership of an owner or operator where a release to the environment of hazardous wastes or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration.

(10) Authorized representative--The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(11) Battery--As defined in §335.261 of this title (relating to Universal Waste Rule).

(12) Boiler--An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units;

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler).

(13) Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(14) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored,

processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(15) Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(16) Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(17) Cathode ray tube or CRT--A vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means its glass has been removed from its housing, or casing whose vacuum has been released.

(18) Certification--A statement of professional opinion based upon knowledge and belief.

(19) Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden

pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(20) Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(21) Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(22) Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

(23) Closure--The act of permanently taking a waste management unit or facility out of service.

(24) Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(25) Component--Either the tank or ancillary equipment of a tank system.

(26) Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(27) Consignee--The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(28) Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(29) Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title (relating to Standards).

(30) Contaminant--Includes, but is not limited to, "solid waste," "hazardous waste," and "hazardous waste constituent" as defined in this subchapter; "pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC), §361.401; "hazardous substance" as defined in THSC, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.267.

(31) Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(32) Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(33) Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective

of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(34) Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(35) Cathode Ray Tube collector--A person who receives used, intact Cathode Ray Tubes for recycling, repair, resale, or donation.

(36) Cathode Ray Tube glass manufacturer--An operation or part of an operation that uses a furnace to manufacture Cathode Ray Tube glass.

(37) Cathode Ray Tube processing--Conducting all of the following activities:

(A) Receiving broken or intact Cathode Ray Tubes (CRTs);

(B) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(C) Sorting or otherwise managing glass removed from CRT monitors.

(38) Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(39) Designated facility--A [Class 1 or] hazardous waste treatment, storage, or disposal facility which: has received a [United States Environmental Protection Agency] permit (or [a facility with] interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 270 and 124; has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271 [(in the case of hazardous waste; a permit issued in accordance with §335.2 of this title (relating to Permit Required) (in the case of nonhazardous waste)]; or [that] is regulated under 40 CFR §261.6(c)(2) or 40 CFR Part 266, Subpart F [§335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements)] and [that] has been designated on the manifest by the generator pursuant to 40 CFR

§262.20. [in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste).] For hazardous wastes, if [If] a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. For Class 1 wastes, a designated facility is any treatment, storage, or disposal facility authorized to receive the Class 1 waste that has been designated on the manifest by the generator. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §335.12 [§335.12(e)] of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

(40) Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(41) Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(42) Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(43) Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

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

(45) Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(46) Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(47) Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of non-hazardous industrial solid waste; and

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

(48) United States Environmental Protection Agency (EPA) acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(49) United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 26l, Subpart D and to each characteristic identified in 40 CFR Part 26l, Subpart C.

(50) United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(51) Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the *Federal Register*.

(52) Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(53) Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(54) Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained

all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(55) Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(56) Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(57) Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department

of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(58) Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(59) Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) <u>or §335.602(a)(5) of this title (relating to Standards)</u>, all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, and/or

disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste).

(60) Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

(61) Food-chain crops--Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(62) Freeboard--The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(63) Free liquids--Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(64) Gasification--For the purpose of complying with 40 Code of Federal Regulations §261.4(a)(12)(i), gasification is a process, conducted in an enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

(65) Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(66) Groundwater--Water below the land surface in a zone of saturation.

(67) Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code,

§6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 26l. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(68) Hazardous substance--Any substance designated as a hazardous substance under 40 Code of Federal Regulations Part 302.

(69) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq*.

(70) Hazardous waste constituent--A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR §261.24.

(71) Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-

owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(72) Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(73) In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(74) Inactive portion--That portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

(75) Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(76) Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(77) Individual generation site--The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or

hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

(78) Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(79) Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

(80) Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(81) Inground tank--A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(82) Injection well--A well into which fluids are injected. (See also "underground injection.")

(83) Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(84) Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(85) International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

(86) Lamp--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(87) Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(88) Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(89) Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(90) Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(91) Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(92) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(93) Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(94) Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(95) Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22 (including, if necessary, EPA Form 8700-22A), originated and signed by the generator or offeror in accordance with the instructions in §335.10 of this title and the applicable requirements of 40 CFR Parts 262 - 265. [, that will accompany and be used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is the EPA Form 8700-22, obtainable from any printer registered with the EPA.]

(96) Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of [on] the manifest by a registered source.

(97) Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(98) Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

(99) Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(100) Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(101) Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(102) New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system.")

(103) Off-site--Property which cannot be characterized as on-site.

(104) Onground tank--A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(105) On-Site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but

connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(106) Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

(107) Operator--The person responsible for the overall operation of a facility.

(108) Owner--The person who owns a facility or part of a facility.

(109) Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(110) PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(111) Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, or disposal facility in accordance with specified limitations.

(112) Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

(113) Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(114) Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq*.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels--i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils--i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils--i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils--i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils--i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants--i.e., automotive and industrial lubricants;

(x) building materials--i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials--i.e., transformer oils and cable oils; and

(xii) used oils--See definition for "used oil" in this section.

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, *et seq*.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(115) Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(116) Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(117) Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation and Recovery Act and solid waste management units.

(118) Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(119) Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(120) Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(121) Primary exporter--Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 Code of Federal Regulations Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(122) Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health

or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq*., as amended.

(123) Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(124) Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(125) Receiving country--A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(126) Regional administrator--The regional administrator for the United States Environmental Protection Agency region in which the facility is located, or his designee.

(127) Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(128) Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under §335.166(5) of this title (relating to Corrective Action Program) or §335.167(c) of this title.

(129) Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, or disposal.

(130) Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency or state approved corrective action.

(131) Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(132) Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(133) Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(134) Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.

(135) Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(136) Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(137) Small quantity generator--A generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

(138) Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or

other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq*., as amended; or

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §§261.4(a)(1) - (22), 261.39, and 261.40, as amended through March 18, 2010 (75

FR 12989) [July 28, 2006 (71 FR 42928)], subject to the changes in this clause, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste). For the purposes of the exclusions under 40 CFR §261.39 and §261.40, 40 CFR §261.41 is adopted by reference as amended through July 28, 2006 (71 FR 42928). For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'solid Waste' in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of 'solid Waste' in §335.1 of this title (relating to Definitions)":

(I) in the certification statement under 40 CFR §261.38(c)(1)(i)(C)(4), the reference to "40 CFR §261.38" is changed to "40 CFR §261.38, as revised under subparagraph (A)(iv) under the definition of 'solid Waste' in 30 TAC §335.1," and the reference to "40 CFR §261.28(c)(10)" is changed to "40 CFR §261.38(c)(10)";

(II) in 40 CFR §261.38(c)(2), the references to "§260.10 of this chapter" are changed to "§335.1 of this title (relating to Definitions)," and the reference to "parts 264 or 265 of this chapter" is changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of

Hazardous Waste Treatment, Storage, or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities)";

(III) in 40 CFR §261.38(c)(3) - (5), the references to "parts 264 and 265, or §262.34 of this chapter" are changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";

(IV) in 40 CFR §261.38(c)(5), the reference to "§261.6(c) of this chapter" is changed to "§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)";

(V) in 40 CFR §261.38(c)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director";

(VI) in 40 CFR §261.38(c)(8), the reference to "§262.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)";

(VII) in 40 CFR §261.38(c)(9), the reference to "§261.2(c)(4) of this chapter" is changed to §335.1(138)(D)(iv) " of this title (relating to Definitions)"; and

(VIII) in 40 CFR §261.38(c)(10), the reference to "implementing authority" is changed to "executive director."

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33, but that exhibit one or more of the hazardous waste characteristics, or will be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(17)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

Figure: 30 TAC §335.1(138)(D)(iv)

TABLE 1				
	Use Constituting Disposal S.W. Def. (D)(i)(1)	**Energy Recovery/Fuel S.W. Def. (D)(ii)(2)**	**Reclamation S.W. Def. (D)(iii)(3)[2]**	**Speculative Accumulation S.W. Def. (D)(iv)(4)**
Spent materials (listed hazardous & not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous)[1]	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not	*	*		*

listed characteristically hazardous)				
Sludges (nonhazardous)[1]	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous)[1]	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal <u>that is not excluded under §335.1(138)(A)(iv)</u> [other than excluded scrap metal (see §335.17(9))] (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(9)) (nonhazardous)[1]	*	*	*	*

NOTE: The terms "spent materials," "sludges," "by-products," "scrap metal," and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).
[1] These materials are governed by the provisions of §335.24(h) only.
[2] Except as provided in 40 CFR §261.4(a)(17) for mineral processing secondary materials.

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed

such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2).

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that will otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as

ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as will be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel, or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Subchapter R of this chapter (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Subchapter R of this chapter; and

(-b-) does not exceed a concentration limit under §312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

(viii) with the exception of the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are

recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(K) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(139) Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(140) Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(141) Staging pile--An accumulation of solid, non-flowing remediation waste, as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(142) Standard permit [Permit]--A Resource Conservation and Recovery Act (RCRA) permit authorizing management of hazardous waste issued under Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units) and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit). The standard permit may have two parts, a uniform portion issued in all cases and a supplemental portion issued at the executive director's discretion [A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste non-thermal treatment and/or storage facility in accordance with specified limitations].

(143) Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(144) Sump--Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(145) Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(146) Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(147) Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(148) TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(149) Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

(150) Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(151) Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(152) Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste are held during the normal course of transportation.

(153) Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(154) Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(155) Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(156) Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 Code of Federal Regulations §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(157) Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

(158) Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(159) Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

(160) Underground tank--A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

(161) Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or

processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

(162) Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(163) Universal waste handler--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(164) Universal waste transporter--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(165) Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(166) Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(167) Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, conditionally exempt small quantity generator hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(168) Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §§466 *et seq*., §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of tank or tank system as defined in this section.

(169) Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(170) Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(171) Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

§335.2. Permit Required.

(a) Except with regard to storage, processing, or disposal to which subsections (c) - (h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable

Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Department of State Health Services (DSHS), or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency (EPA) or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities that satisfied this requirement by filing an application on or before November 19, 1980, with the EPA are not required to submit a separate application with the DSHS. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Texas Solid Waste Disposal Act (Vernon's Supplement 1991), Texas Civil Statutes, Article

4477-7, or the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §§6901 *et seq*., that render the facilities subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the EPA under RCRA, which first require them to comply with the standards in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and the waste is not commingled with

waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit;

(4) the collection, storage, or processing of nonhazardous industrial solid waste, if the waste is collected, stored, or processed as part of a treatability study;

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment;

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the Clean Waste Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit;

(7) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater unit and is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26;

(8) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater treatment unit that discharges to a publicly owned treatment works and the units are located at a noncommercial solid waste management facility; or

(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities.

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b) - (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 CFR §261.4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in 40 CFR §261.4(e) and (f), as amended and adopted in the CFR through April 4, 2006 [February 18, 1994], as published in the *Federal Register* (71 FR 16862) [(59 FR 8362)], which are adopted by reference.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill that has qualified for interim status in accordance with 40 CFR Part 270, Subpart G, and that has complied with the standards in Subchapter E of this chapter, by complying with the notification and information requirements in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions, which may include, without limitation, public notice and technical requirements. A

request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of 40 CFR §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing permit or site development plan applicable to the facility or a portion of the facility;

(2) polychlorinated biphenyl compounds wastes subject to regulation by 40 CFR Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

(7) radioactive or nuclear waste materials, receipt of which will require a license from the DSHS [TDH] or the commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.171(c)(3)(B) - (E) of this title (relating to Disposal of Special Wastes). Authorizations obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit application, failure of the facility to operate the facility in compliance with the standards set forth in Subchapter E of this chapter, or as otherwise provided by law.

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR §265.115) after January 26, 1983, must have post-closure permits, unless they

demonstrate closure by removal or decontamination as provided under 40 CFR §270.1(c)(5) and (6), or obtain an order in lieu of a post-closure permit, as provided in subsection (m) of this section. If a post-closure permit is required, the permit must address applicable provisions of 40 CFR Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) provisions concerning groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the EPA imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title.

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the

definitions and requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(m) At the discretion of the commission, an owner or operator may obtain a post-closure order in lieu of a post-closure permit for interim status units, a corrective action management unit unless authorized by a permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units. The post-closure order must address the facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and groundwater monitoring requirements of §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response).

(n) Except as provided in subsection (d)(9) of this section, owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works are required to obtain a permit under this subchapter. By June 1, 2006, owners or operators of existing commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works must have a permit issued under this subchapter or obtain a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges) to continue operating. A general permit issued under Chapter 205 of this title will authorize operations until a final decision is made on the application for an

individual permit or 15 months, whichever is earlier. The general permit shall authorize operations for a maximum period of 15 months except that authorization may be extended on an individual basis in one-year increments at the discretion of the executive director. Should an application for a general permit issued under Chapter 205 of this title be submitted, the applicant shall also submit to the commission, by June 1, 2006, the appropriate information to demonstrate compliance with financial assurance requirements for closure of industrial solid waste facilities in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities). Owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works operating under a general permit issued under Chapter 205 of this title shall submit an application for a permit issued under this subchapter prior to September 1, 2006.

(o) Treatment, storage, and disposal facilities that are otherwise subject to permitting under RCRA and that meet the criteria in paragraphs (1) or paragraph (2) of this subsection, may be eligible for a standard permit under Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit) if they satisfy one of the two following criteria:

(1) facility generates hazardous waste and then non-thermally treats and/or stores hazardous waste on-site; or

(2) facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility.

§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

(a) Except as provided in paragraph (2) of this subsection [(g) and (h) of this section], no person who generates, transports, processes, stores, or disposes [generator] of hazardous [or Class 1] waste [consigned to an off-site solid waste treatment, storage, or disposal facility within the United States or a primary exporter of hazardous waste consigned to a foreign country] shall cause, suffer, allow, or permit the shipment of hazardous waste [or Class 1 waste] unless he complies with the requirements of paragraph (1) of this subsection, and the manifest requirements in 40 Code of Federal Regulations (CFR) §§262.20 - 262.23, 262.27, 262.42, 262.54, 262.55, and 262.60 and the Appendix to 40 CFR Part 262, as these sections are amended through March 18, 2010 (75 FR 12989). [:]

(1) In addition, generators, owners or operators of treatment, storage, or disposal facilities, and primary exporters shall include a Texas waste code for each hazardous waste itemized on the manifest. [for generators of industrial nonhazardous Class 1 waste in a quantity greater than 100 kilograms per month and/or generators of hazardous waste shipping hazardous waste which is part of a total quantity of hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste treatment, storage, or disposal facility in Texas, a standard (nationally uniform) Resource Conservation and Recovery Act (RCRA) manifest form (United States Environmental Protection Agency (EPA) Form 8700-22), under both RCRA and Department of Transportation (DOT) statutory authorities, is prepared;]

(2) No manifest is required for a hazardous waste generated by a [The generator is either an industrial] generator that generates less than [100 kilograms of nonhazardous Class 1 waste per month and less than] the quantity limits of hazardous waste specified in §335.78 of this title or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title. [;]

(3) For the purposes of the federal hazardous waste manifest requirements incorporated by reference the term, "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B. [for generators of hazardous waste or Class 1 waste generated in Texas for consignment to another state the standard (nationally uniform) RCRA manifest form (EPA Form 8700-22) is prepared, unless the generator is identified in paragraph (2) of this section;]

(4) For the purposes of the federal hazardous waste manifest requirements incorporated by reference, reference to the United States Environmental Protection Agency (EPA) is changed to the Texas Commission on Environmental Quality. [for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a standard (nationally uniform) RCRA manifest form (EPA Form 8700-22); and]

[(5) a generator designates on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternate facility which is authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "Alternate Facility." If the

transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste;]

[(6) for shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.]

(b) No manifest and no marking in accordance with §335.67(b) of this title (relating to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges). [Generators may obtain the manifest from any source that is registered with the EPA as a supplier of manifests. A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the EPA director of the Office of Solid Waste to do so under 40 Code of Federal Regulations (CFR) §262.21.]

(c) Except as provided in subsections (d) and (e) of this section, persons who generate, transport, process, store, or dispose of Class 1 waste shall not cause, suffer, allow, or permit the shipment of Class 1 waste unless the person complies with the manifest requirements listed in subsection (a) of this section except for 40 CFR §262.54 and §262.55 with the following changes: [All manifests for hazardous wastes must be prepared according to the instructions found in the Appendix to 40 CFR Part 262, and must also contain the Texas Waste Code for each waste. Manifests for Class 1 wastes must be prepared according to the instructions found in the Appendix to 40 CFR Part 262 (pre-printed on the back of the Uniform Hazardous Waste Manifest) with the addition of the Texas Waste Codes for each waste. When itemizing Class 1 waste, the TCEQ solid waste registration numbers will be used when EPA identification numbers are not required.]

(1) When Class 1 waste is itemized on the manifest, use the Texas Commission on Environmental Quality solid waste registration (SWR) number in place of the EPA identification number and the Texas waste code in place of the EPA waste code;

(2) When both hazardous and Class 1 waste are itemized on the same manifest, use EPA identification numbers to identify the generator, transporter, and receiver;

(3) Use Texas waste codes for each waste itemized on the manifest;

(4) The term, "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B; and

(5) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

(d) No manifest is required for the shipment of Class 1 waste where the generator is an industrial generator that generates less than the quantity limits of Class 1 waste specified in §335.78 of this title or is a municipal generator that generates less than the quantity limit of Class 1 waste specified in §335.78 of this title. [At the time of waste transfer, the generator shall:]

[(1) use a manifest system that ensures that interstate and intrastate shipments of hazardous waste are designated for delivery and, in the case of intrastate shipments, are delivered to facilities that are authorized to operate under an approved state program or the federal program; and]

[(2) ensure that all hazardous and Class 1 wastes offered for transportation are accompanied by a manifest except shipments subject to subsections (g) and (h) of this section or shipments by rail or water, as specified in subsections (e) and (f) of this section.]

[(e) For shipments of Class 1 waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.]

[(f) For rail shipments of hazardous waste or Class 1 waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:]

[(1) the next non-rail transporter, if any;]

[(2) the designated facility if transported solely by rail; or]

[(3) the last rail transporter to handle the waste in the United States if exported by rail.]

(e) [(g)] No manifest is required for the shipment of Class 1 waste [which is not hazardous waste] to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered another source with respect to other plants or operations owned by the same person.

[(h) No manifest and no marking in accordance with §335.67(b) of this title (relating to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-

of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).]

§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste.

(a) Except as provided by §335.10(a)(2), (d), and (e) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), persons who transport hazardous [No transporter may cause, suffer, allow, or permit the shipment of solid] waste must comply with the manifest requirements in 40 Code of Federal Regulations (CFR) §263.20, §263.21, and the Appendix to 40 CFR Part 262, as these sections are amended through June 16, 2005 (70 FR 35034) as well as the following: [for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) to an off-site treatment, storage, or disposal facility, unless the transporter:]

(1) the person must comply [complies] with §335.10 of this title; and

(2) in the case of hazardous waste exports, the person must ensure [ensures] that the shipment conforms to the requirements set forth in the regulations contained in 40 [Code of Federal Regulations (]CFR[)] §263.20.

(b) Except as provided by §335.10(d) and (e) of this title, a person who transports Class 1 waste must comply with the requirements of subsection (a) of this section, except those requirements in 40 CFR §263.20(a)(2). [A transporter may not cause, suffer, allow, or permit the delivery of a shipment of hazardous or Class 1 waste to another designated transporter or to a treatment, storage, or disposal facility unless accompanied by a standard (nationally uniform) Resource Conservation and Recovery Act (RCRA) manifest form (United States Environmental Protection Agency (EPA) Form 8700-22) prepared according to §335.10 of this title and complies with 40 CFR Part263.]

[(c) The requirements of subsections (b) and (d) of this section do not apply to water (bulk shipment) transporters if:]

[(1) the waste is delivered by water (bulk shipment) to the facility designated on the manifest;]

[(2) a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste;]

[(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the facility on either the manifest or the shipping paper;]

[(4) the person delivering the waste to the initial water (bulk shipment) transporter obtains the date of delivery and the signature of the water (bulk shipment) transporter on the manifest and forwards it to the facility; and]

[(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §335.14(b) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste).]

[(d) For shipments involving rail transportation, the requirements of subsections (b) and (c) of this section do not apply and the following requirements do apply.]

[(1) When accepting Class 1 waste from a non-rail transporter, the initial rail transporter must:]

[(A) sign and date, the manifest acknowledging acceptance of the waste;]

[(B) return a copy of the manifest to the non-rail transporter;]

[(C) forward at least three copies of the manifest to:]

[(i) the next non-rail transporter, if any;]

[(ii) the designated facility, if the shipment is delivered to that facility by rail; or]

[(iii) the last rail transporter designated to handle the waste in the United States;]

[(D) retain one copy of the manifest and rail shipping paper in accordance with §335.14(c) of this title.]

[(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.]

[(3) When delivering Class 1 waste or municipal hazardous waste to the designated facility, a rail transporter must:]

[(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and]

[(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title.]

[(4) When delivering hazardous waste or Class 1 waste to a non-rail transporter, a rail transporter must:]

[(A) obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and]

[(B) retain a copy of the manifest in accordance with §335.14(c) of this title.]

[(5) Before accepting municipal hazardous waste or Class 1 waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.]

[(e) Transporters who transport hazardous waste or Class 1 waste out of the United States shall comply with manifest requirements according to §335.10 of this title and 40 CFR Part 263.]

[(f) The transporter must deliver the entire quantity of municipal hazardous waste or Class 1 waste which he has accepted from a generator or a transporter to:]

[(1) the designated facility listed on the manifest;]

[(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery;]

[(3) the next designated transporter; or]

[(4) the place outside the United States designated by the generator.]

[(g) If the transporter cannot deliver the waste in accordance with subsection (h) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.]

[(h) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:]

[(1) for a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required;]

[(2) for a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection, and the name, address, phone number, and EPA identification number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment.]

§335.12. Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities.

(a) Except as provided by §335.10(a)(2) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), persons who generate, process, store, or dispose of hazardous waste must comply with 40 Code of Federal Regulations (CFR) §265.71 and §265.72, or 40 CFR §264.71 and §264.72, depending on the status of the person, and with the Appendix to 40 CFR Part 262, as these sections are amended through March 18, 2010 (75 FR 12989). [No owner or operator of a treatment, storage, or disposal facility may accept delivery of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to

Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), for off-site treatment, storage, or disposal unless:]

[(1) a manifest accompanies the shipment which designates that facility to receive the waste;]

[(2) the manifest complies with §335.10 of this title and 40 Code of Federal Regulations (CFR)Part 264; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.]

[(3) the owner or operator retains one copy of the manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities);]

[(4) within 30 days after the delivery, the owner or operator sends a copy of the manifest to the generator or primary exporter where appropriate; and]

[(5) in the case of hazardous waste exports, a copy of the United States Environmental Protection Agency (EPA) acknowledgment of consent also accompanies the waste and the owner or operator has no knowledge that the shipment does not conform to the EPA acknowledgment of consent.]

(b) Except as provided by §335.10(d) and (e) of this title, persons who generate, transport, process, store, or dispose of Class 1 waste must comply with 40 CFR §§264.71, 264.72, and 264.76, and the Appendix to 40 CFR Part 262, as amended through March 18, 2010 (75 FR 12989), and a manifest must accompany the shipment which designates that facility to receive the waste. [If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste or Class 1 waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall process the manifest in accordance with §335.10 of this title and comply with 40 CFR Part 264.]

[(c) If a facility receives hazardous waste or Class 1 waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment) by a shipping paper, the owner or operator, or his agent must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).]

[(1) Manifest discrepancies are:]

[(A) significant differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;]

[(B) rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, and disposal facility cannot accept; or]

[(C) container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 CFR §261.7(b).]

[(2) Significant differences in quantity are for bulk weight, variations greater than 10% in weight; and for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.]

[(3) Significant differences in type are obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.]

[(4) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend

that the owner or operator of a facility perform the general waste analysis required by 40 CFR §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.]

[(d) Facilities that receive hazardous waste imported from a foreign source must mail a copy of the manifest for the imported hazardous waste to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460. Manifests that only document the shipment of imported Class 1 waste do not need to be sent to the International Compliance Office.]

[(e) The guidelines for rejecting waste are as follows.]

[(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 40 CFR §261.7(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste.]

[(A) If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.]

[(B) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (2) or (3) of this subsection.]

[(2) Except as provided in subsection (e)(3) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest as set in §335.10 of this title.]

[(3) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility.]

[(4) Except as provided in paragraph (5) of this subsection, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with §335.10 of this title.]

[(5) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest designating the generator as the alternate facility. The facility must retain a copy for its records then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest.]

[(6) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 40 CFR §261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the

amended manifest to the transporter and generator that received copies prior to the amendments.]

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

(a) Unregistered generators who ship hazardous waste or Class 1 waste shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

(b) Unregistered generators or out-of-state primary exporters who export hazardous waste from or through Texas to a foreign country, shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

(c) Registered generators or out-of-state primary exporters who import hazardous or Class 1 waste from a foreign country through Texas to another state shall prepare a complete and correct Foreign Waste Shipment Summary (F1) from the manifests.

(d) The Waste Shipment Summary (S1) and the Foreign Waste Shipment Summary (F1) shall be prepared in a form provided or approved by the executive

director and submitted to the executive director on or before the 25th of each month for shipments originating during the previous month. The unregistered generator or in-state/out-of-state primary exporter must keep a copy of each summary for a period of at least three years from the due date of the summary. These generators are required to prepare and submit a Waste Shipment Summary (S1) and/or Foreign Waste Shipment Summary (F1) only for those months in which shipments are actually made. Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.

(e) The following figure is a graphic representation illustrating generator, waste type, shipment type, and report method.

Figure: 30 TAC §335.13(e) (No change to the figure as it currently exists in TAC.)

(f) A registered generator is defined as an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements), and is assigned a solid waste registration number.

(g) An unregistered generator is defined as an in-state generator who is not a conditionally exempt small quantity generator, as defined in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally

Exempt Small Quantity Generators), that ships hazardous waste and/or Class 1 waste using a temporary solid waste registration number and a temporary Texas waste code number assigned by the executive director.

(h) A primary exporter/importer is defined as:

(1) an in-state generator who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste to a foreign country; or

(2) an out-of-state generator/importer of record who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste through Texas to a foreign country.

(i) The registered/unregistered generator or primary exporter shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) for a minimum of three years from the date of shipment by the registered/unregistered generator or primary exporter.

(j) A registered/unregistered generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class 1 waste.

(k) A registered/unregistered generator or primary exporter of hazardous waste subject to §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments) must submit an exception report to the executive director if he has not received a copy of the manifest with the handwritten signatures of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report must be retained by the registered/unregistered generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.

(l) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(m) The requirements of subsections (j) and (k) of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title.

(n) Primary exporters of hazardous waste as defined in 40 Code of Federal Regulations (CFR) §262.51 must submit an annual report in accordance with the requirements set out in the regulations contained in 40 CFR §262.56, as amended and adopted through March 18, 2010 (75 FR 12989). [April 12, 1996, at 61 FedReg 16290.]

(o) Primary exporters of hazardous waste as defined in 40 CFR §262.51, or importers of hazardous waste, to or from countries listed in 40 CFR §262.58(a)(1) for recovery, must comply with 40 CFR Part 262, Subparts A and H.

§335.19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following criteria:

(1) the manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) the reason that the applicant has accumulated the material for one or more years without recycling 75% of the weight or volume accumulated at the beginning of the year;

(3) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) the extent to which the material is handled to minimize loss; and

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

[(2) the prevalence of the practice on an industry-wide basis;]

(2) [(3)] the extent to which the material is handled before reclamation to minimize loss;

(3) [(4)] the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) [(5)] the location of the reclamation operation in relation to the production process;

(5) [(6)] whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) [(7)] whether the person who generates the material also reclaims it; and

(7) [(8)] other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

(1) the degree of processing the material has undergone and the degree of further processing that is required;

(2) the value of the material after it has been reclaimed;

(3) the degree to which the reclaimed material is like an analogous raw material;

(4) the extent to which an end market for the reclaimed material is guaranteed;

(5) the extent to which the reclaimed material is handled to minimize loss; and

(6) other relevant factors.

(d) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to

Standards for the Management of Specific Wastes and Specific Types of Facilities [Materials]).

§335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials.

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d) - (f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) - (l) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission

Meetings); Chapter 17 of this title (relating to Tax Relief for Property Used for Environmental Protection); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); and Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings)[; and Chapter 261 of this title (relating to Impact Statements)].

(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B - I or O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions); Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title ; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; [Chapter 261 of this title;] or Chapter 305 of this title, except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986:

(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 CFR §§262.53, 262.55, 262.56(a)(1) - (4) and (6) and (b), and 262.57, as amended through January 8, 2010 (75 FR 1236) [which are in effect as of November 8, 1986], export such materials only upon such consent of the receiving country and in conformance with the United States Environmental Protection Agency (EPA) [EPA] acknowledgment of consent as defined in the regulations contained in 40 CFR Part 262, Subpart E, as amended through January 8, 2010 (75 FR 1236) [which are in effect as of November 8, 1986], and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export;

(B) transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment;

(2) scrap metal that is not already excluded under 40 CFR §261.4(a)(13);

(3) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 CFR §261.4(a)(12)); and

(4) the following hazardous waste fuels:

(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such

hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter [(relating to Standards Applicable to Generators of Hazardous Waste)] and Subchapter D of this chapter [(relating to Standards Applicable to Transporters of Hazardous Waste)], and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a) - (c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title ; Chapter 55 of this title; Chapter 70 of

this title; Chapter 80 of this title; and the notification requirements under §335.6 of this title, except as provided in subsections (a) - (c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a) - (c) of this section:

(1) notification requirements under §335.6 of this title; and

(2) Section 335.12 [§335.12] of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [Processing,] or Disposal Facilities).

(g) Recyclable materials (excluding those listed in subsections (b)(4), and (c)(1) - (5) [(c)(1) and (2) - (5)] of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping

Requirements Applicable to Owners or Operators of Treatment, Storage, [Processing,] or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, [Processing,] or Disposal Facilities, respectively), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of §335.4 of this title. In addition, industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6 of this title. Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsections (b)(4) and (c)(2) of this section may also be subject to the requirements of §§335.10 - 335.15 of this title, as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into nonharmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and

(9) other relevant factors.

(i) Except as provided in Texas Health and Safety Code, §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;

(2) whether hazardous and nonhazardous wastes that are incompatible are stored and/or processed in the same or connected units;

(3) whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;

(4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(7) the potential for the objectionable constituent to degrade into harmful constituents;

(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and

(12) other relevant factors.

(j) Closure cost estimates.

(1) Except as otherwise approved by the executive director, an owner or operator of a recycling facility that stores combustible nonhazardous materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations. The closure cost estimate for financial assurance must be submitted with any new notification in accordance with §335.6 within 60 days of the effective date of this rule for existing facilities or as otherwise requested by the executive director.

(2) The estimate must:

(A) equal the costs of closure of the facility, including disposition of the maximum inventories of all processed and unprocessed combustible materials

stored outdoors on site during the life of the facility, in accordance with all applicable regulations;

(B) be based on the costs of hiring a third party that is not affiliated (as defined in §328.2 of this title (relating to Definitions)) with the owner or operator; and

(C) be based on a per cubic yard and/or short ton measure for collection and disposition costs.

(k) Financial assurance. An owner or operator of a recycling facility that stores nonhazardous combustible recyclable materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall establish and maintain financial assurance for closure of the facility in accordance with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).

(l) Closure requirements.

(1) Closure must include collecting processed and unprocessed materials, and transporting the materials to an authorized facility for disposition unless otherwise approved or directed in writing by the executive director.

(2) Closure of the facility must be completed within 180 days following the most recent acceptance of processed or unprocessed materials unless otherwise approved or directed in writing by the executive director.

(m) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A - I or O of this chapter, but is regulated under Chapter 324 of this title (relating to Used Oil Standards). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(n) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 CFR Part 264 or Part 265, Subparts AA and BB, as adopted by reference under §335.152(a)(17) and (18) and §335.112(a)(19) and (20) of this title (relating to Standards).

(o) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as

defined in 40 CFR §262.58(a)(1), for purpose of recovery, and any person who exports or imports such hazardous waste, is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996 at 61 FedReg 16290), if the hazardous waste is subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(p) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste," §335.6 of this title, §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), and Subchapter H of this chapter.

SUBCHAPTER C: STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

§§335.61, 335.62, 335.69, 335.76, 335.78, 335.79

Statutory Authority

The amendments and new section are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024, (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments and new section implement THSC, Chapter 361.

§335.61. Purpose, Scope and Applicability.

(a) Except as provided in subsection (b) of this section, this subchapter establishes standards for generators of hazardous waste. These standards are in addition

to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste [Management] in General).

(b) The provisions of this subchapter with which a generator who stores, processes or disposes of hazardous waste on-site must comply are §335.62 of this title (relating to Hazardous Waste Determination and Waste Classification), §335.63 of this title (relating to EPA Identification Numbers), §335.70 of this title (relating to Recordkeeping), §335.73 of this title (relating to Additional Reporting), and, if applicable, §335.77 of this title (relating to Farmers), and §335.69 of this title (relating to Accumulation Time).

(c) Any person who imports hazardous waste into the state from a foreign country shall comply with standards applicable to generators.

(d) An owner or operator who initiates a shipment of hazardous waste from a processing, storage or disposal facility must comply with the generator standards contained in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and this subchapter. The provisions of §335.69

of this title [(relating to Accumulation Time)] are applicable to on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §335.69 of this title only apply to owners or operators who are shipping hazardous waste which they generate at that facility.

(e) A farmer who generates waste pesticides which are hazardous waste and who complies with §335.77 of this title is not required to comply with this chapter with respect to those pesticides.

(f) A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in Subchapters E, F, H, and O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste) and with Chapter 305 of this title (relating to Consolidated Permits).

(g) Section 335.78(c) and (d) of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) must be used to determine the applicability of provisions of this subchapter that are dependent on calculations of the quantity of hazardous waste generated per month.

(h) The requirements of this subchapter do not apply to persons responding to an explosives or munitions emergency in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

(i) For purposes of this subsection, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in 40 Code of Federal Regulations §262.200. The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of §335.79 of this title (relating to Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities) are not subject to:

(1) for large and small quantity generators, the requirements of §335.504 of this title (relating to Hazardous Waste Determination) and §335.69 of this title, except as provided in §335.79 of this title; and

(2) for conditionally exempt small quantity generators, the conditions of §335.78 of this title, except as provided in §335.79 of this title.

§335.62. Hazardous Waste Determination and Waste Classification.

A person who generates a solid waste must determine if that waste is hazardous pursuant to §335.504 of this title (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the provisions of Subchapter R of this chapter (relating to Waste Classification). If the waste is determined to be hazardous, the generator must refer to this chapter and to 40 Code of Federal Regulations Parts 261, 264, 265, 266, 267, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste.

§335.69. Accumulation Time.

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f) - (h) and (n) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

(A) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, [and] BB, and CC, as adopted by reference under §335.112(a) of this title; and/or

(B) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, and CC, except 40 CFR §265.197(c) and §265.200, as adopted by reference under §335.112(a) of this title; and/or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title and maintains the following records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(D) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to

operation of the unit. The owner or operator shall maintain the following records at the facility:

(i) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or

(ii) documentation that the unit is emptied at least once every 90 days;

(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

(3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) the generator complies with the following:

(A) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D and with 40 CFR §265.16, as adopted by reference in §335.112(a) of this title;

(B) all applicable requirements under 40 CFR Part 268 [40 CFR §268.7(a)(5)], as adopted by reference under §335.431 [§335.431(c)] of this title (relating to Purpose, Scope, and Applicability); and

(C) Section 335.113 [§335.113] of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in 40 CFR §261.31 or §261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264, 265, and 267 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 90-day period. [A generator who accumulates hazardous waste for more than 90 days is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title (relating to Consolidated Permits) applicable to such owners and operators, unless he has been granted an extension to the 90-day period.] Such

extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General) applicable to generators of Class 1 waste.

(d) A generator, other than a conditionally exempt small quantity generator regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 CFR <u>§261.31 or</u> §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) <u>or (f)</u> of this section provided he:

(1) complies with 40 CFR §§265.171, 265.172, and 265.173(a), as adopted by reference under §335.112(a) of this title; and

(2) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(e) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in excess of the amounts listed in subsection (d) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this section or other applicable provisions of this chapter. During the three-day period, the generator must continue to comply with subsection (d) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) the quantity of waste accumulated on-site never exceeds 6,000 kilograms;

(2) the generator complies with the requirements of 40 CFR Part 265, Subpart I, as adopted by reference under §335.112(a) of this title, except 40 CFR §265.176 and §265.178;

(3) the generator complies with the requirements of 40 CFR §265.201, as adopted by reference under §335.112(a) of this title;

(4) the generator complies with the requirements of:

(A) subsection (a)(2) and (3) of this section;

(B) 40 CFR Part 265, Subpart C, as adopted by reference under §335.112(a) of this title; [and]

(C) all applicable requirements under 40 CFR Part 267, as adopted by reference under §335.601 and §335.602 of this title (relating to Purpose, Scope, and Applicability; and Standards); and

(D) [(C)] all applicable requirements under 40 CFR Part 268 [40 CFR §268.7(a)(5)], as adopted by reference under §335.431 [§335.431(c)] of this title; and

(5) the generator complies with the following requirements.

(A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph (D) of this paragraph. This employee is the emergency coordinator.

(B) The generator must post the following information next to telephones that may be used to summon emergency assistance:

(i) the name and telephone number of the emergency coordinator;

(ii) location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) the telephone number of the fire department, unless the facility has a direct alarm.

(C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows.

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher.

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using its 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) identification number of the generator;

(II) date, time, and type of incident (e.g., spill or fire);

(III) quantity and type of hazardous waste involved in the incident;

(IV) extent of injuries, if any; and

(V) estimated quantity and disposition of recovered materials, if any.

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste), and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(i) A generator who generates or collects hazardous waste for the purpose of treatability studies is not subject to this section.

(j) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) the generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering the F006 waste or otherwise released to the environment prior to its recycling;

(2) the F006 waste is legitimately recycled through metals recovery;

(3) no more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

(4) the F006 waste is managed in accordance with the following:

(A) the F006 waste is placed:

(i) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC; and/or

(ii) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200; and/or

(iii) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(I) a written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

(II) documentation that the unit is emptied at least once every 180 days;

(B) the generator complies with 40 CFR §265.111 and §265.114, as adopted by reference under §335.112(a)(6) of this title;

(C) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(D) while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

(E) the generator complies with the following:

(i) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D, and 40 CFR §265.16, as adopted by reference under §335.112(a) of this title;

(ii) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title; and

(iii) Section 335.113 [§335.113] of this title.

(k) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of subsection (j)(1) - (4) of this section.

(l) A generator accumulating F006 waste in accordance with subsection (j) or (k) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title applicable to such owners and operators, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the executive director if F006 waste must remain on-site for longer than 180 days (or 270

days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the executive director on a case-by-case basis.

(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) may accumulate the returned waste on-site in accordance with subsections (a) and (b) or (f) - (h) of this section depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(n) A generator who sends a shipment of Class 1 waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title may accumulate the returned waste on-site. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

§335.76. Additional Requirements Applicable to International Shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58 as amended through January 8, 2010 (75 FR 1236) [July 14, 2006 (71 FR 40254)], a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous

waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title and §335.14 of this title and Subchapter D of this chapter. Exports of hazardous waste are prohibited unless:

(1) notification in accordance with the regulations contained in 40 CFR §262.53, as amended and adopted through April 12, 1996 (61 FR 16290) has been provided;

(2) the receiving country has consented to accept the hazardous waste;

(3) a copy of the United States Environmental Protection Agency (EPA) acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));

(4) the hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA acknowledgment of consent; and

(5) the primary exporter complies with the manifest requirements of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) except that:

(A) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and

(B) the primary exporter may obtain the manifest from any source that is registered with the EPA as a supplier of manifests.

(c) A primary exporter [exportor] must submit an exception report to the executive director if:

(1) he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter;

(2) within 90 days from the date the waste was accepted by the initial transporter, the primary exporter [exportor] has not received written confirmation from the foreign consignee that the hazardous waste was received; or

(3) the waste was returned to the United States.

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title and 40 CFR §262.60. [for the manifest except:]

[(1) in place of the generator's name, address, and EPA identification number, the name and address of the foreign generator and the importer's name, address, and EPA identification number must be used;]

[(2) in place of the generator's signature on the certification statement, the United States importer or his agent must sign and date the certification and obtain the signature of the initial transporter; and]

[(3) a person who imports hazardous waste may obtain the Uniform Hazardous Waste Manifest from any source that is registered with the EPA as a supplier of the manifests.]

(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International

Agreements), as amended and adopted through January 8, 2010 (75 FR 1236) [April 12, 1996 (61 FR 16290)].

(g) Except to the extent that they are clearly inconsistent with Texas Health and Safety Code, Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR §262.57, which are in effect as of November 8, 1986.

(h) Transfrontier shipments of hazardous waste for recovery within countries belonging to the Organization for Economic Cooperation and Development are subject to 40 CFR Part 262, Subpart H, which is adopted by reference as amended and adopted in the CFR through January 8, 2010 (75 FR 1236) [July 14, 2006 (71 FR 40254)].

§335.78. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (e) - (g) and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not

subject to regulation under Subchapters C - H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action [Actions] on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests [Request] for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; [Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property);] Chapter 305 of this title (relating to Consolidated Permits); or the notification requirements of the Resource Conservation

and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) When making the quantity determinations of Subchapters A - C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), the generator must include all hazardous waste it generates, except hazardous waste that:

(1) is exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c) - (f), §335.24(c) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials), §335.41(f)(1) of this title (relating to Purpose, Scope and Applicability), or 40 CFR §261.8;

(2) is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in §335.1 of this title (relating to Definitions);

(3) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under §335.24(f) of this title [(relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials)];

(4) is used oil managed under the requirements of §335.24(j) of this title and Chapter 324 of this title (relating to Used Oil);

(5) are spent lead-acid batteries managed under the requirements of §335.251 of this title (relating to Applicability and Requirements); [or]

(6) is universal waste managed under §335.41(j) of this title [(relating to Purpose, Scope and Applicability)] and Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule); or

(7) is an unused commercial chemical product (listed in 40 CFR Part 261, Subpart D or exhibiting one or more characteristics in 40 CFR Part 261, Subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity consistent with 40 CFR §262.213. For purposes of this provision, the phrase "eligible academic entity" shall have the meaning as defined in 40 CFR §262.200.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;

(2) hazardous waste which is generated or collected for the purpose of treatability studies;

(3) hazardous waste produced by on-site processing (including reclamation) of his hazardous waste, so long as the hazardous waste that is processed was counted once; or

(4) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C - H and O of this chapter [(relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage,

Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions)]; Chapter 1 of this title [(relating to Purpose of Rules, General Provisions)]; Chapter 3 of this title [(relating to Definitions)]; Chapter 10 of this title [(relating to Commission Meetings)]; Chapter 20 of this title [(relating to Rulemaking)]; Chapter 37 of this title [(relating to Financial Assurance)]; Chapter 39 of this title [(relating to Public Notice)]; Chapter 40 of this title [(relating to Alternative Dispute Resolution)]; Chapter 50 of this title [(relating to Actions on Applications)]; Chapter 55 of this title [(relating to Request for Contested Case Hearings)]; Chapter 70 of this title [(relating to Enforcement)]; Chapter 80 of this title [(relating to Contested Case Hearings)]; Chapter 86 of this title [(relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property)]; Chapter 305 of this title [(relating to Consolidated Permits)]; and the notification requirements of the Resource Conservation and Recovery Act, §3010:

(1) a total of one kilogram of acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination <u>and Waste Classification</u>).

(2) The generator may accumulate acute hazardous waste on-site. If the generator accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C - H and O of this chapter [(relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards

for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions)]; Chapter 1 of this title [(relating to Purpose of Rules, General Provisions)]; Chapter 3 of this title [(relating to Definitions)]; Chapter 10 of this title [(relating to Commission Meetings)]; Chapter 20 of this title [(relating to Rulemaking)]; Chapter 37 of this title [(relating to Financial Assurance)]; Chapter 39 of this title [(relating to Public Notice)]; Chapter 40 of this title [(relating to Alternative Dispute Resolution)]; Chapter 50 of this title [(relating to Actions on Applications)]; Chapter 55 of this title [(relating to Request for Contested Case Hearings)]; Chapter 70 of this title [(relating to Enforcement)]; Chapter 80 of this title [(relating to Contested Case Hearings)]; Chapter 86 of this title [(relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property)]; Chapter 305 of this title [(relating to Consolidated Permits)]; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of its acute hazardous waste in an on-site facility, or ensure delivery to an off-

site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency (EPA) [EPA] under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258;

(E) permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30;

(F) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title.

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If such generator accumulates at any time more than a total of

1000 kilograms of its hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D - H and O of this chapter [(relating to Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions)]; Chapter 1 of this title [(relating to Purpose of Rules, General Provisions)]; Chapter 3 of this title [(relating to Definitions)]; Chapter 10 of this title [(relating to Commission Meetings)]; Chapter 20 of this title [(relating to Rulemaking)]; Chapter 37 of this title [(relating to Financial Assurance)]; Chapter 39 of this title [(relating to Public Notice)]; Chapter 40 of this title [(relating to Alternative Dispute Resolution)]; Chapter 50 of this title [(relating to Actions on Applications)]; Chapter 55 of this title [(relating to Request for Contested Case Hearings)]; Chapter 70 of this title [(relating to Enforcement)]; Chapter 80 of this title [(relating to Contested Case Hearings)]; Chapter 86 of this title [(relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property)]; Chapter 305 of this title [(relating to

Consolidated Permits)]; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title [(relating to Accumulation Time)] for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 [1000] kilograms;

(3) A conditionally exempt small quantity generator may either process or dispose of its hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the EPA under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258 or equivalent or more stringent rules under Chapter 330 of this title (relating to Municipal Solid Waste);

(E) permitted, licensed, or registered by a state to manage non-municipal or industrial non-hazardous waste and, if managed in a non-municipal or industrial non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30 or equivalent or more stringent counterpart rules that may be adopted by the commission relating to additional requirements for industrial non-hazardous waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators;

(F) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR Part 261, Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Chapter 324 of this title (relating to Used Oil Standards) and 40 CFR Part 279 [if it is destined to be burned for energy recovery]. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated [if it is destined to be burned for energy recovery].

§335.79. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities.

This section incorporates by reference the federal Alternative Requirements for

Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities in 40 Code of Federal Regulations Part 262, Subpart K, §§262.200 - 262.216 (known as the "Academic Laboratories rule"), as amended through December 20, 2010 (75 FR 79304).

SUBCHAPTER E: INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES §335.111, §335.112

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

§335.111. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is to establish minimum requirements that define the acceptable management of hazardous waste prior to the issuance or denial of a hazardous waste permit and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. Except as provided in 40 Code of Federal Regulations (CFR) §265.1080(b), this subchapter and the standards of 40 CFR §§264.552, 264.553, and 264.554 apply to owners and operators of hazardous waste storage, processing, or disposal facilities who have fully complied with the requirements for interim status under the Resource Conservation and Recovery Act (RCRA) [RCRA], §3005(e), except as specifically provided for in §335.41 of this title (relating to Purpose, Scope and Applicability).

(b) United States Environmental Protection Agency (EPA) [EPA] Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027 must not be managed at facilities subject to regulation under this subchapter, unless:

(1) the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(2) the waste is stored in tanks or containers;

(3) the waste is stored or processed in waste piles that meet the requirements of 40 CFR §264.250(c) as well as all other applicable requirements of 40 CFR Part 265, Subpart L, and §335.120 of this title (relating to Containment for Waste Piles);

(4) the waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 CFR §265.352; or

(5) the waste is burned in facilities that thermally process the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 CFR §265.383.

(c) The requirements of this section apply to owners or operators of all facilities which process, store or dispose of hazardous waste referred to in 40 CFR Part 268, and the 40 CFR Part 268 standards are considered material conditions or requirements of the Part 265 interim status standards incorporated by reference in §335.112 of this title (relating to Standards).

(d) Owners and operators who are subject to the requirements to obtain a post-closure permit under §335.2 and §335.43 of this title (relating to Permit Required), but

who obtain a post-closure order in lieu of a post-closure permit as provided in §335.2(m) of this title, must:

(1) submit information about the facility listed in §305.50(b) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);

(2) comply with facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(3) comply with the groundwater monitoring requirements of §§335.156 - 335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); and

(4) comply with the financial assurance requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities).

(e) The commission may replace all or part of the closure requirements of 40 CFR Part 265, Subpart G (relating to Closure and Post-Closure), as amended and adopted in §335.112(a)(6) of this title and the unit specific standards in §335.123 of this title (relating [related] to Closure and Post-Closure (Land Treatment Facilities)) applying to a regulated unit with alternative requirements for closure set out in a permit or a post-closure order where the commission determines that:

(1) a regulated unit is situated among solid waste management units or area of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s) or area of concern are likely to have contributed to the release; and

(2) it is not necessary to apply the closure requirement of this subchapter because the alternative requirements will be protective of human health and the environment and will satisfy the closure performance standards of §335.8 of this title (relating [related] to Closure and Remediation) and §335.167 of this title.

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are

adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR 22685) and as further amended as indicated in each paragraph of this subsection:

(1) Subpart B - General Facility Standards (as amended through January 8, 2010 (75 FR 1236)) [July 14, 2006 (71 FR 40254))];

(2) Subpart C - Preparedness and Prevention;

(3) Subpart D - Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)) [July 14, 2006 (71 FR 40254))], except 40 CFR §265.56(d);

(4) Subpart E - Manifest System, Recordkeeping and Reporting (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77 [April 4, 2006 (71 FR 16862))];

(5) Subpart F - Groundwater Monitoring (as amended through April 4, 2006 (71 FR 16862)), except 40 CFR §265.90 and §265.94;

(6) Subpart G - Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H - Financial Requirements (as amended through September 16, 1992 (57 FR 42832)); except 40 CFR §§265.140, 265.141, 265.142(a)(2), 265.142(b) and (c), 265.143(a) - (g), 265.144(b) and (c), 265.145(a) - (g), 264.146, 265.147(a) - (d), 265.147(f) - (k), and 265.148 - 265.150;

(8) Subpart I - Use and Management of Containers (as amended through July 14, 2006 (71 FR 40254));

(9) Subpart J - Tank Systems (as amended through July 14, 2006 (71 FR 40254));

(10) Subpart K - Surface Impoundments (as amended through July 14, 2006 (71 FR 40254));

(11) Subpart L - Waste Piles (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §265.253;

(12) Subpart M - Land Treatment (as amended through July 14, 2006 (71 FR 40254)) except, 40 CFR §§265.272, 265.279, and 265.280;

(13) Subpart N - Landfills (as amended through March 18, 2010 (75 FR 12989)) [July 14, 2006 (71 FR 40254))], except 40 CFR §§265.301(f) - (i), 265.314, and 265.315;

(14) Subpart O - Incinerators (as amended through October 12, 2005 (70 FR 59402)) [September 30, 1999 (64 FR 52828))];

(15) Subpart P - Thermal Treatment (as amended through July 17, 1991 (56 FR 32692));

(16) Subpart Q - Chemical, Physical, and Biological Treatment (as amended through July 14, 2006 (71 FR 40254));

(17) Subpart R - Underground Injection;

(18) Subpart W - Drip Pads (as amended through July 14, 2006 (71 FR 40254));

(19) Subpart AA - Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254));

(20) Subpart BB - Air Emission Standards for Equipment Leaks (as amended through April 4, 2006 (71 FR 16862));

(21) Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254));

(22) Subpart DD - Containment Buildings (as amended through July 14, 2006 (71 FR 40254));

(23) Subpart EE - Hazardous Waste Munitions and Explosives Storage (as amended through February 12, 1997 (62 FR 6622)); and

(24) the following appendices contained in 40 CFR Part 265:

(A) Appendix I - Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix III - EPA Interim Primary Drinking Water Standards;

(C) Appendix IV - Tests for Significance;

(D) Appendix V - Examples of Potentially Incompatible Waste; and

(E) Appendix VI - Compounds With Henry's Law Constant Less Than 0.1 Y/X.

(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(C) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(D) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(E) 40 CFR §265.1 is changed to §335.111 of this title (relating to Purpose, Scope, and Applicability);

(F) 40 CFR §265.90 is changed to §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements);

(G) 40 CFR §265.94 is changed to §335.117 of this title (relating to Recordkeeping and Reporting);

(H) 40 CFR §265.314 is changed to §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste);

(I) 40 CFR §270.1 is changed to §335.2 of this title (relating to Permit Required);

(J) 40 CFR §270.28 is changed to §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);

(K) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments [Amendment]);

(L) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); and

(M) Qualified professional engineer is changed to Texas licensed professional engineer.

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) is changed to §335.112(a)(3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) Reference to 40 CFR §§265.71, 265.72, 265.76, and 265.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) [§335.12(c)(1) and (2)] of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits),

§335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 and §335.117 of this title, in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

(c) A copy of 40 CFR Part 265 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

SUBCHAPTER F: PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES §§335.151, 335.152, 335.155, 335.168, 335.170

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendments implement THSC, Chapter 361.

§335.151. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is to establish minimum standards to define the acceptable management of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste, in accordance with Texas Solid Waste Disposal Act [TSWDA], and in the evaluation of an investigation report to implement groundwater protection requirements relating to compliance monitoring and corrective action; and in the evaluation of corrective action measures to be instituted in accordance with §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). For facilities that store, process, or dispose of industrial solid waste, in addition to hazardous waste, nothing herein shall be construed to restrict or abridge the commission's authority to implement the provisions of Texas Water Code, Chapter 26, and §335.4 of this title (relating to General Prohibitions), with respect to those activities.

(b) The standards in this subchapter apply to owners and operators of all facilities which process, store, or dispose of hazardous waste, except as specifically provided for in §335.41 of this title (relating to Purpose, Scope, and Applicability).

(c) A facility owner or operator who has fully complied with the requirements for interim status, as defined in the Resource Conservation and Recovery Act (RCRA) [RCRA], §3005(e), and §335.2 and §335.43 of this title (relating to Permit Required), must comply with the requirements of Subchapter E of this chapter (relating to Interim

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities) in lieu of the requirements of this subchapter, until final administrative disposition of his permit application is made, except as provided under 40 Code of Federal Regulations (CFR) Part 264, Subpart S.

(d) The regulations of this subchapter apply to all owners and operators subject to the requirements of §335.2(m) of this title when the commission issues either a post-closure permit or a post-closure order at the facility. When the commission issues a post-closure order, references in this subchapter to "in the permit" also mean "in the order."

(e) The commission may replace all or part of the requirements of 40 CFR Part 264 Subpart G (relating [related] to Closure and Post-Closure), as amended and adopted in §335.152(a)(5) of this title (relating to Standards) and the unit specific standards in §§335.169, 335.172, and 335.174 of this title (relating to Closure and Post-Closure Care (Surface Impoundments); Closure and Post-Closure Care (Land Treatment Units), and Closure and Post-Closure Care (Landfills)) applying to regulated units, with alternative requirements as set out in a permit or order where the commission determines that:

(1) a regulated unit is situated among solid waste management units or area of concern, a release has occurred, and both the regulated unit and one or more

solid waste management unit(s) or area of concern are likely to have contributed to the release; and

(2) it is not necessary to apply the closure requirements of this subchapter (and those referenced herein) because the alternative requirements will be protective of human health and the environment and will satisfy the performance standards of §335.8 of this title (relating to Closure and Remediation) and §335.167 of this title [(relating to Corrective Action for Solid Waste Management Units)].

(f) If a permitted facility obtains an order setting out alternative requirements provided in subsection (e) of this section, then the alternative requirements shall also be referenced in the facility's permit.

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR 22685) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) Subpart B--General Facility Standards (as amended through January 8, 2010 (75 FR 1236)) [July 14, 2006 (71 FR 40254))]; in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C--Preparedness and Prevention;

(3) Subpart D--Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)) [April 4, 2006 (71 FR 16862))], except 40 CFR §264.56(d);

(4) Subpart E--Manifest System, Recordkeeping and Reporting (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §§264.71, 264.72, 264.76, and 264.77 [April 4, 2006 (71 FR 16862))]; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G--Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H--Financial Requirements (as amended through April 4, 2006 (71 FR 16862)); except 40 CFR §§264.140, 264.141, 264.142(a)(2), 264.142(b) and (c), 264.143(a) - (h), 264.144(b) and (c), 264.145(a) - (h), 264.146, 264.147(a) - (d), 264.147(f) - (k), and 264.148 - 264.151; and subject to the following limitations: facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.142(a), 264.144(a), and §37.6031(c) of this title (relating to Financial Assurance Requirements for Liability);

(7) Subpart I--Use and Management of Containers (as amended through July 14, 2006 (71 FR 40254));

(8) Subpart J--Tank Systems (as amended through July 14, 2006 (71 FR 40254));

(9) Subpart K--Surface Impoundments (as amended through July 14, 2006 (71 FR 40254)) [August 1, 2005 (70 FR 44150))], except 40 CFR §264.221 and §264.228:

(A) reference to 40 CFR §264.221 is changed to §335.168 of this title (relating to Design and Operating Requirements (Surface Impoundments));

(B) reference to 40 CFR §264.228 is changed to §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments));

(10) Subpart L--Waste Piles (as amended and adopted through July 14, 2006 (71 FR 40254)), except 40 CFR §264.251;

(11) Subpart M--Land Treatment (as amended and adopted through July 14, 2006 (71 FR 40254)), except 40 CFR §264.273 and §264.280;

(12) Subpart N--Landfills (as amended through March 18, 2010 (75 FR 12989)) [July 14, 2006 (71 FR 40254))], except 40 CFR §§264.301, 264.310, 264.314, and 264.315;

(13) Subpart O--Incinerators (as amended through April 8, 2008 (73 FR 18970));

(14) Subpart S--Special Provisions for Cleanup (as amended through March 18, 2010 (75 FR 12989)) [(July 14, 2006 (71 FR 40254))];

(15) Subpart W--Drip Pads (as amended through July 14, 2006 (71 FR 40254));

(16) Subpart X--Miscellaneous Units (as amended through July 14, 2006 (71 FR 40254));

(17) Subpart AA--Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254));

(18) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through July 14, 2006 (71 FR 40254));

(19) Subpart CC--Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254));

(20) Subpart DD--Containment Buildings (as amended through July 14, 2006 (71 FR 40254));

(21) Subpart EE--Hazardous Waste Munitions and Explosives Storage (as amended through August 1, 2005 (70 FR 44150)); and

(22) the following appendices contained in 40 CFR Part 264:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix IV--Cochron's Approximation to the Behrens-Fisher Students' T-Test;

(C) Appendix V--Examples of Potentially Incompatible Waste;

(D) Appendix VI--Political Jurisdictions in Which Compliance With §264.18(a) Must Be Demonstrated; and

(E) Appendix IX--Ground-Water Monitoring List (as amended through June 13, 1997 (62 FR 32451)).

(b) The provisions of 40 CFR §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201 - 335.206 of this title (relating to Purpose, Scope, and Applicability; Definitions; Site Selection to Protect Groundwater or Surface Water; Unsuitable Site Characteristics; Prohibition of Permit Issuance; and Petitions for Rulemaking). A copy of 40 CFR §264.18(b) is available for inspection at the library of

the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(c) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (relating to Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);

(C) 40 CFR §264.280 is changed to §335.172 of this title (relating to Closure and Post-Closure Care (Land Treatment Units));

(D) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(E) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(F) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(G) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments); and

(H) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 264, Subpart D is changed to §335.152(a)(3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) Reference to 40 CFR §§264.71, 264.72, 264.76, and 264.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) [§335.12(c)(1) and (2)] of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.155 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title

(relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

(11) Reference to qualified professional engineer is changed to Texas licensed professional engineer.

(d) A copy of 40 CFR Part 264 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

§335.155. Additional Reports.

In addition to submitting the waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or [and] Operators of Treatment, Storage, [Processing,] or Disposal Facilities), the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations (CFR) §264.56(j);

(2) facility closure as specified in 40 CFR §264.115;

(3) as otherwise required by 40 CFR Part 264, Subparts F, K - N, X, AA, [and] BB, and CC.

§335.168. Design and Operating Requirements (Surface Impoundments).

(a) Any surface impoundment that is not covered by subsection (c) of this section or 40 Code of Federal Regulations (CFR) §265.221 must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with §335.169(a)(1) of this title (relating to Closure and Post-Closure Care (Surface Impoundments)). For impoundments that will be closed in accordance with §335.169(a)(2) of this title, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(b) The owner or operator will be exempted from the requirements of subsections (a) and (j) of this section if the commission finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see §335.159 of this title (relating to Hazardous Constituents)) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the adopted alternate design and operation;

(3) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992, must meet the requirements of 40 CFR §264.221(c), as amended through July 14, 2006 (71 FR 40254) [January 29, 1992 (57 FR 3487)].

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that he meets the requirements of 40 CFR §264.221(d), as amended through January 29, 1992 (57 FR 3462).

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from

foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics in 40 CFR §261.24, and is in compliance with either of the following requirements:

(1) the monofill:

(A) has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this subsection, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (c) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with

appropriate post-closure requirements, including, but not limited to, groundwater monitoring and corrective action;

(B) is located more than 1/4 mile from an underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)); and

(C) is in compliance with groundwater monitoring requirements of this subchapter; or

(2) the owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement surface impoundment unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of Resource Conservation and Recovery Act, §3004(o)(1)(A)(i) and (o)(5); and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind, and wave action; rainfall; run-off, malfunctions of level controllers, alarms, and other equipment; and human error.

(h) A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(i) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(j) A surface impoundment (except for an existing portion of a surface impoundment) that will be closed in accordance with §335.169(a)(2) of this title must have an additional liner to that required in subsection (a) of this section which:

(1) prevents any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the post-closure care period; and

(2) minimizes the rate of migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water so as not to pose a substantial present or potential hazard to human health and the environment.

§335.170. Design and Operating Requirements (Waste Piles).

(a) A waste pile (except for an existing portion of a waste pile) must have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility. The liner must be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure

gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) a leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The commission will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 centimeters (one foot). The leachate collection and removal system must be:

(A) constructed of materials that are:

(i) chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(B) designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) The owner or operator will be exempted from the requirements of subsection (a) of this section if the commission finds, based on a demonstration by the owner or operator, the alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner and operator of each new waste pile unit [on which construction commences after January 29, 1992], each lateral expansion of a waste pile unit [on which construction commences after July 29, 1992], and each replacement of an existing waste pile unit [that is to commence reuse after July 29, 1992], must comply with the requirements of 40 CFR §264.251(c), as amended through April 4, 2006 (71 FR 16862) [January 29, 1992, at 57 FedReg 3488].

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that such design and operating practices, together with location characteristics:

(1) will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (c) of this section; and

(2) will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) Subsection (c) of this section does not apply to monofills that are granted a waiver by the Commission in accordance with §335.168(e) of this title (relating to Design and Operating Requirements (Surface Impoundments)).

(f) The owner or operator of any replacement waste pile unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of §3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the active portion of the pile during peak discharge from at least a 100-year storm.

(h) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(i) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the pile to control wind dispersal.

(k) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES
DIVISION 1: RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL
§335.213

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

§335.213. Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste [Management] in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities), Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action [Actions] on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests [Request] for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); [Chapter 261 of this title (relating to

Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property)]; Chapter 305 of this title (relating to Consolidated Permits), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES
DIVISION 2: HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY
§335.222

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

§335.222. Management Prior to Burning.

(a) Generators. Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(b) Transporters. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste).

(c) Storage and processing facilities. The provisions listed under paragraph (1) of this subsection apply to storage or processing by burners and by intermediaries such as processors, blenders, and distributors between the generator and the burner.

(1) Owners and operators of facilities that store or process hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of the following, except as provided by paragraph (2) of this subsection:

(A) Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste [Management] in General);

(B) Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions);

(C) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities), except §335.112(a)(12) - (19) of this title (relating to Standards);

(D) Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities), except §335.152(11) - (16) of this title (relating to Standards);

(E) Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit); and

(F) [(E)] Chapter 305 of this title (relating to Consolidated Permits).

(2) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulations under the small quantity burner provisions of 40 Code of Federal Regulations §266.108, only hazardous waste that they generate are exempt from regulation under the provisions listed above in paragraph (1) of this subsection applicable to storage units for those units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage or processing of hazardous waste by such owners

and operators prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (1) of this subsection.

SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES
DIVISION 4: SPENT LEAD-ACID BATTERIES BEING RECLAIMED
§335.251

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

§335.251. Applicability and Requirements.

(a) The regulations of this section <u>adopt by reference 40 Code of Federal Regulations (CFR) Part 266, Subpart G as amended through January 8, 2010 (75 FR</u>

1236). This section applies [apply] to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, who store spent batteries that are to be regenerated, [or] who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated), who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country are not subject to regulation under this chapter, except that §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) applies; and are not subject to regulation under Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action [Actions] on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests [Request] for Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); [Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control

Property);] or Chapter 305 of this title (relating to Consolidated Permits). Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.

(b) Owners or operators of facilities that store spent lead-acid batteries before reclaiming them (other than spent batteries that are to be regenerated) are subject to the following requirements:

(1) all applicable provisions in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste [Management] in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities), [and] Subchapter F of this chapter (relating to Permitting Standards of Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities), and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit), except for the requirements in §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [Processing,] or Disposal Facilities) and 40 CFR [Code of Federal Regulations] §265.13; and

(2) all applicable provisions in Chapter 1 of this title [(relating to Purpose of Rules, General Provisions)]; Chapter 3 of this title [(relating to Definitions)]; Chapter 10 of this title [(relating to Commission Meetings)]; Chapter 20 of this title [(relating to Rulemaking)]; Chapter 37 of this title [(relating to Financial Assurance)]; Chapter 39 of this title [(relating to Public Notice)]; Chapter 40 of this title [(relating to Alternative Dispute Resolution)]; Chapter 50 of this title [(relating to Actions on Applications)]; Chapter 55 of this title [(relating to Request for Contested Case Hearings)]; Chapter 70 of this title [(relating to Enforcement)]; Chapter 80 of this title [(relating to Contested Case Hearings)]; Chapter 86 of this title [(relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions)]; Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property);] and Chapter 305 of this title [(relating to Consolidated Permits)].

(c) In addition to the regulations in this section, persons who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country are subject to the requirements of §335.13 and §335.76(h) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; and Additional Requirements Applicable to International Shipments, respectively).

SUBCHAPTER O: LAND DISPOSAL RESTRICTIONS

§335.431

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC) §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

§335.431. Purpose, Scope, and Applicability.

(a) Purpose. The purpose of this subchapter is to identify hazardous wastes that are restricted from land disposal and define those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Scope and Applicability.

(1) Except as provided in paragraph (2) of this subsection, the requirements of this subchapter apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(2) The requirements of this subchapter do not apply to any entity that is either specifically excluded from coverage by this subchapter or would be excluded from the coverage of 40 Code of Federal Regulations (CFR)[,] Part 268 by 40 CFR[,] Part 261, if those parts applied.

(3) Universal waste handlers and universal waste transporters, as defined in and subject to regulation under Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule) are exempt from 40 CFR §268.7 and §268.50.

(c) Adoption by Reference.

(1) except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40

CFR Part 268, as amended through March 18, 2010 (75 FR 12989) [July 14, 2006 (71 FR 40254)] are adopted by reference.

(2) The following sections of 40 CFR Part 268 are excluded from the sections adopted in paragraph (1) of this subsection: §§268.1(f), 268.5, 268.6, 268.7(a)(10), 268.13, 268.42(b), and 268.44.

(3) Appendices IV, VI - IX, and XI of 40 CFR Part 268 are adopted by reference as amended through July 14, 2006 (71 FR 40254).

(d) Changes to Adopted Parts. The parts of the CFR that are adopted by reference in subsection (c) of this section are changed as follows:

(1) The words "Administrator" or "Regional Administrator" are changed to "Executive Director;"

(2) The word "treatment" is changed to "processing;"

(3) The words "Federal Register," when they appear in the text of the regulation, are changed to "Texas Register;"

(4) In 40 CFR §268.7(a)(6) and (a)(7), the applicable definition of hazardous waste and solid waste is the one that is set out in this chapter rather than the definition of hazardous waste and solid waste that is set out in 40 CFR Part 261.

(5) In 40 CFR §268.50(a)(1), the citation to "§262.34" is changed to "§335.69."

SUBCHAPTER R: WASTE CLASSIFICATION

§335.504

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The adopted amendment implements THSC, Chapter 361.

§335.504. Hazardous Waste Determination.

A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded or exempted from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions) or identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart A, as amended through March 18, 2010 (75 FR 12989), or identified in 40 CFR Part 261, Subpart E, as amended through July 28, 2006 (71 FR 42928) [January 2, 2008 (73 FR 57)].

(2) If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 CFR Part 261, Subpart D, as amended through March 18, 2010 (75 FR 12989) [June 4, 2008 (73 FR 31756)].

(3) If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C, as amended through March 18, 2010 (75 FR 12989) [July 14, 2006 (71 FR 40254)].

ORDER ADOPTING AMENDED RULES

Docket No. 2012-1530-RUL.

On January 30, 2013, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 TAC Chapter 305, concerning Consolidated Permits; 30 TAC Chapter 324, concerning Used Oil Standards; and 30 TAC Chapter 335, concerning Industrial Solid Waste and Municipal Hazardous Waste. The proposed rules were published for comment in the October 5, 2012, issue of the *Texas Register* (37 TEX. REG. 7871).

IT IS THEREFORE ORDERED BY THE COMMISSION that the new rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Texas Administrative Procedure Act, Government Code, Section 2001.033.

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

Issued date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

_____
Bryan W. Shaw, Ph.D., Chairman

DRAFT

402.061. In relevant part, Labor Code §408.0041 sets forth that the Commissioner by rule shall adopt guidelines prescribing the circumstances under which an examination by the injured employee's treating doctor or another doctor to whom the injured employee is referred by the treating doctor to determine any issue under Labor Code §408.0041(a), other than an examination under Labor Code §408.0041(f-2), may be appropriate.

Labor Code §402.00111 provides that the Commissioner shall exercise all executive authority, including rulemaking authority, under Title 5, Labor Code.

Labor Code §402.00128 lists the general powers of the Commissioner including the power to hold hearings and the authority to assess and enforce penalties as authorized by Title 5, Labor Code.

Labor Code §402.061 provides the Commissioner the authority to adopt rules as necessary to implement and enforce the Workers' Compensation Act.

The following statute is affected by this proposal: Labor Code §408.0041.

§126.17. Guidelines for Examination by a Treating Doctor or Referral Doctor After a Designated Doctor Examination to Address Issues Other Than Certification of Maximum Medical Improvement and the Evaluation of Permanent Impairment.

(a) An examination by the injured employee's treating doctor or another doctor to whom the injured employee is referred by the treating doctor to determine any issue under Labor Code §408.0041(a)(3) - (6) may be appropriate after a designated doctor examination if:

(1) the designated doctor issued an opinion on the issue;

(2) the injured employee is not satisfied with the designated doctor's opinion; and

(3) the treating doctor or the referral doctor has not already provided the injured employee with a written report that meets the standard described by subsection (b) of this section on the issue addressed by the designated doctor.

(b) The treating doctor or the referral doctor shall complete a narrative report. The report should include objective findings of the examination and an analysis that explains how the objective findings lead to the conclusion reached by the doctor. This report shall be filed with the insurance carrier, the injured employee and the injured employee's representative. Notwithstanding §129.5 of this title (relating to Work Status Reports), if the treating doctor or the referral doctor examines the injured employee to address an issue relating to return to work, the doctor must also file a Work Status Report.

(c) The insurance carrier shall reimburse the injured employee for all reasonable travel expenses as specified in Chapter 134, Subchapter B of this title (relating to Miscellaneous Reimbursement) for attending an appropriate medical examination.

(d) Nothing in this section is construed to limit or prohibit the injured employee from obtaining reasonable and necessary medical care for the compensable injury or from obtaining a written report from a treating doctor or a referral doctor on any issue under Labor Code §408.0041(a)(3) - (6) prior to a designated doctor examination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 24, 2012.

TRD-201205084
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: November 4, 2012
For further information, please call: (512) 804-4703

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 305. CONSOLIDATED PERMITS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§305.50, 305.64, 305.69, 305.122; and new §305.176.

These amendments were originally published for proposal in the April 27, 2012, issue of the *Texas Register* (37 TexReg 2988), withdrawn on September 19, 2012, and are re-proposed herein.

Background and Summary of the Factual Basis for the Proposed Rules

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations periodically to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under the RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, October 18, 1999, September 11, 2000, June 14, 2005 (Clusters III - X), March 5, 2009 (Clusters XI - XV), and May 7, 2012 (Clusters IX and XV - XVIII).

The commission proposes in this rulemaking parts of RCRA Rule Clusters XIX, XX, and XXI that implement revisions to the federal hazardous waste program, which were made by EPA between July 1, 2008 and June 30, 2011. Both mandatory and optional federal rule changes in these clusters are proposed to be adopted. Adoption of one of the federal rule changes is mandatory in order to maintain RCRA authorization. Although not necessary in order to maintain authorization, EPA also recommends

that the optional federal rule changes be incorporated into the state rules. In addition, the commission proposes revisions to parts of previously adopted Clusters XIV, XV, XVI, and XVII that implement revisions requested by EPA to maintain authorization. Establishing equivalency with federal regulations will enable the State of Texas to operate all aspects of the federal hazardous waste program in lieu of the EPA.

The commission also proposes revisions to Chapter 305 to clarify requirements for financial capability reviews in conjunction with permit issuances, amendments, transfers, extensions, and renewals for hazardous waste management facilities and also to revise the timing of financial assurance submittals by new owners in conjunction with permit transfers for hazardous waste management facilities.

All proposed rule changes are discussed further in the Section by Section Discussion portion of this preamble. Two corresponding rulemakings are published in this issue of the *Texas Register* and include changes to 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste and 30 TAC Chapter 324, Used Oil Standards.

Section by Section Discussion

The commission proposes administrative changes throughout the proposed rulemaking to reflect the agency's current practices and to conform to *Texas Register* and agency guidelines. These proposed changes include correcting typographical, spelling, and grammatical errors.

§305.50, Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order

The commission proposes to amend §305.50, by reorganizing existing requirements for financial assurance in subsection (a)(4)(B) - (D) into subsection (a)(4)(B). The reorganization of information would make it easier to understand the information requirements for financial capability reviews. Existing subparagraphs (E) - (G) are proposed to be relettered to reflect the elimination of subparagraphs (C) and (D).

§305.64, Transfer of Permits

The commission proposes to amend §305.64(g), to require new owners and operators of hazardous waste management facilities to provide acceptable financial assurance before the date that a permit modification is issued authorizing the transfer of the permit to the new owner or operator. This change is proposed to reduce the potential for the State of Texas to have to take on the obligation to pay for proper closure, post-closure or corrective action for a site lacking financial assurance. Existing rules require a new permittee to provide financial assurance within six months of a change in ownership or operational control with the previous owner maintaining financial assurance until the new permittee does so. This requirement does not change. An additional requirement is added that the new owner or operator must provide acceptable financial assurance before the modification transferring the permit will be issued. Collectability under certain financial assurance mechanisms is not assured once a permit has been transferred. For example, insurance companies have claimed that a transferor has no insurable interest once a facility has been sold and the permit transferred. In addition, prior owners of hazardous waste management facilities sometimes rely on TCEQ to aggressively pursue recalcitrant new owners to provide financial assurance in order to obtain release of the old owner's financial assurance mechanism rather than establishing a remedy in the sales contract.

This proposed change would make the timing requirements regarding new financial assurance for hazardous waste management facilities more consistent with other programs at TCEQ. For instance, financial assurance for underground injection control (UIC) wells must be provided by the date of the permit transfer. Since many underground injection control wells are owned in combination with hazardous waste management facilities, transfer of a portion of the financial assurance is already provided by the date of the permit transfer. In addition, language is being revised to clarify that the previous owner or operator must submit a request to the executive director in order for the executive director to allow termination of the financial assurance mechanism.

§305.69, Solid Waste Permit Modification at the Request of the Permittee

The commission proposes to amend §305.69(d)(2) to correct the reference to the title of 30 TAC §39.11 to *Text of Public Notice.*

The commission proposes to add §305.69(d)(7) to clarify that the notice requirements of §305.69 do not apply to industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

The commission also proposes to amend §305.69(k), Appendix I (C)(6) to correct a reference from §335.164(10) to §335.164(8). Due to renumbering of §335.164 in a previous rulemaking, the correct citation is §335.164(8).

The commission also proposes to amend §305.69(k), Appendix I (C)(7)(b) to correct a reference from §335.165(11) to §335.165(13). Due to renumbering of §335.165 in a previous rulemaking, the correct citation is §335.165(13).

The commission also proposes to amend §305.69(k), Appendix I (C)(8)(a) to correct a reference to §335.165(9)(B). Due to renumbering of §335.165 in a previous rulemaking, the correct citation should be §335.165(11)(B).

The commission proposes to amend §305.69(k), Appendix I (G)(5)(c) to correct a typographical error.

§305.122, Characteristics of Permits

The commission proposes to amend §305.122(b) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment would reinstate a missing sentence which was inadvertently omitted by EPA. The proposed rule would allow certain changes to permits for cause, such as, modification, revocation and reissuance, or termination. It would also allow modification to a permit upon request of a permittee. Such changes must be consistent with applicable federal regulations. The paragraph and subparagraphs in the subsection have been renumbered and relettered accordingly. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain RCRA authorization.

§305.176, Integration with Maximum Achievable Control Technology (MACT) Standards

The commission proposes new §305.176 to increase the options to integrate air quality standards into a RCRA hazardous waste permit. The new language would conform to federal regulations previously promulgated in the October 12, 2005, issue of the *Federal Register* (70 FR 59402). The proposed new section does not set or impose new air quality standards. The Haz-

ardous Waste Combustion MACT regulations are multi-media regulations at the federal and state level, affecting both air quality and hazardous waste management. The TCEQ has already adopted certain parts of 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE (i.e., the Hazardous Waste Combustion MACT rules) prior to this rulemaking under Chapter 305 and air quality regulations at 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants. This proposed rulemaking would incorporate integration options with MACT standards for hazardous waste incinerators in Chapter 305, Subchapter I. In a previous rulemaking, an amendment regarding the integration options with MACT standards was adopted into §305.572 for boilers and industrial furnaces. Conforming language is proposed in §305.176 to adopt by reference 40 CFR §270.235, Options for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers and Hydrochloric Acid Production Furnaces to Minimize Emissions from Startup, Shutdown, and Malfunction Events. The proposed addition of §305.176 would provide greater flexibility by allowing operators of incinerators the same integration options with MACT standards as operators of boilers and industrial furnaces in §305.572.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules are not expected to have a significant fiscal impact on state agencies or units of local government since they do not typically own or operate hazardous waste facilities.

The proposed rules are part of a comprehensive rule package implementing RCRA requirements involving proposed changes to several chapters of 30 TAC. This fiscal note applies only to the proposed changes to Chapter 305 which includes adoption by reference of federal rule changes to the RCRA hazardous waste program that were adopted by EPA from July 2008 through July 2011. One of the proposed rule changes to Chapter 305 is to incorporate final National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste combustors into Chapter 305. These standards were adopted into Chapter 335 in the last RCRA rule project, and therefore, are currently in place. These standards implemented Clean Air Act, §112(d) by requiring hazardous waste combustors to meet hazardous air pollutants emission standards reflecting the performance of the MACT. Section 305.176 is proposed to be added to include this incorporation by reference; and make corrections and/or updates to several sections in Chapter 305 that do not change the content of the rule.

Separate from EPA amendments, the proposed rules also include a specific revision to the financial assurance requirements for industrial and hazardous waste permits. The proposed amendment to §305.64(g) would require that financial assurance be provided by a new permittee prior to a permit modification for transfer being issued rather than allowing the new permittee up to six months to provide the financial assurance. This financial assurance change is needed to ensure that a permitted hazardous waste facility will have financial assurance at all times after a permit modification transferring the permit to a new owner or operator is issued. It is not certain that all financial assurance mechanisms would provide coverage for a seller after the facility is sold and the permit transferred under the existing regulations. In addition, failure of the buyer and seller to agree upon this detail in sales agreements sometimes results in demands of the seller for the agency to pursue the buyer for failure to provide its own financial assurance and allow the seller's financial assurance to be released. The rule package also includes a reorganization of existing requirements for financial assurance in §305.50. The reorganization of information would make it easier to understand the information requirements for financial capability reviews.

In general, the proposed rules are not expected to have a significant fiscal impact on governmental entities. State agencies or units of local government do not typically own or operate hazardous waste facilities.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be protection of the environment and public safety through greater clarity and continued consistency with federal regulations concerning NESHAP provisions.

In general, the proposed rules are not expected to have a significant fiscal impact on individuals. Individuals do not typically own or operate hazardous waste facilities.

The proposed rules are not expected to have a significant fiscal impact on large businesses that own or operate hazardous waste facilities. There are approximately 180 permitted hazardous waste treatment, storage, or disposal facilities statewide. The proposed rules incorporate final NESHAP for hazardous waste combustors into Chapter 305. These standards were adopted into Chapter 335 in the last RCRA rulemaking project, and therefore, are currently in place. The proposed rules maintain consistency regarding emissions standards. The proposed rules would also require that financial assurance be provided by a new permittee prior to a permit modification for transfer being issued rather than allowing the new permittee up to six months to provide the financial assurance. The cost of financial assurance is based on estimated facility closure costs, and the cost of most financial assurance mechanisms range from 2% to 5% of facility closure costs per year. Currently, the lowest amount of financial assurance is $30,000 per year and the highest amount is $120 million per year. Sellers of hazardous waste facilities would save money since they would not be required to provide financial assurance for the six-month period after the sale of their facility. The amount of any savings would vary widely and depend on the characteristics of the expiring financial assurance. Purchasers of hazardous waste facilities, on the other hand, could incur increased costs similar in amount to the savings by the sellers.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Very few small or micro-businesses generate hazardous waste in large enough quantities to be affected by the rulemaking.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment, to comply with federal regulations, and because the rulemaking does not materially affect a small business for the first five years the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions under 42 United States Code (USC), §6926(g), which already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. Likewise, there is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, the changes move forward compliance with financial assurance requirements without changing those requirements, or the regulated community benefits from the greater flexibility and reduced compliance burden. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal rules, equivalent state rules would not cause any adverse effects. There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). First, the rulemaking does not exceed a standard set by federal law. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program. The other changes do not alter substantive requirements although various changes may increase flexibility for the regulated community and move forward compliance deadlines. Second, although the rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program. Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the waste program. And fourth, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission proposes this rulemaking under Texas Water Code, §5.103 and §5.105 and under Texas Health and Safety Code, §361.017 and §361.024.

The commission solicits public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 applies. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the rulemaking is to maintain state RCRA authorization by adopting state hazardous waste rules that are equivalent to the federal regulations. The rulemaking substantially advances this purpose by adopting rules that incorporate and refer to the federal regulations. Promulgation and enforcement of the rules is not a statutory or constitutional taking of private real property. Specifically, the rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules does not burden, restrict, or limit the owner's right to property and does not reduce the value of property by 25% or more. Likewise, the regulated community is not unduly burdened by those revisions providing greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42

USC, §§6901 *et seq.* Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the proposed rulemaking would update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules would not violate any applicable provisions of the CMP's stated goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-038-335-WS. The comment period closes November 5, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Cynthia Palomares, P.G., P.E., Industrial and Hazardous Waste Permits Section, (512) 239-6079, MC-130, P.O. Box 13087, Austin, Texas 78711-3087.

SUBCHAPTER C. APPLICATION FOR PERMIT OR POST-CLOSURE ORDER

30 TAC §305.50

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), THSC, §361.085 (relating to Financial Assurance and Disclosure by Permit Applicant), and THSC, §361.024 (relating to Rules and Standards) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§305.50. Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order.

(a) Unless otherwise stated, an application for a permit to store, process, or dispose of solid waste must meet the following requirements.

(1) One original and three copies of the permit application shall be submitted on forms provided by or approved by the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

(2) Plans and specifications for the construction and operation of the facility and the staffing pattern for the facility shall be submitted, including the qualifications of all key operating personnel. Also to be submitted is the closing plan for the solid waste storage, processing, or disposal facility. The information provided must be sufficiently detailed and complete to allow the executive director to ascertain whether the facility will be constructed and operated in compliance with all pertinent state and local air, water, public health, and solid waste statutes. Also to be submitted are listings of sites owned, operated, or controlled by the applicant in the State of Texas. For purposes of this section, the terms "permit holder" and "applicant" include each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock, provided such partner or owner controls at least 20% of the permit holder or applicant and at least 20% of another business which operates a solid waste management facility.

(3) Any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the Texas Solid Waste Disposal Act (TSWDA) and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), shall be included, including, but not limited to, the information set forth in the TSWDA, §4(e)(13).

(4) An application for a permit, permit amendment, or permit modification to store, process, or dispose of hazardous waste is subject to the following requirements, as applicable.

(A) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain any additional information required by 40 Code of Federal Regulations (CFR) §§270.13 - 270.27 (as amended though July 14, 2006 (71 Federal Register 40254)), except that closure cost estimates shall be prepared in accordance with 40 CFR §264.142(a)(1), (3), and (4), as well as §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates), §37.141 of this title (relating to Increase in Current Cost Estimate), and §335.178 of this title (relating to Cost Estimate for Closure).

(B) An application for a permit to store, process, or dispose of hazardous waste shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate and close the facility in a safe manner [~~and~~] in compliance with the permit and all applicable rules as well as[~~, including, but not limited to,~~] how an applicant intends to obtain financing for construction of the facility[~~, and to close the facility properly~~]. Financial information necessary [~~submitted~~] to satisfy this subparagraph shall be as follows: [~~meet the requirements of subparagraph (C) or (D) of this paragraph.~~]

(i) For publicly traded entities:

(I) copies of the most recent two Securities and Exchange Commission Form 10-Ks;

(II) a copy of the Securities and Exchange Commission Form 10-Q for the most recent quarter;

(III) a statement signed by an authorized signatory consistent with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage consistent with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities); and

(IV) estimates of capital costs for expansion and/or construction if the application encompasses facility expansion, capacity expansion, or new construction; or

(ii) For privately held entities with audited financial statements for either of the most recent two fiscal years:

(I) complete copies of the audited financial statements for each of the most recent two fiscal years if audits have been performed in each year. If an audit has not been completed for one of the previous two years, a complete copy of the fiscal year end financial statement and federal tax return may be substituted in lieu of the audit not performed. The tax return must be certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service." Financial statements shall be prepared consistent with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statement, and accountant's opinion letter;

(II) a complete copy of the most current quarterly financial statement prepared consistent with generally accepted accounting principles;

(III) a written statement detailing the information that would normally be found in Securities and Exchange Commission's Form 10-K including descriptions of the business and its operations; identification of any affiliated relationships; credit agreements and terms; any legal proceedings involving the applicant; contingent liabilities; and significant accounting policies;

(IV) estimates of capital costs for expansion and/or construction if the application encompasses facility expansion, capacity expansion, or new construction; and

(V) a statement signed by an authorized signatory consistent with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title; or

(iii) For privately held entities without audited financial statements for either of the two most recent fiscal years, or entities choosing not to provide the information provided in clauses (i), (ii), or (iv) of this subparagraph:

(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing;

(II) a written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided;

(III) a statement addressing how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title; and

(IV) estimates of capital costs for expansion and/or construction if the application encompasses facility expansion, capacity expansion, or new construction; or

(iv) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of this subparagraph:

(I) a statement signed by an authorized signatory consistent with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage consistent with Chapter 37, Subchapter P of this title;

(II) a certified copy of the resolution; and

(III) certification by the governing body of passage of the resolution.

~~[(C) For applicants possessing a resolution from a governing body approving or agreeing to approve the issuance of bonds for the purpose of satisfying the financial assurance requirements of subparagraph (B) of this paragraph, submission of the following information will be an adequate demonstration:]~~

~~*[(i)* a statement signed by an authorized signatory in accordance with §305.44(a) of this title (relating to Signatories to Applications) explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities);]~~

~~*[(ii)* a certified copy of the resolution; and]~~

~~*[(iii)* certification by the governing body of passage of the resolution.]~~

~~[(D) For all applicants not meeting the requirements of subparagraph (C) of this paragraph, financial information submitted to satisfy the requirements of subparagraph (B) of this paragraph must include the applicable items listed under clauses (i) - (vii) of this subparagraph. Financial statements required under clauses (ii) and (iii) of this subparagraph shall be prepared in accordance with generally accepted accounting principles and include a balance sheet, income statement, cash flow statement, notes to the financial statements, and accountant's opinion letter:]~~

~~*[(i)* a statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining in detail how the applicant demonstrates sufficient financial resources to construct, safely operate, properly close, and provide adequate liability coverage for the facility. This statement must also address how the applicant intends to comply with the financial assurance requirements for closure, post-closure, corrective action, and liability coverage in accordance with Chapter 37, Subchapter P of this title;]~~

~~*[(ii)* for applicants for which audited financial statements have been prepared the previous two or more years, the following financial statements:]~~

~~*[(I)* audited financial statements for the previous two years; and]~~

~~[(II) the most current quarterly financial statement prepared according to generally accepted accounting principles;]~~

~~[(iii) for applicants for which audited financial statements have not been prepared the previous two or more years, the following copies of tax returns and financial statements:]~~

~~[(I) copies of tax returns for the previous two years, each certified by original signature of an authorized signatory as being a "true and correct copy of the return filed with the Internal Revenue Service";]~~

~~[(II) financial statements for the previous two years; and]~~

~~[(III) additionally, an audited financial statement for the most recent fiscal year;]~~

~~[(iv) for publicly traded companies, copies of Securities and Exchange Commission Form 10-K for the previous two years and the most current Form 10-Q;]~~

~~[(v) for privately-held companies, written disclosure of the information that would normally be found in Securities and Exchange Commission Form 10-K including, but not limited to, the following:]~~

~~[(I) descriptions of the business and its operations;]~~

~~[(II) identification of any affiliated relationships;]~~

~~[(III) credit agreements and terms;]~~

~~[(IV) any legal proceedings involving the applicant;]~~

~~[(V) contingent liabilities; and]~~

~~[(VI) significant accounting policies;]~~

~~[(vi) for applications encompassing facility expansion, capacity expansion, or new construction, estimates of capital costs for expansion and/or construction;]~~

~~[(vii) if an applicant cannot or chooses not to demonstrate sufficient financial resources through submittal of the financial documentation specified in clauses (i) - (v) of this subparagraph and who must or chooses to obtain additional financing through a new stock offering or new debt issuance for facility expansion, capacity expansion, or new construction; and for safe operation, proper closure, and adequate liability coverage, the following information:]~~

~~[(I) a financial plan sufficiently detailed to clearly demonstrate that the applicant will be in a position to readily secure financing for construction, operation, and closure if the permit is issued. The submitted financial plan must be accompanied by original letters of opinion from two financial experts, not otherwise employed by the applicant, who have the demonstrated ability to either finance the facility or place the required financing. The opinion letters must certify that the financial plan is reasonable; certify that financing is obtainable within 180 days of final administrative and judicial disposition of the permit application; and include the time schedule contingent upon permit finality for securing the financing. Only one opinion letter from a financial expert, not otherwise employed by the applicant, is required if the letter renders a firm commitment to provide all the necessary financing; and]~~

~~[(II) written detail of the annual operating costs of the facility and a projected cash flow statement including the period of construction and first two years of operation. The cash flow statement must demonstrate the financial resources to meet operating costs, debt service, and financial assurance for closure, post-closure care, and liability coverage requirements. A list of the assumptions made to forecast cash flow shall also be provided.]~~

(C) [~~(E)~~] If any of the information required to be disclosed under subparagraph (B) [~~(D)~~] of this paragraph would be considered confidential under applicable law, the information shall be protected accordingly. During hearings on contested applications, disclosure of confidential information may be allowed only under an appropriate protective order.

(D) [~~(F)~~] An application for a modification or amendment of a permit that includes a capacity expansion of an existing hazardous waste management facility must also contain information provided by a Texas licensed professional geoscientist or licensed professional engineer delineating all faults within 3,000 feet of the facility, together with a demonstration, unless previously demonstrated to the commission or the United States Environmental Protection Agency [~~EPA~~], that:

(i) the fault has not experienced displacement within Holocene time, or if faults have experienced displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous wastes will be conducted; and

(ii) the fault will not result in structural instability of the surface facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(E) [~~(G)~~] At any time after the effective date of the requirements contained in Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), the executive director may require the owner or operator of an existing hazardous waste management facility to submit that portion of his application containing the information specified in 40 CFR §§270.14 - 270.27. Any owner or operator shall be allowed a reasonable period of time from the date of the request to submit the information. An application for a new hazardous waste management facility must be submitted at least 180 days before physical construction of the facility is expected to commence.

(5) An application for a new hazardous waste landfill which is filed after January 1, 1986, must include an engineering report which evaluates the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above-grade construction, and the potential adverse effects, if any, which would be associated with the above-grade construction.

(6) An application for a new hazardous waste landfill, land treatment facility, or surface impoundment that is to be located in the apparent recharge zone of a regional aquifer must include a hydrogeologic report prepared by a Texas licensed professional geoscientist or licensed professional engineer documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system.

(7) Engineering plans and specifications submitted as part of the permit application shall be prepared and sealed by a Texas licensed professional engineer who is currently registered as required by the Texas Engineering Practice Act.

(8) After August 8, 1985, any Part B permit application submitted by an owner or operator of a facility that stores, processes, or disposes of hazardous waste in a surface impoundment or a landfill must be accompanied by information, reasonably ascertainable by the owner or operator, on the potential for the public to be exposed to

hazardous wastes or hazardous constituents through releases related to the unit. By August 8, 1985, owners and operators of a landfill or a surface impoundment who have already submitted a Part B application must submit the exposure information required by this paragraph. At a minimum, such information must address:

(A) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(B) the potential pathways of human exposure to hazardous wastes or constituents resulting from documented releases; and

(C) the potential magnitude and nature of the human exposure resulting from such releases.

(9) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, or an application for amendment or modification of a solid waste management facility permit to provide for capacity expansion, the application shall also identify the nature of any known specific and potential sources, types, and volumes of waste to be stored, processed, or disposed of by the facility and shall identify any other related information the executive director may require.

(10) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new hazardous waste management facility, the application must also contain the following:

(A) copies of any relevant land use plans, adopted in accordance with the Texas Local Government Code, Chapter 211, which were in existence before publication of the notice of intent to file a solid waste permit application or, if no notice of intent is filed, at the time the permit application is filed;

(B) identification of the names and locations of industrial and other waste-generating facilities within 1/2 mile of the facility in the case of an application for a permit for a new on-site hazardous waste management facility, and within one mile of the facility in the case of an application for a permit for a new commercial hazardous waste management facility;

(C) the approximate quantity of hazardous waste generated or received annually at those facilities described under subparagraph (B) of this paragraph;

(D) descriptions of the major routes of travel in the vicinity of the facility to be used for the transportation of hazardous waste to and from the facility, together with a map showing the land-use patterns, covering at least a five-mile radius from the boundaries of the facility; and

(E) the information and demonstrations concerning faults described under paragraph (4)(D) [~~(4)(F)~~] of this subsection.

(11) In the case of an application for a permit to store, process, or dispose of hazardous waste, the application shall also contain information sufficient to demonstrate to the satisfaction of the commission that a proposed hazardous waste landfill, areal expansion of such landfill, or new commercial hazardous waste land disposal unit is not subject to inundation as a result of a 100-year flood event. An applicant or any other party may not rely solely on floodplain maps prepared by the Federal Emergency Management Agency or a successor agency to determine whether a hazardous waste landfill, areal expansion of such landfill, or commercial hazardous waste land disposal unit is subject to such an inundation.

(12) In the case of an application for a permit to store, process, or dispose of hazardous waste at a new commercial hazardous management facility, the application shall also contain the following:

(A) information sufficient to demonstrate whether a burden will be imposed on public roadways by vehicles traveling to and from the facility, including, at a minimum:

(i) the average gross weight of the various types and sizes of such vehicles to be used for transportation of hazardous waste;

(ii) the average number of such vehicles which would travel the public roadways; and

(iii) identification of the roads to be used by vehicles traveling to and from the facility within a minimum radius of 2 1/2 miles from the facility. Such identification must include the major highways nearest the facility, even if they are located outside the 2 1/2 mile radius;

(B) in addition to the requirements of subparagraph (A) of this paragraph, an applicant may submit a letter from the relevant agency of the state, county, or municipality which has the authority to regulate and maintain roads which states unequivocally that the roads to and from the facility are adequate for the loads to be placed on them by the proposed facility. Such letter will serve as prima facie evidence that the additional loads placed on the roadways caused by the operation of the facility would not constitute a burden and thus would not require that improvements be made to such roadways. Such letter does not, however, obviate the need to submit the information required under subparagraph (A) of this paragraph;

(C) evidence sufficient to demonstrate that:

(i) emergency response capabilities are available or will be available before the facility first receives waste, in the area in which the facility is located or proposed to be located, that has the ability to manage a reasonable worst-case emergency condition associated with the operation of the facility; such evidence may include, but is not limited to, the following:

(I) in addition to the contingency plan required under 40 CFR §270.14(b)(7), provisions specifying procedures and timing of practice facility evacuation drills, where there is a possibility that evacuation of the facility could be necessary;

(II) contracts with any private corporation, municipality, or county to provide emergency response;

(III) weather data which might tend to affect emergency response;

(IV) a definition of worst-case emergencies, e.g., fires, explosions, the Texas Design Hurricane, or the Standard Project Hurricane;

(V) a training program for personnel for response to such emergencies;

(VI) identification of first-responders;

(VII) identification of local or regional emergency medical services and hospitals which have had hazardous materials training;

(VIII) a pre-disaster plan, including drills;

(IX) a mechanism for notifying all applicable government agencies when an incident occurs (i.e., Texas Commission on Environmental Quality, Texas Parks and Wildlife, General Land Office, Texas Department of State Health Services, and Texas Railroad Commission);

(X) a showing of coordination with the local emergency planning committee and any local comprehensive emergency management plan; and

(XI) any medical response capability which may be available on the facility property; or

(ii) the applicant has secured bonding of sufficient financial assurance to fund the emergency response personnel and equipment determined to be necessary by the executive director to manage a reasonable worst-case emergency condition associated with the facility; such financial assurance may be demonstrated by providing information which may include, but is not limited to, the following:

(I) long-term studies using an environmental model which provide the amount of damages for which the facility is responsible; and

(II) costs involved in supplying any of the information included in or satisfying any of the requirements of clause (i)(I) - (XI) of this subparagraph;

(D) if an applicant does not elect to provide its own facilities or secure bonding to ensure sufficient emergency response capabilities in accordance with §335.183 of this title (relating to Emergency Response Capabilities Required for New Commercial Hazardous Waste Management Facilities), the applicant must provide prior to the time the facility first receives waste:

(i) documentation showing agreements with the county and/or municipality in which the facility is located, or documentation showing agreements with an adjoining county, municipality, mutual aid association, or other appropriate entity such as professional organizations regularly doing business in the area of emergency and/or disaster response; or

(ii) demonstration that a financial assurance mechanism in the form of a negotiable instrument, such as a letter of credit, fully paid in trust fund, or an insurance policy, with the limitation that the funds can only be used for emergency response personnel and equipment and made payable to and for the benefit of the county government and/or municipal government in the county in which the facility is located or proposed to be located; and

(E) a written statement signed by an authorized signatory in accordance with §305.44(a) of this title explaining how the applicant intends to provide emergency response financial assurance to meet the requirements of subparagraph (C) or (D) of this paragraph; and

(F) a summary of the applicant's experience in hazardous waste management and in particular the hazardous waste management technology proposed for the application location, and, for any applicant without experience in the particular hazardous waste management technology, a conspicuous statement of that lack of experience.

(13) An application for a boiler or industrial furnace burning hazardous waste at a facility at which the owner or operator uses direct transfer operations to feed hazardous waste from transport vehicles (containers, as defined in 40 CFR §266.111) directly to the boiler or industrial furnace shall submit information supporting conformance with the standards for direct transfer provided by 40 CFR §266.111 and §335.225 of this title (relating to Additional Standards for Direct Transfer).

(14) The executive director may require a permittee or an applicant to submit information in order to establish permit conditions under §305.127(1)(B)(iii) and (4)(A) [~~§305.127(4)(A) and (1)(B)(iii)~~] of this title (relating to Conditions to be Determined for Individual Permits).

(15) If the executive director concludes, based on one or more of the factors listed in subparagraph (A) of this paragraph that compliance with the standards of 40 CFR Part 63, Subpart EEE alone may not be protective of human health or the environment, the executive director shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The executive director may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required. The executive director shall base the evaluation of whether compliance with the standards of 40 CFR Part 63, Subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(A) particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day-care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

(B) identities and quantities of emissions of persistent, bioaccumulative, or toxic pollutants considering enforceable controls in place to limit those pollutants;

(C) identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);

(D) identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;

(E) presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;

(F) volume and types of wastes, for example wastes containing highly toxic constituents;

(G) other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;

(H) adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and

(I) such other factors as may be appropriate.

(16) If, as the result of an assessment(s) or other information, the executive director determines that conditions are necessary in addition to those required under 40 CFR Part 63, Subpart EEE, Parts 264 or 266 to ensure protection of human health and the environment, including revising emission limits, he/she shall include those terms and conditions in a Resource Conservation and Recovery Act permit for a hazardous waste combustion unit.

(b) An application specifically for a post-closure permit or for a post-closure order for post-closure care must meet the following requirements, as applicable.

(1) An application for a post-closure permit or a post-closure order shall contain information required by 40 CFR §270.14(b)(1), (4) - (6), (11), (13), (14), (18), and (19), (c), and (d), and any additional information that the executive director determines is necessary from 40 CFR §§270.14, 270.16 - 270.18, 270.20, or 270.21, except that closure cost estimates shall be prepared in accordance with 40 CFR

§264.142(a)(1), (3), and (4), as well as §§37.131, 37.141, 335.127, and 335.178 of this title.

(2) An application for a post-closure order shall also contain financial information sufficient to demonstrate to the satisfaction of the executive director that the applicant has sufficient financial resources to operate the facility in a safe manner and in compliance with the post-closure order and all applicable rules. Financial information submitted to satisfy this paragraph shall meet the requirements of Chapter 37, Subchapter P of this title.

(3) An application for a post-closure order or for a post-closure permit must also contain any other information as the executive director may deem necessary to determine whether the facility and the operation thereof will comply with the requirements of the TSWDA and Chapter 335 of this title including, but not limited to, the information set forth in TSWDA, §361.109.

(4) The executive director may require an applicant for a post-closure order to submit information in order to establish conditions under §305.127(4)(A) of this title.

(5) An application for a post-closure order or for a post-closure permit shall also contain the information listed in §305.45(a)(1) of this title (relating to Contents of Application for Permit).

(6) All engineering and geoscientific information submitted to the agency shall be prepared by, or under the supervision of, a licensed professional engineer or licensed professional geoscientist, and shall be signed, sealed, and dated by qualified professionals as required by the Texas Engineering Practice Act and the Texas Geosciences Practice Act and the licensing and registration boards under these acts.

(7) One original and three copies of an application for a post-closure permit or for a post-closure order shall be submitted on forms provided by, or approved by, the executive director and shall be accompanied by a like number of originals and copies of all required exhibits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2012.

TRD-201205006
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: November 4, 2012
For further information, please call: (512) 239-0779

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SUBCHAPTER D. AMENDMENTS, RENEWALS, TRANSFERS, CORRECTIONS, REVOCATION, AND SUSPENSION OF PERMITS

30 TAC §305.64, §305.69

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), THSC, §361.085 (relating to Financial Assurance and Disclosure by Permit Applicant), and THSC, §361.024 (relating to Rules and Standards) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§305.64. Transfer of Permits.

(a) A permit is issued in personam and may be transferred only upon approval of the commission. No transfer is required for a corporate name change, as long as the secretary of state can verify that a change in name alone has occurred. An attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Except as provided otherwise in subsection (g) of this section, either the transferee or the permittee shall submit to the executive director an application for transfer at least 30 days before the proposed transfer date. The application shall contain the following:

(1) the name and address of the transferee;

(2) date of proposed transfer;

(3) if the permit requires financial responsibility, the method by which the proposed transferee intends to assume or provide financial responsibility, including proof of such financial responsibility to become effective when the transfer becomes effective;

(4) a fee of $100 to be applied toward the processing of the application, as provided in §305.53(a) of this title (relating to Application Fee);

(5) a sworn statement that the application is made with the full knowledge and consent of the permittee if the transferee is filing the application; and

(6) any other information the executive director may reasonably require.

(c) If no agreement regarding transfer of permit responsibility and liability is provided, responsibility for compliance with the terms and conditions of the permit and liability for any violation associated therewith is assumed by the transferee, effective on the date of the approved transfer. This section is not intended to relieve a transfer or of any liability.

(d) The executive director must be satisfied that proof of any required financial responsibility is sufficient before transmitting an application for transfer to the commission for further proceedings.

(e) If a person attempting to acquire a permit causes or allows operation of the facility before approval is given, such person shall be considered to be operating without a permit or other authorization.

(f) The commission may refuse to approve a transfer where conditions of a judicial decree, compliance agreement, or other enforcement order have not been entirely met. The commission shall also consider the prior compliance record of the transferee, if any.

(g) For permits involving hazardous waste under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 changes in the ownership or operational control of a facility may be made as Class 1 modifications with prior written approval of the executive director in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). The new owner or operator must submit a revised permit application no

later than 90 days prior to the scheduled change. A written agreement containing a specific date for transfer of permit responsibility between the current and new permittees must also be submitted to the executive director. When a transfer of ownership or operational control occurs, the old owner or operator shall comply with the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), until the new owner or operator has demonstrated compliance with the requirements of Chapter 37, Subchapter P of this title. The new owner or operator must demonstrate compliance with the requirements of Chapter 37, Subchapter P of this title within six months of the date of the change of ownership or operational control of the facility. Prior to the executive director issuing the permit modification transferring the permit, the new owner or operator must provide proof of financial assurance in compliance with Chapter 37, Subchapter P of this title. Upon demonstration to the executive director [~~by the new owner or operator~~] of compliance with Chapter 37[~~, Subchapter P~~] of this title, the executive director shall notify the old owner or operator that he no longer needs to comply with Chapter 37, Subchapter P of this title as of the date of demonstration.

(h) The commission may transfer permits to an interim permittee pending an ultimate decision on a permit transfer if it finds one or more of the following:

(1) the permittee no longer owns the permitted facilities;

(2) the permittee is about to abandon or cease operation of the facilities;

(3) the permittee has abandoned or ceased operating the facilities; and

(4) there exists a need for the continued operation of the facility and the proposed interim permittee is capable of assuming responsibility for compliance with the permit.

(i) The commission may transfer a permit involuntarily after notice and an opportunity for hearing, for any of the following reasons:

(1) the permittee no longer owns or controls the permitted facilities;

(2) if the facilities have not been built, and the permittee no longer has sufficient property rights in the site of the proposed facilities;

(3) the permittee has failed or is failing to comply with the terms and conditions of the permit;

(4) the permitted facilities have been or are about to be abandoned;

(5) the permittee has violated commission rules or orders;

(6) the permittee has been or is operating the permitted facilities in a manner which creates an imminent and substantial endangerment to the public health or the environment;

(7) foreclosure, insolvency, bankruptcy, or similar proceedings have rendered the permittee unable to construct the permitted facilities or adequately perform its responsibilities in operating the facilities; or

(8) transfer of the permit would maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state and/or would minimize the damage to the environment; and

(9) the transferee has demonstrated the willingness and ability to comply with the permit and all other applicable requirements.

(j) The commission may initiate proceedings in accordance with the Texas Water Code, Chapter 13, for the appointment of a receiver consistent with this section.

(k) For standard permits, changes in the ownership or operational control of a facility may be made as a Class 1 modification to the standard permit with prior approval from the executive director in accordance with §305.69(k) [~~§305.69(l)(a)(7)~~] of this title.

§305.69. Solid Waste Permit Modification at the Request of the Permittee.

(a) Applicability. This section applies only to modifications to industrial and hazardous solid waste permits. Modifications to municipal solid waste permits are covered in §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications).

(b) Class I modifications of solid waste permits.

(1) Except as provided in paragraph (2) of this subsection, the permittee may put into effect Class 1 modifications listed in Appendix I of subsection (k) of this section under the following conditions:

(A) the permittee must notify the executive director concerning the modification by certified mail or other means that establish proof of delivery within seven calendar days after the change is put into effect. This notification must specify the changes being made to permit conditions or supporting documents referenced by the permit and must explain why they are necessary. Along with the notification, the permittee must provide the applicable information in the form and manner specified in §1.5(d) of this title (relating to Records of the Agency), §§305.41 - 305.45 and 305.47 - 305.53 of this title (relating to Applicability; Application Required; Who Applies; Signatories to Applications; Contents of Application for Permit; Retention of Application Data; Additional Contents of Applications for Wastewater Discharge Permits; Additional Contents of Application for an Injection Well Permit; Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order; Revision of Applications for Hazardous Waste Permits; Waste Containing Radioactive Materials; and Application Fee), Subchapter I of this chapter (relating to Hazardous Waste Incinerator Permits), and Subchapter J of this chapter (relating to Permits for Land Treatment Demonstrations Using Field Tests or Laboratory Analyses);

(B) the permittee must send notice of the modification request by first-class mail to all persons listed in §39.13 of this title (relating to Mailed Notice). This notification must be made within 90 calendar days after the change is put into effect. For the Class 1 modifications that require prior executive director approval, the notification must be made within 90 calendar days after the executive director approves the request; and

(C) any person may request the executive director to review, and the executive director may for cause reject, any Class 1 modification. The executive director must inform the permittee by certified mail that a Class 1 modification has been rejected, explaining the reasons for the rejection. If a Class 1 modification has been rejected, the permittee must comply with the original permit conditions.

(2) Class 1 permit modifications identified in Appendix I of subsection (k) of this section by a superscript 1 may be made only with the prior written approval of the executive director.

(3) For a Class 1 permit modification, the permittee may elect to follow the procedures in subsection (c) of this section for Class 2 modifications instead of the Class 1 procedures. The permittee must inform the executive director of this decision in the notification required in subsection (c)(1) of this section.

(c) Class 2 modifications of solid waste permits.

(1) For Class 2 modifications, which are listed in Appendix I of subsection (k) of this section, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies the modification as a Class 2 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title and §§305.41 - 305.45 and 305.47 - 305.53 of this title;

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request, and the permittee must provide to the executive director evidence of the mailing and publication. The notice must include:

(A) announcement of a 60-day comment period, in accordance with paragraph (5) of this subsection, and the name and address of an agency contact to whom comments must be sent;

(B) announcement of the date, time, and place for a public meeting to be held in accordance with paragraph (4) of this subsection;

(C) name and telephone number of the permittee's contact person;

(D) name and telephone number of an agency contact person;

(E) location where copies of the modification request and any supporting documents can be viewed and copied; and

(F) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact identified in the public notice.

(6) No later than 90 days after receipt of the modification request, subparagraphs (A), (B), (C), (D), or (E) of this paragraph must be met, subject to §50.33 of this title (relating to Executive Director Action on Application), as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization; or

(E) the executive director must notify the permittee that the executive director or the commission will decide on the request within the next 30 days.

(7) If the executive director notifies the permittee of a 30-day extension for a decision, then no later than 120 days after receipt of the modification request, subparagraphs (A), (B), (C), or (D) of this paragraph must be met, subject to §50.33 of this title, as follows:

(A) the executive director or the commission must approve the modification request, with or without changes, and modify the permit accordingly;

(B) the commission must deny the request;

(C) the commission or the executive director must determine that the modification request must follow the procedures in subsection (d) of this section for Class 3 modifications for either of the following reasons:

(i) there is significant public concern about the proposed modification; or

(ii) the complex nature of the change requires the more extensive procedures of a Class 3 modification; or

(D) the commission must approve the modification request, with or without changes, as a temporary authorization having a term of up to 180 days, in accordance with the following public notice requirements:

(i) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(ii) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(8) If the executive director or the commission fails to make one of the decisions specified in paragraph (7) of this subsection by the 120th day after receipt of the modification request, the permittee is automatically authorized to conduct the activities described in the modification request for up to 180 days, without formal agency action. The authorized activities must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title (relating to Interim

Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities). If the commission approves, with or without changes, or denies any modification request during the term of the temporary authorization issued pursuant to paragraph (6) or (7) of this subsection, such action cancels the temporary authorization. The commission is the sole authority for approving or denying the modification request during the term of the temporary authorization. If the executive director or the commission approves, with or without changes, or if the commission denies the modification request during the term of the automatic authorization provided for in this paragraph, such action cancels the automatic authorization.

(9) In the case of an automatic authorization under paragraph (8) of this subsection, or a temporary authorization under paragraph (6)(D) or (7)(D) of this subsection, if the executive director or the commission has not made a final approval or denial of the modification request by the date 50 days prior to the end of the temporary or automatic authorization, the permittee must within seven days of that time send a notification to all persons listed in §39.13 of this title, and make a reasonable effort to notify other persons who submitted written comments on the modification request, that:

(A) the permittee has been authorized temporarily to conduct the activities described in the permit modification request; and

(B) unless the executive director or the commission acts to give final approval or denial of the request by the end of the authorization period, the permittee will receive authorization to conduct such activities for the life of the permit.

(10) If the owner/operator fails to notify the public by the date specified in paragraph (9) of this subsection, the effective date of the permanent authorization will be deferred until 50 days after the owner/operator notifies the public.

(11) Except as provided in paragraph (13) of this subsection, if the executive director or the commission does not finally approve or deny a modification request before the end of the automatic or temporary authorization period or reclassify the modification as Class 3 modification, the permittee is authorized to conduct the activities described in the permit modification request for the life of the permit unless amended or modified later under §305.62 of this title (relating to Amendments) or this section. The activities authorized under this paragraph must be conducted as described in the permit modification request and must be in compliance with all appropriate standards of Chapter 335, Subchapter E of this title.

(12) In the processing of each Class 2 modification request which is subsequently approved or denied by the executive director or the commission in accordance with paragraph (6) or (7) of this subsection, or each Class 2 modification request for which a temporary authorization is issued in accordance with subsection (f) of this section or a reclassification to a Class 3 modification is made in accordance with paragraph (6)(C) or (7)(C) of this subsection, the executive director must consider all written comments submitted to the agency during the public comment period and must respond in writing to all significant comments.

(13) With the written consent of the permittee, the executive director may extend indefinitely or for a specified period the time periods for final approval or denial of a Class 2 modification request or for reclassifying a modification as Class 3.

(14) The commission or the executive director may change the terms of, and the commission may deny a Class 2 permit modification request under paragraphs (6) - (8) of this subsection for any of the following reasons:

(A) the modification request is incomplete;

(B) the requested modification does not comply with the appropriate requirements of Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or other applicable requirements; or

(C) the conditions of the modification fail to protect human health and the environment.

(15) The permittee may perform any construction associated with a Class 2 permit modification request beginning 60 days after the submission of the request unless the executive director establishes a later date for commencing construction and informs the permittee in writing before the 60th day.

(d) Class 3 modifications of solid waste permits.

(1) For Class 3 modifications listed in Appendix I of subsection (k) of this section, the permittee must submit a modification request to the executive director that:

(A) describes the exact change to be made to the permit conditions and supporting documents referenced by the permit;

(B) identifies that the modification is a Class 3 modification;

(C) explains why the modification is needed; and

(D) provides the applicable information in the form and manner specified in §1.5(d) of this title and §§305.41 - 305.45 and 305.47 - 305.53 of this title; and Subchapter Q of this chapter (relating to Permits for Boilers and Industrial Furnaces Burning Hazardous Waste).

(2) The permittee must send a notice of the modification request by first-class mail to all persons listed in §39.13 of this title and must cause this notice to be published in a major local newspaper of general circulation. This notice must be mailed and published within seven days before or after the date of submission of the modification request and evidence of the mailing and publication of the notice shall be provided to the executive director. The notice shall include the following:

(A) all information required by §39.11 of this title (relating to Text of Public [~~Mailed~~] Notice);

(B) announcement of a 60-day comment period, and the name and address of an agency contact person to whom comments must be sent;

(C) announcement of the date, time, and place for a public meeting on the modification request, to be held in accordance with paragraph (4) of this subsection;

(D) name and telephone number of the permittee's contact person;

(E) name and telephone number of an agency contact person;

(F) identification of the location where copies of the modification request and any supporting documents can be viewed and copied; and

(G) the following statement: "The permittee's compliance history during the life of the permit being modified is available from the agency contact person."

(3) The permittee must place a copy of the permit modification request and supporting documents in a location accessible to the public in the vicinity of the permitted facility.

(4) The permittee must hold a public meeting no earlier than 15 days after the publication of the notice required in paragraph (2) of this subsection and no later than 15 days before the close of the 60-day comment period. The meeting must be held to the extent practicable in the vicinity of the permitted facility.

(5) The public shall be provided at least 60 days to comment on the modification request. The comment period will begin on the date the permittee publishes the notice in the local newspaper. Comments should be submitted to the agency contact person identified in the public notice.

(6) After the conclusion of the 60-day comment period, the permit modification request shall be granted or denied in accordance with the applicable requirements of Chapter 39 of this title (relating to Public Notice), Chapter 50 of this title (relating to Action on Applications and Other Authorizations), and Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment). When a permit is modified, only the conditions subject to modification are reopened.

(7) Except as otherwise required by Chapter 39 of this title, the notice requirements in this section do not apply to Class 3 modification applications for industrial or hazardous waste facility permits that are declared administratively complete on or after September 1, 1999.

(e) Other modifications.

(1) In the case of modifications not explicitly listed in Appendix I of subsection (k) of this section, the permittee may submit a Class 3 modification request to the agency, or the permittee may request a determination by the executive director that the modification should be reviewed and approved as a Class 1 or Class 2 modification. If the permittee requests that the modification be classified as a Class 1 or Class 2 modification, the permittee must provide the agency with the necessary information to support the requested classification.

(2) The executive director shall make the determination described in paragraph (1) of this subsection as promptly as practicable. In determining the appropriate class for a specific modification, the executive director shall consider the similarity of the modification to other modifications codified in Appendix I of subsection (k) of this section and the following criteria.

(A) Class 1 modifications apply to minor changes that keep the permit current with routine changes to the facility or its operation. These changes do not substantially alter the permit conditions or reduce the capacity of the facility to protect human health or the environment. In the case of Class 1 modifications, the executive director may require prior approval;

(B) Class 2 modifications apply to changes that are necessary to enable a permittee to respond, in a timely manner, to:

(i) common variations in the types and quantities of the wastes managed under the facility permit;

(ii) technological advancements; and

(iii) changes necessary to comply with new regulations, where these changes can be implemented without substantially changing design specifications or management practices in the permit; and

(C) Class 3 modifications reflect a substantial alteration of the facility or its operations.

(f) Temporary authorizations.

(1) Upon request of the permittee, the commission may grant the permittee a temporary authorization having a term of up to 180 days, in accordance with this subsection, and in accordance with the following public notice requirements:

(A) notice of a hearing on the temporary authorization shall be given not later than the 20th day before the hearing on the authorization; and

(B) this notice of hearing shall provide that an affected person may request an evidentiary hearing on issuance of the temporary authorization.

(2) The permittee may request a temporary authorization for:

(A) any Class 2 modification meeting the criteria in paragraph (5)(B) of this subsection; and

(B) any Class 3 modification that meets the criteria in paragraph (5)(B)(i) or (ii) of this subsection, or that meets any of the criteria in paragraph (5)(B)(iii) - (v) of this subsection and provides improved management or treatment of a hazardous waste already listed in the facility permit.

(3) The temporary authorization request must include:

(A) a specific description of the activities to be conducted under the temporary authorization;

(B) an explanation of why the temporary authorization is necessary and reasonably unavoidable; and

(C) sufficient information to ensure compliance with the applicable standards of Chapter 335, Subchapter F of this title and 40 Code of Federal Regulations (CFR) Part 264.

(4) The permittee must send a notice about the temporary authorization request by first-class mail to all persons listed in §39.13 of this title. This notification must be made within seven days of submission of the authorization request.

(5) The commission shall approve or deny the temporary authorization as quickly as practicable. To issue a temporary authorization, the commission must find:

(A) the authorized activities are in compliance with the applicable standards of Chapter 335, Subchapter F of this title and 40 CFR Part 264; and

(B) the temporary authorization is necessary to achieve one of the following objectives before action is likely to be taken on a modification request:

(i) to facilitate timely implementation of closure or corrective action activities;

(ii) to allow treatment or storage in tanks, containers, or containment buildings, of restricted wastes in accordance with Chapter 335, Subchapter O of this title (relating to Land Disposal Restrictions), 40 CFR Part 268, or Section 3004 of the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §6924;

(iii) to prevent disruption of ongoing waste management activities;

(iv) to enable the permittee to respond to sudden changes in the types or quantities of the wastes managed under the facility permit; or

(v) to facilitate other changes to protect human health and the environment.

(6) A temporary authorization may be reissued for one additional term of up to 180 days provided that the permittee has re-

quested a Class 2 or 3 permit modification for the activity covered in the temporary authorization, and:

(A) the reissued temporary authorization constitutes the commission's decision on a Class 2 permit modification in accordance with subsection (c)(6)(D) or (7)(D) of this section; or

(B) the commission determines that the reissued temporary authorization involving a Class 3 permit modification request is warranted to allow the authorized activities to continue while the modification procedures of subsection (d) of this section are conducted.

(g) Public notice and appeals of permit modification decisions.

(1) The commission shall notify all persons listed in §39.13 of this title within ten working days of any decision under this section to grant or deny a Class 2 or 3 permit modification request. The commission shall also notify such persons within ten working days after an automatic authorization for a Class 2 modification goes into effect under subsection (c)(8) or (11) of this section.

(2) The executive director's or the commission's decision to grant or deny a Class 3 permit modification request under this section may be appealed under the appropriate procedures set forth in the commission's rules and in the Administrative Procedure Act, Texas Government Code, Chapter 2001.

(h) Newly regulated wastes and units.

(1) The permittee is authorized to continue to manage wastes listed or identified as hazardous under 40 CFR Part 261, or to continue to manage hazardous waste in units newly regulated as hazardous waste management units if:

(A) the unit was in existence as a hazardous waste facility unit with respect to the newly listed or characteristic waste or newly regulated waste management unit on the effective date of the final rule listing or identifying the waste or regulating the unit;

(B) the permittee submits a Class 1 modification request on or before the date on which the waste or unit becomes subject to the new requirements;

(C) the permittee is in substantial compliance with the applicable standards of Chapter 335, Subchapter E of this title, Chapter 335, Subchapter H, Divisions 1 through 4 of this title (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and 40 CFR Part 265 and Part 266;

(D) the permittee also submits a complete Class 2 or 3 modification request within 180 days after the effective date of the final rule listing or identifying the waste or subjecting the unit to Section 6921 of the Resource Conservation and Recovery Act Subtitle C (Subchapter III Hazardous Waste Management, 42 United States Code, §§6921 - 6939e); and

(E) in the case of land disposal units, the permittee certifies that each such unit is in compliance with all applicable 40 CFR Part 265 groundwater monitoring requirements and with Chapter 37 of this title (relating to Financial Assurance) on the date 12 months after the effective date of the final rule identifying or listing the waste as hazardous, or regulating the unit as a hazardous waste management unit. If the owner or operator fails to certify compliance with these requirements, the owner or operator shall lose authority to operate under this section.

(2) New wastes or units added to a facility's permit under this subsection do not constitute expansions for the purpose of the 25% capacity expansion limit for Class 2 modifications.

(i) Combustion facility changes to meet 40 CFR Part 63, Maximum Achievable Control Technology (MACT) standards. The following procedures apply to hazardous waste combustion facility permit modifications requested under L.9. of Appendix I of subsection (k) of this section.

(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR §63.1210(b) and (c) that were in effect prior to October 11, 2000, as amended in 40 CFR §270.42(j) through October 12, 2005 (70 Federal Register 59402), before a permit modification can be requested under this section.

(2) If the executive director does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The executive director may, at his or her discretion, extend this 90-day deadline one time for up to 30 days by notifying the facility owner or operator.

(3) Facility owners or operators may request to have specific RCRA operating and emissions limits waived by submitting a Class 1 permit modification request under L.10. in Appendix I of subsection (k) of this section. The facility owner or operator must:

(A) identify the specific RCRA permit operating and emissions limits which are requested to be waived;

(B) provide an explanation of why the changes are necessary to minimize or eliminate conflicts between the RCRA permit and MACT compliance;

(C) discuss how the revised provisions will be sufficiently protective; and

(D) the executive director shall notify the facility owner or operator whether the Class 1 permit modification has been approved or denied. If denied, the executive director shall provide justification for denial.

(4) To request the modification referenced in paragraph (3) of this subsection in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR §63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the executive director); the owner or operator must:

(A) submit the modification request to the executive director at the same time the test plans are submitted to the executive director; and

(B) the executive director may elect to approve or deny the request contingent upon approval of the test plans.

(j) Military hazardous waste munitions storage, processing, and disposal. The permittee is authorized to continue to accept waste military munitions notwithstanding any permit conditions barring the permittee from accepting off-site wastes, if:

(1) the facility is in existence as a hazardous waste facility, and the facility is already permitted to handle waste military munitions, on the date when waste military munitions become subject to hazardous waste regulatory requirements;

(2) on or before the date when waste military munitions become subject to hazardous waste regulatory requirements, the permittee submits a Class 1 modification request to remove or revise the permit provision restricting the receipt of off-site waste munitions; and

(3) the permittee submits a Class 2 modification request within 180 days of the date when the waste military munitions become subject to hazardous waste regulatory requirements.

(k) Appendix I. The following appendix will be used for the purposes of this subchapter which relates to industrial and hazardous solid waste permit modification at the request of the permittee.
Figure: 30 TAC §305.69(k)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2012.

TRD-201205007
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: November 4, 2012
For further information, please call: (512) 239-0779

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SUBCHAPTER F. PERMIT CHARACTERISTICS AND CONDITIONS

30 TAC §305.122

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), THSC, §361.085 (relating to Financial Assurance and Disclosure by Permit Applicant), and THSC, §361.024 (relating to Rules and Standards) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§305.122. Characteristics of Permits.

(a) Compliance with a Resource Conservation and Recovery Act (RCRA) permit during its term constitutes compliance, for purposes of enforcement, with subtitle C of RCRA except for those requirements not included in the permit which:

(1) become effective by statute;

(2) are promulgated under 40 Code of Federal Regulations (CFR) Part 268, restricting the placement of hazardous wastes in or on the land;

(3) are promulgated under 40 CFR Part 264, regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, construction quality assurance programs, monitoring, action leakage rates, and response action plans, and will be implemented through the Class 1 permit modifications procedures of §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); or

(4) are promulgated under 40 CFR Part 265, Subparts AA, BB, or CC limiting air emissions, as adopted by reference under §335.112 of this title (relating to Standards).

(b) A permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §305.62 of this title (relating to Amendments) and §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), or the permit may be modified upon the request of the permittee as set forth in §305.69 of this title.

(c) [~~(b)~~] A permit issued within the scope of this subchapter does not convey any property rights of any sort, nor any exclusive privilege, and does not become a vested right in the permittee.

(d) [~~(c)~~] The issuance of a permit does not authorize any injury to persons or property or an invasion of other property rights, or any infringement of state or local law or regulations.

(e) [~~(d)~~] Except for any toxic effluent standards and prohibitions imposed under Clean Water Act (CWA), §307, and standards for sewage sludge use or disposal under CWA, §405(d), compliance with a Texas pollutant discharge elimination system (TPDES) permit during its term constitutes compliance, for purposes of enforcement, with the CWA, §§301, 302, 306, 307, 318, 403, and 405; however, a TPDES permit may be amended or revoked during its term for cause as set forth in [§]§305.62 and §305.66 of this title. [~~(relating to Amendment; and Permit Denial, Revocation and Suspension.)~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2012.

TRD-201205008
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: November 4, 2012
For further information, please call: (512) 239-0779

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SUBCHAPTER I. HAZARDOUS WASTE INCINERATOR PERMITS

30 TAC §305.176

Statutory Authority

The new section is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), THSC, §361.085 (relating to Financial Assurance and Disclosure by Permit Applicant), and THSC, §361.024 (relating to Rules and Standards) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed new section implements THSC, Chapter 361.

§305.176. Integration with Maximum Achievable Control Technology (MACT) Standards.

The regulations contained in 40 Code of Federal Regulations §270.235, Options for Incinerators, Cement Kilns, Lightweight Aggregate Kilns, Solid Fuel Boilers, Liquid Fuel Boilers, and Hydrochloric Acid Pro-

duction Furnaces to Minimize Emissions from startup, shutdown, and malfunction events, are adopted by reference, as amended and adopted through October 12, 2005 (70 FedReg 59402).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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For further information, please call: (512) 239-0779

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CHAPTER 324. USED OIL STANDARDS
SUBCHAPTER A. USED OIL RECYCLING

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§324.1 - 324.4, 324.6, 324.7, and 324.11 - 324.16; and repeals §324.5.

These amendments were originally published for proposal in the April 27, 2012, issue of the *Texas Register* (37 TexReg 3011), withdrawn on September 19, 2012, and are re-proposed herein.

Background and Summary for the Factual Basis of the Proposed Rules

The federal used oil recycling program is authorized under the Used Oil Recycling Act of 1980, Resource Conservation and Recovery Act of 1976 (RCRA), §3014. The United States Environmental Protection Agency (EPA) sets standards for used oil destined for recycling to prevent mismanagement by generators, collection centers, transporters, processors and re-refiners, burners, and marketers. Those federal standards are located in 40 Code of Federal Regulations (CFR) Part 279.

States may obtain authorization from the EPA to administer the used oil recycling program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA used oil recycling program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal used oil recycling program, the State of Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission must adopt new regulations periodically to meet the changing federal regulations.

The commission proposes in this rulemaking parts of RCRA Rule Clusters XIX - XXI that implement revisions to the federal used oil recycling program. Establishing equivalency with federal regulations will enable the State of Texas to operate all aspects of the federal used oil recycling program in lieu of the EPA. All proposed rule changes are further discussed in the Section by Section Discussion portion of this preamble.

Two corresponding rulemakings are published in this issue of the *Texas Register* and include changes to 30 TAC Chapter 305, Consolidated Permits, and 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste.

Section by Section Discussion

The commission proposes administrative changes throughout the proposed rulemaking to reflect the agency's current practices and to conform to *Texas Register* and agency guidelines. These proposed changes include correcting typographical, spelling, and grammatical errors throughout the chapter and also incorporating by reference the typographical, spelling, and grammatical corrections in 40 CFR Part 279. In addition, the commission proposes to replace the phrases "shall be as" and "will be as" with the phrase, "The commission incorporates by reference". This change in phrasing would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules. Finally, the commission proposes to adopt substantive changes throughout the chapter such as: removing the requirement to use SW-846 as the testing method to ensure that used oil does not contain significant concentrations of halogenated hazardous constituents, adding clarifying language regarding used oil containing polychlorinated biphenyls (PCBs), and tracking requirements for used oil marketers. The changes would make it easier for recyclers to comply with the RCRA regulations.

§324.1, Federal Rule Adoption by Reference

The commission proposes to amend §324.1 to incorporate by reference the federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). Specifically, this amendment would update the "amended through" date to "July 14, 2006 at 71 FedReg 40280." An introductory sentence is proposed to be added to make clear that recyclers in Texas must comply with federal used oil regulations and with any additional requirements specified in Chapter 324. The terms "Administrator or Regional Administrator," "Environmental Protection Agency (EPA)," and "Commission" are proposed to be moved to this section from the definition section in §324.2.

§324.2, Definitions

The commission proposes to amend §324.2 to make five changes. First, the commission proposes to amend §324.2 to incorporate by reference the federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). Specifically, this amendment would correct the spelling of the word "kerosine" to "kerosene" in the definition for "Petroleum refining facility" found in 40 CFR §279.1. Second, the commission proposes to amend §324.2(5) to replace the word "Recycling" with the phrase "Recycling of used oil". This change would clarify that this definition pertains to used oil. Third, the commission proposes to add language to §324.2(7) to revise the definition of "Secondary containment" to add the clause "shall be designed to meet the specifications found in §324.22(d)(3) to retain". This language is integral to the state's program requirements regarding secondary containment for used oil. Fourth, the definitions for "Administrator or Regional Administrator" found in §324.2(2), "Commission" found in §324.2(3), and "Environmental Protection Agency (EPA)" found in §324.2(4) are proposed to be removed. The terms "Administrator or Regional Administrator," "Environmental Protection Agency (EPA)," and "Commission" are proposed to be moved to §324.1 as part of the Federal

Rule Adoption by Reference section. Section 324.2 has been alphabetized and modified accordingly. Fifth, the introductory phrase "Most words are as defined" is proposed to be changed to "The commission incorporates by reference the definitions" to make clear that all definitions in 40 CFR §279.1 are part of the state regulations and enforceable. However, the commission also proposes certain additional definitions as part of §324.2.

§324.3, Applicability

The commission proposes to amend §324.3 to make five changes. First, the commission proposes to amend §324.3 to adopt by reference the regulations promulgated in the July 30, 2003, issue of the *Federal Register* (68 FR 44665). This amendment would add revised language in 40 CFR §279.10(i) relating to Used Oil Containing PCBs. Specifically, this amendment would clarify when used oil contaminated with PCBs is regulated under the RCRA used oil management standards and when it is not. Second, the commission proposes an amendment to §324.3 to adopt by reference the regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment would remove the requirement in 40 CFR §279.10(b)(1)(ii), relating to Applicability, to use SW-846 as the testing method. This change would ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and would make it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection and use. Third, the commission proposes to amend §324.3 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment would make grammatical corrections to 40 CFR §279.10(b)(2) relating to Applicability and would change the language in 40 CFR §279.11 relating to Used Oil Specifications. Fourth, the commission proposes to amend §324.3 by adding the phrases "The commission incorporates by reference" and "In addition, the commission adds the following clarifications and requirements:" and removing the phrases "applicability will be as" and "and as clarified here". These revisions would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules and to clarify that there are additional state requirements. Fifth, the commission proposes language to be added to §324.3(5) which reads "and meet the prohibition requirements found in §324.4 of this title (relating to Prohibitions) to prevent the discharge of hazardous waste into a sanitary sewer." This amendment would clarify that the State of Texas is not allowing the discharge of hazardous waste into a sanitary sewer.

§324.4, Prohibitions

The commission proposes to amend §324.4 by adding the phrases "The commission incorporates by reference the" and "In addition, the commission requires the following:" and removing the phrases "will be as" and "and as specified here." These changes in phrasing would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules and to clarify that there are additional state requirements.

§324.5, Notice by Retail Dealer

The commission proposes the repeal of §324.5 and proposes to add the statement concerning where to obtain a sign to §324.7(1)(A) and (3)(A). The proposed repeal allows the regulated community to find the contact address in the same section where the requirement for signs is placed.

§324.6, Generators

The commission proposes to amend §324.6 to replace the phrase "shall be as" with the phrase "The commission incorporates by reference". This change in phrasing would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules.

§324.7, Collection Centers

The commission proposes to amend §324.7 to make four changes. First, the commission proposes to amend §324.7 to replace the phrases "Rules for" and "shall be as" with the phrase "The commission incorporates by reference rules for owners or operators of all" in front of the phrase "do-it-yourselfer (DIY) used oil collection centers". This change in phrasing would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules, is consistent with the federal rules and clarifies that the section applies to the owners or operators of these facilities. Second, the commission proposes to remove the phrase "and as specified here" and to add the phrase "In addition, the commission requires the following:". This proposed change clarifies that there are additional state requirements that must be followed by collection centers. Third, the commission also proposes to amend §324.7(1)(A) and (3)(A) to add the statement concerning where to obtain a sign. This proposed change would organize all the information on obtaining a sign in one place. The regulated community would no longer have to refer to §324.5 to determine how to obtain a sign that is required to be posted per §324.7(1)(A) and (3)(A). Fourth, the commission also proposes to amend §324.7(1)(B) and (3)(B) to remove the mailing address because it is provided on commission cover letters and forms and to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality.

§324.11, Transporters and Transfer Facilities

The commission proposes to amend §324.11 to make four changes. First, the commission proposes to amend §324.11 by adding the phrase "The commission incorporates by reference" and removing the words "are" and ", and in this section" and adding the phrase "In addition, the commission requires the following:". These changes would avoid any ambiguity as to the commission's actions to incorporate the federal used oil rules and clarify that there are additional state requirements. Second, the commission proposes to adopt by reference the federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment would remove the requirement to use SW-846 as the testing method in 40 CFR §279.44(c) relating to Rebuttable Presumption for Used Oil. This amendment would ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and would make it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection and use. Third, the commission proposes to amend §324.11 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment would make grammatical corrections in 40 CFR §279.43(c)(3)(i) and (5) relating to Used Oil Transportation, 40 CFR §279.44(a) and (c)(2) relating to Rebuttable Presumption for Used Oil, and 40 CFR §279.45(a) relating to Used Oil Storage at Transfer Facilities. Fourth, the commission proposes to adopt §324.11(2) to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality and to remove the mailing address because it is provided on commission cover letters and forms.

§324.12, Processors and Re-refiners

The commission proposes to amend §324.12. First, the commission proposes to amend §324.12 by adding the phrases "The commission incorporates by reference", "owners and operators of" and "In addition, the commission requires the following:". These additions would require changing the tense of the words "processors" and "re-refiners" to "processing" and "re-refining" and removing the words "are" and "and in this section". These changes would avoid any ambiguity as to the commission's actions to incorporate the federal used oil rules, clarify that the section applies to the owners and operators of these facilities and clarify that there are additional state requirements. Second, the commission proposes to amend §324.12(2) and (4) to remove the mailing address because it is provided on commission instruction letters and forms. Third, the commission proposes to amend §324.12 to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Fourth, the commission proposes to adopt by reference the federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment would remove the requirement to use SW-846 as the testing method in 40 CFR §279.53(c) relating to Rebuttable Presumption for Used Oil. This amendment would ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and makes it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection and use. Fifth, the commission proposes to amend §324.12 to adopt by reference the federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment would make grammatical corrections in 40 CFR §279.52(a) - (b), (b)(1)(ii), (6)(ii) and (iii) relating to General Facility Standards; 40 CFR §279.54(g) relating to Used Oil Management; 40 CFR §279.55(a) and (b)(2)(i)(B) relating to Analysis plan; 40 CFR §279.56(a)(2) relating to Tracking; 40 CFR §279.57(a)(2)(ii) relating to Operating record and reporting; and 40 CFR §279.59 relating to the Management of Residues.

Additionally, the commission proposes to amend the title of §324.12 from "Processors and Rerefiners" to "Processors and Re-refiners".

§324.13, Burners of Off-Specification Used Oil for Energy Recovery

The commission proposes to amend §324.13 to make five changes. First, the commission proposes to amend §324.13 by adding the phrase "The commission incorporates by reference" and removing the word "are". This change in phrasing would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules. Second, the commission proposes to add the phrase "In addition, the commission requires the following:" and remove the phrase ", and in this section". This change would clarify that there are additional state requirements. Third, the commission proposes to amend §324.13(2) to remove the mailing address for the agency because it is provided on commission cover letters and forms and update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Fourth, the commission proposes to adopt by reference the federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34591). This amendment would remove the requirement to use SW-846 as the testing method in 40 CFR §279.63(c) relating to Rebuttable Presumption for Used Oil. This amendment would ensure that the used oil does not contain significant concentrations of halogenated hazardous constituents and makes it easier for recyclers to comply with the RCRA regulations by allowing more flexibility in method selection and use. Fifth, the commission proposes to amend §324.13 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This proposed amendment would make grammatical corrections in 40 CFR §279.63(b)(3) relating to Rebuttable Presumption for Used Oil and 40 CFR §279.64(e) relating to Used Oil Storage.

§324.14, Marketers of Used Oil Fuel

The commission proposes to amend §324.14 to make five changes. First, the commission proposes to amend §324.14 by adding the phrases "The commission incorporates by reference", "These rules", "In addition" and the word "found" and remove the phrase "and this section". These changes would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules and make the sentence more readable. Second, the commission proposes to amend §324.14 to remove the mailing address because it is provided on commission cover letters and forms. Third, the commission proposes to amend §324.14 to update the agency name from Texas Natural Resource Conservation Commission to Texas Commission on Environmental Quality. Fourth, the commission proposes to adopt by reference the federal regulations promulgated in the July 30, 2003, issue of the *Federal Register* (68 FR 44665). This amendment would revise the language in 40 CFR §279.74(b) relating to Tracking. Specifically, the amendment would allow the initial marketer of used oil that meets the used oil fuel specifications in 40 CFR §279.11 to only keep a record of a shipment of used oil to the facility to which the initial marketer delivers the used oil. Fifth, the commission proposes to amend §324.14 to adopt by reference the regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40280). This amendment would make grammatical corrections in 40 CFR §279.70(b)(1) relating to Applicability.

§324.15, Spills

The commission proposes to amend §324.15 by adding the phrase "The commission incorporates by reference" and removing the word "See". This revision would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules. The commission also proposes additional language which would require recyclers to immediately clean up spills that meet the reportable quantity limit. Specifically, the amendment would incorporate federal requirements found in 40 CFR §§279.22(d), 279.43(c), 279.45(h), 279.54(g), and 279.64 regarding Reporting and Managing Spills. The section would continue to require used oil recyclers to comply with 30 TAC Chapter 327 relating to Spill Prevention and Control.

§324.16, Polychlorinated Biphenyls (PCBs)

The commission proposes to amend §324.16 by adding the phrase "The commission incorporates by reference" and removing the phrase "shall be as" and restructuring the sentence to make it easier to read. These changes would avoid any ambiguity as to the commission's action to incorporate the federal used oil rules.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules are not expected to have a significant fiscal impact on state agencies or units of

local government since the rules impose no additional requirements, clarify ambiguities for the regulated community, and allow for more flexible testing methods of used oil.

The proposed rules are part of a comprehensive rule package implementing RCRA requirements involving proposed changes to several chapters of 30 TAC. This fiscal note applies only to the proposed changes to Chapter 324 which include adoption by reference of federal rule changes to the RCRA Used Oil Management program that were adopted by EPA from July 2003 through July 2006 for used oil facilities. The proposed rulemaking would also incorporate several grammatical corrections to errors found in 40 CFR Chapter 279. A used oil facility may have several regulated participants (marketers, burners, transporters, etc.) at the same facility.

Parts of the proposed rules for Chapter 324 are expected to clear up current ambiguities regarding the used oil recycling program for the regulated community. For example, the proposed rulemaking incorporates EPA's intent to clarify the applicability of the RCRA used oil management standards to used oil containing PCBs. Specifically, the rulemaking clarifies that used oil that contains less than 50 parts per million of PCBs is generally subject to regulation under the RCRA used oil management standards. The proposed rulemaking also incorporates clarifying language regarding tracking requirements for used oil marketers. Specifically, the initial marketer need only keep a record of a shipment of used oil to the facility to which the used oil is delivered.

The proposed rulemaking also makes it easier for used oil facilities to ensure that used oil does not contain significant concentrations of halogenated hazardous constituents by removing the requirement to use only one testing method (SW-846) as the testing method for these hazardous elements. Used oil facilities could use other, equally protective testing methods.

In general, the proposed rules are not expected to have a significant fiscal impact on governmental entities. The agency knows of only one governmental entity (a state agency) that participates in used oil recycling. The proposed rules are clarifying in nature or provide alternative testing methods for used oil recycling. All testing methods for concentrations of halogenated hazardous constituents in used oil cost about the same, and the flexibility of testing methods is not expected to generate significant cost savings.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be protection of the environment and public safety through continued consistency with federal regulations for recycling used oil.

In general, the proposed rules are not expected to have a significant fiscal impact on individuals. The proposed rules are clarifying in nature or provide alternative testing methods for concentrations of halogenated hazardous constituents in used oil.

The proposed rules are not expected to have a significant fiscal impact on large businesses that own or operate used oil facilities. The agency estimates there may be as many as 397 used oil facilities statewide. The proposed rules clarify ambiguities regarding the used oil recycling program for the regulated community and provide alternative testing methods for concentrations of halogenated hazardous constituents in used oil. Since all testing methods cost about the same, the flexibility of testing methods is not expected to generate significant cost savings.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules clarify ambiguities regarding the used oil recycling program for the regulated community and provide alternative testing methods for concentrations of halogenated hazardous constituents in used oil. Since all testing methods cost about the same, the flexibility of testing methods is not expected to generate significant cost savings.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment and to comply with federal regulations.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions under 42 United States Code (USC), §6926(g), which already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. Likewise, there is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive or the regulated community benefits from the greater flexibility and reduced compliance burden. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal rules, equivalent state rules would not cause any adverse effects. There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). First, the rulemaking does not exceed a standard set by federal law because the commission proposes this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the

minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program. The other changes do not alter substantive requirements although various changes may increase flexibility for the regulated community and move forward compliance deadlines. Second, although the rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program. Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the waste program. And fourth, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission proposes this rulemaking under Texas Water Code, §5.103 and §5.105 and under Texas Health and Safety Code, §361.017 and §361.024.

The commission solicits public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 applies. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the rulemaking is to maintain state RCRA authorization by adopting state hazardous waste rules that are equivalent to the federal regulations. The rulemaking substantially advances this purpose by adopting rules that incorporate and refer to the federal regulations. Promulgation and enforcement of the rules is not a statutory or constitutional taking of private real property. Specifically, the rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by 25% or more beyond that which would otherwise exist in the absence of the regulations. The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules does not burden, restrict, or limit the owner's right to property and does not reduce the value of property by 25% or more. Likewise, the regulated community is not unduly burdened by those revisions providing greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements.

Consistency with the Coastal Management Program

The commission reviewed the proposed rules and found that they are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will they affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rules are not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-038-335-WS. The comment period closes November 5, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Cynthia Palomares, P.G., P.E., Industrial and Hazardous Waste Permits Section, MC-130, P.O. Box 13087, Austin, TX 78711-3087, (512) 239-6079.

30 TAC §§324.1 - 324.4, 324.6, 324.7, 324.11 - 324.16

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §371.026 (relating to Registration and Reporting Requirements of Used Oil Handlers, Other than Generators) and THSC, §371.028 (relating to Rules) which authorize the commission to regulate used oil handlers, to implement the used oil recycling program established by THSC, Chapter 371, and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 371.

§324.1. Federal Rule Adoption by Reference.

Person(s) managing used oil must comply with the requirements in this chapter and the [~~The~~] requirements in 40 Code of Federal Regulations (CFR)[~~,~~] Part 279, Standards for the Management of Used Oil, as amended through July 14, 2006, at 71 FedReg 40280 [~~May 26, 1998 at 69 FedReg 28556~~], which are adopted by reference. For purposes of this chapter, the term "Administrator" or "Regional Administrator" used in 40 CFR Part 279 shall be read to mean "State Administrator, the Executive Director of the Texas Commission on Environmental Quality, or his representative." The term "Environmental Protection Agency" or "EPA" used in 40 CFR Part 279 shall be read to mean "the Texas Commission on Environmental Quality or its successor." [~~However, requirements in this chapter also apply.~~]

§324.2. Definitions.

The commission incorporates by reference the definitions [~~Most words are as defined~~] in 40 Code of Federal Regulations (CFR) §279.1. However, the following words have these additional meanings:

(1) Aboveground tank--A tank used to store or process used oil that is not an underground storage tank as defined in 30 TAC Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(2) Earthen area--The active area of the facility is the earthen area at the facility over which any transportation, storage or processing of used oil occurs.

[~~(2) Administrator or Regional Administrator--These terms in 40 CFR Part 279 requirements should be replaced with the "State Administrator, the Executive Director of the Texas Natural Resource Conservation Commission or his representative."~~]

[~~(3) Commission--The Texas Natural Resource Conservation Commission or its successor.~~]

[~~(4) Environmental Protection Agency (EPA)--This term in 40 CFR Part 279 Requirements should be replaced with "Commission."~~]

(3) [~~(5)~~] Recycling of used oil--

(A) Preparing used oil for reuse as a petroleum product by re-refining [~~rerefining~~], reclaiming, or other means;

(B) Using used oil as a lubricant or petroleum product instead of using a petroleum product made from new oil; or

(C) Burning used oil for energy recovery.

(4) [~~(6)~~] Re-refining--Applying processes (other than crude oil refining) to material composed primarily of used oil to produce high-quality base stocks for petroleum products, including settling, filtering, catalytic conversion, fractional/vacuum distillation, hydro treating, or polishing.

(5) [~~(7)~~] Secondary containment--Dikes, berms, retaining walls, and/or equivalent structures made of a material(s) that is sufficiently impervious to used oil. These structures shall be designed to meet the specifications found in §324.22(d)(3) of this title (relating to Soil Remediation Requirements for Used Oil Handlers) to retain [~~all~~] potential spills of used oil from the tanks or containers, plus run-on water, until removal of the spill.

(6) [~~(8)~~] Sufficiently impervious to used oil--Capable of containing all potential spills of used oil from containers and tanks until removal of the spill.

(7) [~~(9)~~] Synthetic oils--Oils not derived from crude oil. This includes those from coal, shale, or a polymer-based starting material; and non-polymeric synthetic fluids used as hydraulic or heat transfer fluids. Synthetic oils are generally used for the same purpose as crude oil derived oils and have relatively the same level of contamination after use.

(8) [~~(10)~~] Used oil handler--A transporter or an owner or operator of a used oil transfer, processing, re-refining [~~rerefining~~], or off-specification used oil burning facility.

[~~(11) Earthen area--The active area of the facility is the earthen area at the facility over which any transportation, storage or processing of used oil occurs.~~]

§324.3. Applicability.

The commission incorporates by reference the Applicability and the Exemptions [~~exemptions~~] from Applicability requirements [~~applicability will be as~~] in 40 Code of Federal Regulations (CFR) Part 279, Subpart B, §279.10 and §279.11. In addition, the commission adds the following clarifications and requirements: [~~and as clarified here.~~]

(1) A used oil contaminated with a listed hazardous waste must be handled under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). United States Environmental Protection Agency [~~EPA~~] Hazardous Waste Number "F002" must be used on used oil that is listed hazardous due to halogenated contaminants.

(2) Used oil can be stored in tanks and containers not meeting 40 CFR Part 264 or 265. The requirement in 40 CFR Part 279 that refers to compliance with 40 CFR Part 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in compliance with 40 CFR Part 264 or 265, Subpart K.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10(b) (relating to Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per §335.2 of this title (relating to Permit Required). A waste that is characteristically hazardous for "ignitability only" can be mixed with used oil. However, the resultant mixture cannot exhibit the hazardous ignitability characteristic to manage it under this chapter and 40 CFR Part 279 rather than Chapter 335 of this title. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics. The resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils or products is also a processor subject to 40 CFR Part 279, Subpart F (relating to Standards for Used Oil Processors and Re-refiners) and §324.12 of this title (relating to Processors and Re-refiners [~~Rerefiners~~]).

(4) A used oil shall not be regulated until it is a spent material as defined in 40 CFR §261.1(c)(1) and §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

(5) Oily water mixtures to be recycled that are contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or that have been designed for oil-water separation must be managed under this chapter and meet the prohibition requirements found in §324.4 of this title (relating to Prohibitions) to prevent the discharge of hazardous waste into a sanitary sewer. Management of wastes from other tanks, sumps, and grip trap waste management units that are plumbed directly to a sanitary sewer must comply with the requirements in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation) and Chapter 330 of this title (relating to Municipal Solid Waste).

§324.4. Prohibitions.

The commission incorporates by reference the Prohibitions [~~will be as~~] in 40 Code of Federal Regulations [~~CFR~~] Subpart B, §279.12 [~~and as specified here~~]. In addition, the commission requires the following:

(1) A person must not collect, transport, store, burn, market, recycle, process, use, discharge, or dispose of used oil in any manner that endangers the public health or welfare of the environment.

(2) A person commits an offense if the person:

(A) intentionally discharges used oil into a sewer, drainage system, septic tank, surface water or groundwater, watercourse, or marine water;

(B) knowingly puts used oil in waste that is to be disposed of in landfills or directly disposes of used oil on land;

(C) knowingly transports, treats, stores, disposes of, recycles, markets, burns, processes, re-refines [~~rerefines~~] used oil within the state:

(i) without first complying with the registration requirements of this rule; and/or

(ii) in violation of rules for the management of used oil;

(D) intentionally applies used oil to roads or land for dust suppression, weed abatement, or other similar uses;

(E) violates an order of the commission to cease and desist any activity prohibited by this section or any rule applicable to a prohibited activity; or

(F) intentionally makes any false representation in any document used for program compliance.

(3) An exception to paragraph (2) of this section [~~subsection~~] is if a person knowingly disposes into the environment any used oil that has not been separated by the generator from other solid wastes.

(4) An exception to paragraph (2)(B) of this section [~~subsection~~] is if the mixing or commingling of used oil with waste to be disposed of in landfills is the unavoidable result of the mechanical shredding of motor vehicles, appliances or other metals.

§324.6. Generators.

The commission incorporates by reference rules [~~Rules~~] for used oil generators [~~shall be as~~] in 40 Code of Federal Regulations [~~(CFR)~~] Part 279, particularly Subpart C. A person or entity that services equipment involving removal of used oil or changes used oil at a customer's home or business and transports the used oil from the site in quantities less than or equal to 55 gallons may choose to be the generator. If the service company removing the used oil from equipment does not assume generator responsibility, the site owner or operator will remain the generator.

§324.7. Collection Centers.

The commission incorporates by reference rules for owners or operators of all [~~Rules for~~] "do-it-yourselfer used oil collection centers" and "used oil collection centers" (as defined in 40 Code of Federal Regulations (CFR)§279.1) [~~shall be as~~] in 40 CFR Part 279, particularly Subpart D[~~, and as specified here~~]. All appropriate businesses and government agencies are encouraged to serve as "do-it-yourselfer used oil collection centers" or "used oil collection centers." Collection centers collecting used oil from households will be publicized by the commission. In addition, the commission requires the following:

(1) A "Do-it-yourselfer Used Oil Collection Center" must:

(A) post and maintain a durable and legible sign identifying the site as a household used oil collection center. Written requests for signs shall be sent to the Texas Commission on Environmental Quality, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087;

(B) must register each odd numbered year, no later than January 25 following the close of the year, with the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], Used Oil Recycling Program[~~, P.O. Box 13087, Austin, Texas 78711-3087~~] utilizing a commission form. Registrations expire on December 31 in even numbered years. New collection centers must register within 30 days of initial operation;

(C) collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(D) notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of household used oil; and

(E) annually report the amount of household used oil collected by January 25 of each year on a commission form.

(2) Household used oil is not subject to the rebuttable presumption (a requirement to prove that used oil is not hazardous).

(3) A "Used Oil Collection Center" must:

(A) post and maintain a durable and legible sign identifying the site as a household used oil collection center. Written requests for signs shall be sent to the Texas Commission on Environmental Quality, Used Oil Recycling Program, P.O. Box 13087, Austin, Texas 78711-3087;

(B) register each odd numbered year no later than January 25 following the close of the year, with the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], Used Oil Recycling Program[~~, P.O. Box 13087, Austin, Texas 78711-3087~~] utilizing a commission form. Registrations expire on December 31 in even numbered years. New collection centers must register within 30 days of initial operation;

(C) collect used oil from households during business hours at each location to be exempt from the fee on first sale of automotive oil;

(D) notify the commission in writing within 30 days following abandonment or closure of the collection center or stopping collection of household used oil; and

(E) report annually the amount of household and non-household used oil collected by January 25 of each year on a commission form. Mixtures of household used oil and non-household used oil shall be considered non-household used oil.

(4) Household used oil is not subject to the rebuttable presumption (a requirement to prove used oil is not hazardous) unless mixed with non-household used oil.

§324.11. Transporters and Transfer Facilities.

The commission incorporates by reference rules [~~Rules~~] for used oil transporters and transfer facilities [~~are~~] in 40 Code of Federal Regulations (CFR) Part 279, particularly Subpart E[~~, and in this section~~]. In addition, the commission requires the following:

(1) Underground storage tanks (USTs). USTs [~~Underground storage tanks~~] containing used oil are subject to Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks) and 40 CFR Part 279.

(2) Registration. Transporters must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the United States Environmental Protection Agency (EPA). Transporters must register, through the commission, using EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], Used Oil Recycling Program[~~, P.O. Box 13087, Austin, Texas 78711-3087~~].

§324.12. Processors and Re-refiners [~~Rerefiners~~].

The commission incorporates by reference rules [~~Rules~~] for owners and operators of used oil processing [~~processors~~] and re-refining facilities [~~rerefiners are~~] in 40 Code of Federal Regulations (CFR) Part 279, particularly Subpart F[~~, and in this section.~~]. In addition, the commission requires the following:

(1) Underground storage tanks. See §324.11(1) of this title (relating to Transporters and Transfer Facilities).

(2) Registration. Processors and re-refiners [~~rerefiners~~] must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the United States Environmental Protection Agency (EPA). Processors and re-refiners [~~rerefiners~~] must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], Used Oil Recycling Program[~~, P.O. Box 13087, Austin, Texas 87811-3087~~].

(3) Analysis plan. Each facility must prepare an analysis plan. The facility will follow the plan when sampling and analyzing, keeping records, and complying with analytical requirements for documenting that used oil is not listed hazardous and/or the used oil fuel specification has been met. This plan must specify the frequency of sampling and analysis. It must also specify procedures and analysis to assure listed hazardous wastes are not mixed with the used oil received. It must also contain procedures for handling a shipment of contaminated used oil. A facility need not prepare an analysis plan if it:

(A) only processes its own used oil; and

(B) uses adequate process knowledge instead of analysis to prove that the used oil meets rule requirements.

(4) Biennial report. The biennial report required by 40 CFR §279.57(b) covering each odd numbered year must be provided to the commission by December 1 of the odd numbered year if all used oil operations have been completed for that year. If not, you must submit the report by January 25 of the following even numbered year. The information must be entered on a commission form. Mail the report to the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], Used Oil Recycling Program[~~, P.O. Box 13087, Austin, Texas 78711-3087~~].

§324.13. Burners of Off-specification Used Oil for Energy Recovery.

The commission incorporates by reference rules [~~Rules~~] for burners of off-specification used oil for energy recovery [~~are~~] in 40 Code of Federal Regulations (CFR) Part 279, particularly Subpart G[~~, and in this section~~]. In addition, the commission requires the following:

(1) Underground storage tanks. See §324.11(1) of this title (relating to Transporters and Transfer Facilities).

(2) Registration. Burners must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the United States Environmental Protection Agency (EPA). Burners must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], Used Oil Recycling Program[~~, P.O. Box 13087, Austin, Texas 78711-3087~~].

§324.14. Marketers of Used Oil Fuel.

The commission incorporates by reference rules [~~Rules~~] for marketers of used oil which will be burned for energy recovery. These rules are found in 40 Code of Federal Regulations [~~CFR~~] Part 279, [~~particularly~~] Subpart H[~~, and this section~~]. In addition, marketers [~~Marketers~~] must register their used oil activities if they have not previously registered their specific used oil activities with the commission and the United States Environmental Protection Agency (EPA). Marketers must register, through the commission, using the EPA Form 8700-12 and a commission form. Mail registration forms to the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~], Used Oil Recycling Program[~~, P.O. Box 13087, Austin, Texas 78711-3087~~].

§324.15. Spills.

The commission incorporates by reference the Used Oil Spill Prevention, Detection of Releases, and Spill Response requirements in 40 Code of Federal Regulations §§279.22(d), 279.43(c), 279.45(h), 279.54(g), and 279.64. In addition, used oil recyclers shall immediately clean up and properly dispose of any spills of used oil consistent with [~~See~~] Chapter 327 of this title (relating to Spill Prevention and Control), particularly §327.4(b)(2) of this title (relating to Reportable Quantities).

§324.16. Polychlorinated Biphenyls (PCBs).

The commission incorporates by reference [~~Per 40 CFR 279 (Table 1),~~] the rules for burning used oil containing PCBs [~~shall be as~~] in 40 Code of Federal Regulations Part 279 (CFR) (Table 1) and in 40 CFR §761.20(e).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2012.

TRD-201205010
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: November 4, 2012
For further information, please call: (512) 239-0779

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30 TAC §324.5

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeal is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §371.026 (relating to Registration and Reporting Requirements of Used Oil Handlers, Other than Generators) and THSC, §361.028 (relating to Rules) which authorize the commission to regulate used oil handlers, to implement the used oil recycling program established by THSC, Chapter 371, and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed repeal implements THSC, Chapter 371.

§324.5. Notice by Retail Dealer.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2012.

TRD-201205011

Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: November 4, 2012
For further information, please call: (512) 239-0779

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§335.1, 335.2, 335.10 - 335.13, 335.19, 335.24, 335.61, 335.62, 335.69, 335.76, 335.78, 335.111, 335.112, 335.151, 335.152, 335.155, 335.168, 335.170, 335.213, 335.222, 335.251, 335.431, and 335.504; and new §335.79.

These amendments were originally published for proposal in the April 27, 2012, issue of the *Texas Register* (37 TexReg 3011), withdrawn on September 19, 2012, and are re-proposed to include additional revisions.

Background and Summary of the Factual Basis for the Proposed Rules

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations regularly to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under the RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, October 18, 1999, September 11, 2000, June 14, 2005 (Clusters III - X), March 5, 2009 (Clusters XI - XV) and May 7, 2012 (Clusters IX and XV - XVIII).

The commission proposes in this rulemaking parts of RCRA Rule Clusters XIX, XX, and XXI that implement revisions to the federal hazardous waste program which were made by EPA between July 1, 2008 and June 30, 2011. Both mandatory and optional federal rule changes in these clusters are proposed. Adoption of one of the federal rule changes is mandatory in order to maintain RCRA authorization. Although not necessary in order to maintain authorization, EPA also recommends that the optional federal rule changes be incorporated into the state rules. In addition, the commission proposes revisions to parts of previously adopted Clusters XIV, XV, XVI, and XVII that implement revisions requested by EPA that are needed to maintain authorization. Establishing equivalency with federal regulations will enable the State of Texas to operate all aspects of the federal hazardous waste program in lieu of the EPA. All proposed rule changes are discussed further in the Section by Section Discussion portion of this preamble.

Two corresponding rulemakings are published in this issue of the *Texas Register* and include changes to 30 TAC Chapter 305, Consolidated Permits and 30 TAC Chapter 324, Used Oil Standards.

Section by Section Discussion

The commission proposes administrative changes throughout the proposed rulemaking to reflect the agency's current practices and to conform to *Texas Register* and agency guidelines. These changes include updating references to Texas State Agencies, updating cross-references, and correcting typographical, spelling, and grammatical errors.

§335.1, Definitions

The commission proposes to amend §335.1(39) to conform to federal regulations previously promulgated in the March 4, 2005, issue of the *Federal Register* (70 FR 10776). Specifically, this amendment would revise the definition of "Designated facility" so that it is consistent with the EPA definition in 40 Code of Federal Regulations (CFR) §260.10. Also, the definition is proposed to be reorganized to separate out the definition of a Texas Class 1 designated facility from a hazardous waste designated facility.

The commission proposes to amend §335.1(59)(B) to conform to federal regulations previously promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). This amendment would clarify the definition of "Facility" for the purpose of implementing corrective action under the authority of a standard permit. Specifically, this amendment would incorporate by reference corrective action authorized by 40 CFR Part 267, Subpart F (Releases from Solid Waste Management Units) to address corrective action under the authority of a standard permit.

The commission proposes to amend §335.1(95) to conform to federal regulations previously promulgated in the March 4, 2005, issue of the *Federal Register* (70 FR 10776). Specifically, this amendment would revise the definition of "Manifest" so that it is consistent with the EPA definition in 40 CFR §260.10.

The commission proposes to amend §335.1(96) to conform to federal regulations previously promulgated in the March 4, 2005, issue of the *Federal Register* (70 FR 10776). Specifically, this amendment would revise the definition of "Manifest tracking number" so that it is consistent with the EPA definition in 40 CFR §260.10.

The commission proposes to amend §335.1(138)(A)(iv) to conform to federal regulations previously promulgated in the July 28, 2006, issue of the *Federal Register* (71 FR 42928). This amendment would add requirements for notification and recordkeeping to exclude cathode ray tubes (CRTs) that meet the requirements in 40 CFR §261.39 and §261.40 for reuse and recycling from classification as a solid waste. This exclusion is also found in 40 CFR §261.4 which was adopted in a previous rulemaking. This amendment would add additional language from 40 CFR Part 261, Subpart E concerning conditional exclusions and notification and recordkeeping requirements for CRTs. In addition, technical corrections are incorporated by reference to conform

to federal regulations previously promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989).

The commission also proposes to amend §335.1(142) to conform to federal regulations previously promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). Specifically, this amendment would revise the definition of "Standard permit" so that it is consistent with the EPA definition in 40 CFR §124.2(a).

§335.2, Permit Required

The commission proposes to amend §335.2(g) to conform to federal regulations previously promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). Specifically, this amendment would revise the reporting requirements for treatability studies by reducing the amount of information required to be submitted.

§335.10, Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

The commission proposes to amend §335.10 by restructuring to separate Texas Class 1 waste from hazardous waste manifest requirements thereby eliminating confusion between the two programs. The commission proposes to incorporate by reference EPA manifest requirements to ensure consistency. Current Class 1 waste manifest requirements are the same as EPA hazardous waste manifest requirements with some minor differences. This rulemaking does not change any of those requirements. The Uniform Hazardous Waste Manifest requirements are incorporated by reference as published in the March 4, 2005, issue of the *Federal Register* (70 FR 10776) and amended through the March 18, 2010, issue of the *Federal Register* (75 FR 12989). These changes would allow generators of hazardous and industrial waste to more readily identify applicable manifest requirements. This proposed amendment would help ensure compliance with manifest requirements including proper completion of the manifest form. Additionally, references to the EPA are proposed to be changed to the TCEQ and references to the regional director are proposed to be changed to the executive director.

§335.11, Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste

The commission proposes to amend §335.11 by restructuring to separate Texas Class 1 waste from hazardous waste manifest requirements thereby eliminating confusion between the two programs. The commission proposes to incorporate by reference EPA manifest requirements to ensure consistency. Current Class 1 waste manifest requirements are the same as EPA hazardous waste manifest requirements with some minor differences. This proposed rulemaking would not change any of the manifest requirements. The Uniform Hazardous Waste Manifest requirements are incorporated by reference as published in the March 4, 2005, issue of the *Federal Register* (70 FR 10821) and amended through June 16, 2005, issue of the *Federal Register* (70 FR 35034).

§335.12, Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities

The commission proposes to amend §335.12 by restructuring to separate Texas Class 1 waste from hazardous waste manifest requirements thereby eliminating confusion between the two programs. Manifest requirements for hazardous waste are proposed to be adopted by reference from EPA rules to ensure consistency. The Uniform Hazardous Waste Manifest requirements are incorporated by reference as published in the March 4, 2005, issue of the *Federal Register* (70 FR 10821) and amended through March 18, 2010, issue of the *Federal Register* (75 FR 12989).

§335.13, Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste

The commission proposes to amend §335.13(n) to conform to federal regulations previously promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Specifically, this amendment would make corrections to typographical errors in the CFR.

The commission proposes the addition of §335.13(o) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). Specifically, this amendment would implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the Organization for Economic Cooperation and Development (OECD), establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country, specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, D.C., and require United States receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment. Because of the federal government's special role in matters of foreign policy, EPA does not authorize states to administer federal import/export functions in any section of the RCRA hazardous waste regulations. Although states do not receive authorization to administer the federal government's export functions in 40 CFR Part 262, Subpart E, import functions in 40 CFR Part 262, Subpart F, import/export functions in 40 CFR Part 262, Subpart H, or the import/export related functions in any other section of the RCRA hazardous waste regulations, state programs are required to adopt those federal provisions that are more stringent than existing state requirements to maintain their equivalency with the federal program. This amendment is more stringent than the current state rules. Therefore, this amendment is required by EPA to be adopted into state rules, in order to maintain authorization.

§335.19, Standards and Criteria for Variances from Classification as a Solid Waste

The commission proposes to amend §335.19(b) to conform to federal regulations previously promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). Specifically, this amendment would reduce the requirements for requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process.

§335.24, Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

The commission proposes to amend §335.24(c)(1)(A) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). Specifi-

cally, this amendment would implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD, establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country, specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, D.C., and require United States receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment. Because of the federal government's special role in matters of foreign policy, EPA does not authorize states to administer federal import/export functions in any section of the RCRA hazardous waste regulations. Although states do not receive authorization to administer the federal government's export functions in 40 CFR Part 262, Subpart E, import functions in 40 CFR Part 262, Subpart F, import/export functions in 40 CFR Part 262, Subpart H, or the import/export related functions in any other section of the RCRA hazardous waste regulations, state programs are required to adopt those federal provisions that are more stringent than existing state requirements to maintain their equivalency with the federal program. This amendment is more stringent than the current state rules. Therefore, this amendment is required by EPA to be adopted into state rules to maintain authorization.

§335.61, Purpose, Scope and Applicability

The commission proposes the addition of §335.61(i) to conform to federal regulations promulgated in the December 1, 2008, issue of the *Federal Register* (73 FR 72912). This amendment proposes exemptions for a specific generator status (i.e., large and small quantity generators and conditionally exempt small quantity generators (CESQGs)) if those eligible academic entities choose to comply with 40 CFR Part 262, Subpart K (known as the "Academic Laboratories rule"). The Academic Laboratories rule is proposed to be incorporated by reference in §335.79. The Academic Laboratories rule establishes an alternative set of generator requirements applicable to laboratories owned by eligible academic entities. The alternative requirements are flexible but protective and address the specific nature of hazardous waste generation and accumulation in these laboratories. Further detailed discussion of the Academic Laboratories rule can be found in the Section by Section Discussion in §335.79.

In particular, the amendment to §335.61 would set out exemptions for eligible academic laboratories under different hazardous waste generator statuses. Specifically, this amendment would exempt large and small quantity generators from the requirements of hazardous waste determination (set out in §335.504) and the satellite accumulation area rule (set out in §335.69). In addition, this amendment would eliminate exemptions (set out in §335.78) for CESQGs, such as the exemption from regulations under 40 CFR Parts 124, 262 - 266, and 268, and the notification requirements of RCRA, §3010. However, academic laboratories under CESQG status would be able to take advantage of the benefits of the Academic Laboratories rule. Those benefits include the flexibility to decide when and where on-site hazardous waste determinations are made and the incentive to remove old and expired chemicals from the laboratories.

§335.62, Hazardous Waste Determination and Waste Classification

The commission proposes to amend §335.62 to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment would add a reference to 40 CFR Part 267 which EPA inadvertently omitted after the rule was promulgated in September, 2005. The amendment would add 40 CFR Part 267 to a list of Parts (261, 264 - 266, 268, and 273) to which a hazardous waste generator must refer for possible exclusions or restrictions pertaining to managing specific waste.

§335.69, Accumulation Time

The commission proposes to amend §335.69(a)(4)(B) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). This amendment would correct a limited reference to 40 CFR §268.7(a)(5) which only addresses waste analysis plans. The amendment would apply all applicable requirements under 40 CFR Part 268 (pertaining to Land Disposal Restrictions) to large and small quantity generators.

The commission also proposes to amend §335.69(b) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment would clarify that the requirements in §335.69(b), pertaining to hazardous waste accumulation time, apply only to large quantity generators.

The commission also proposes to amend §335.69(d) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment would clarify that the satellite accumulation provisions for large quantity generators are also applicable to small quantity generators. The amendment would also add the citation of 40 CFR §261.31 to clarify that this provision applies to acutely hazardous wastes.

The commission also proposes to amend §335.69(e) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment would add the citation of 40 CFR §261.31, which was inadvertently omitted after the dioxin listings for acutely hazardous wastes listed under 40 CFR §261.31 were promulgated in 1985.

The commission also proposes to amend §335.69(f)(4)(B) to delete "and" to allow the addition of a new subparagraph.

The commission also proposes to renumber §335.69(f)(4)(C) to §335.69(f)(4)(D) to add a new subparagraph, and also proposes an amendment to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). This amendment would correct a limited reference to 40 CFR §268.7(a)(5) which only addresses waste analysis plans. The amendment would apply all applicable requirements under 40 CFR Part 268 (pertaining to Land Disposal Restrictions) to large and small quantity generators.

The commission also proposes the addition of §335.69(f)(4)(C) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Subparagraph (C) would add 40 CFR Part 267 to the list of other requirements hazardous waste generators must follow. EPA inadvertently did not include 40 CFR Part 267 in the list after the rule was promulgated in September, 2005.

The commission proposes changes to §335.69(m) by adding paragraphs (1) and (2) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Specifically, the amendment would incorporate

requirements for completion of the manifest regarding rejected loads.

The commission also proposes the addition of §335.69(n) to separate requirements for rejected loads of hazardous waste from Class 1 waste. The commission proposes §335.69(n) with new language addressing Class 1 waste generators. Specifically, this amendment would add requirements for Class 1 waste to alleviate confusion for requirements for each type of rejected waste.

§335.76, Additional Requirements Applicable to International Shipments

The commission proposes to amend §335.76(a) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment would implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment would clarify that countries belonging to the OECD must comply with the requirements of 40 CFR Part 262, Subpart H (Transfrontier Shipments of Hazardous Waste for Recovery within the OECD).

The commission proposes to amend §335.76(d) to conform to federal requirements promulgated in the March 4, 2005, issue of the *Federal Register* (70 FR 10776) and amended through the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Specifically, the amendment would incorporate requirements for completion of the manifest regarding imports of hazardous waste.

The commission proposes to amend §335.76(f) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment would implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment would clarify that any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements contained in 40 CFR §262.58 (International Agreements).

The commission proposes to amend §335.76(h) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment would implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment would clarify that transfrontier shipments of hazardous waste for recovery within the countries belonging to the OECD must comply with the requirements of 40 CFR Part 262, Subpart H.

§335.78, Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

The commission proposes to amend §335.78(c)(6) to conform to federal regulations promulgated in the December 1, 2008, issue of the *Federal Register* (73 FR 72954). The amendment would remove a period at the end of the paragraph and add the word "or" to allow for an additional paragraph.

The commission also proposes to add §335.78(c)(7) to conform to federal regulations promulgated in the December 1, 2008, issue of the *Federal Register* (73 FR 72912). This amendment would allow an eligible academic entity to exclude the amount of unused commercial chemical product (listed in 40 CFR Part 261, Subpart D or exhibiting one or more characteristics in 40 CFR Part 261, Subpart C) generated solely during a laboratory clean-out from being counted toward its hazardous waste generator status.

The commission proposes to amend §335.78(j) to conform to federal regulations promulgated in the July 30, 2003, issue of the *Federal Register* (68 FR 44659). The amendment would remove the phrase "if it is destined to be burned for energy recovery." This amendment would clarify recycled used oil management standards for CESQGs.

§335.79, Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities

The commission proposes new §335.79 to conform to federal regulations promulgated in the December 1, 2008, issue of the *Federal Register* (73 FR 72912), as amended through the December 20, 2010, issue of the *Federal Register* (75 FR 79304). This proposed new section would incorporate by reference an alternative set of generator requirements applicable to laboratories owned by eligible academic entities promulgated under 40 CFR Part 262, Subpart K. Eligible academic entities are colleges and universities, as well as teaching hospitals and nonprofit research institutes that are either owned by or formally affiliated with a college or university. The Academic Laboratories rule does not apply to non-laboratory generated hazardous wastes from other operations of a university or college nor commercial laboratories.

The Academic Laboratories rule would provide a flexible but protective set of regulations that address the specific nature of hazardous waste generation and accumulation in the laboratories owned or operated by academic entities. Specifically, this rule would allow eligible academic entities the flexibility to make hazardous waste determinations in the laboratory; at an on-site central accumulation area; or at an on-site treatment, storage, or disposal facility. Also, this rule would provide incentives for eligible academic entities to clean-out old and expired chemicals that may pose unnecessary risk. Further, this rule would require the development of a Laboratory Management Plan (LMP) which is expected to result in safer laboratory practices and increased awareness of hazardous waste management.

The proposed rule would be optional for eligible academic entities. That is, eligible academic laboratories could choose to comply with 40 CFR Part 262, Subpart K in lieu of the existing generator regulations. In states authorized to implement the RCRA program, such as Texas, 40 CFR Part 262, Subpart K would only be available as an option once it has been adopted by the state in which the eligible academic entity is located.

The commission also proposes the incorporation of six technical corrections to the Academic Laboratories rule published in the December 20, 2010, issue of the *Federal Register* (75 FR 79304). These proposed changes include correction of errors such as omissions and redundancies as well as removal of an obsolete reference to the now-terminated Performance Track program. These proposed technical corrections would improve the clarity of the state's Academic Laboratories rule. The Academic Laboratories rule and the corrections are recommended by EPA to be adopted into state rules, but are not required to maintain RCRA authorization.

§335.111, Purpose, Scope, and Applicability

The commission proposes to amend §335.111 to make technical corrections.

§335.112, Standards

The commission proposes to amend §335.112(a)(1) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment would implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment would specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, D.C., and would require United States receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

The commission proposes to amend §335.112(a)(3), (4), and (13) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Revisions to interim standards for owners and operators of hazardous waste treatment, storage, or disposal facilities in 40 CFR Part 265 are proposed to be adopted by reference under this section. This amendment would correct citations, clarify regulatory requirements, and incorporate conforming changes that were inadvertently omitted by EPA under the interim standards for owners and operators of hazardous waste treatment, storage, or disposal facilities in 40 CFR Part 265. This amendment is as stringent as the current state rules. EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

The commission also proposes to amend §335.112(a)(4), to add language that was inadvertently omitted in a previous rule adoption. Specifically, the language to be added would reinstate the exception to 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77 because these requirements are found elsewhere.

The commission also proposes to amend §335.112(a)(14) to conform to federal regulations previously promulgated in the October 12, 2005, issue of the *Federal Register* (70 FR 59402). This amendment was previously adopted into §335.221 which incorporated final National Emission Standards for Hazardous Air Pollutants for hazardous waste combustors. These standards implemented Federal Clean Air Act, §112(d) by requiring hazardous waste combustors to meet hazardous air pollutants emission standards reflecting the performance of the maximum available control technology. In addition, the commission proposes an amendment to §335.112(a)(14) to include this incorporation by reference.

The commission also proposes to amend §335.112(b)(7) to update a cross-reference.

§335.151, Purpose, Scope, and Applicability

The commission proposes to amend §335.151 to make technical corrections.

§335.152, Standards

The commission proposes to amend §335.152(a)(1) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment would implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment would specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, D.C., and would require United States receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

The commission proposes to amend §335.152(a)(4) to add language that was inadvertently omitted in a previous rule adoption. Specifically, the language to be added would reinstate the exception to 40 CFR §§264.71, 264.72, 264.76, and 264.77 because these requirements are found elsewhere.

The commission also proposes to amend §335.152(a)(9) to conform to federal regulations previously promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). Specifically, this amendment would make corrections to typographical errors in the CFR.

The commission also proposes to amend §335.152(a)(3), (4), (12), and (14) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). This amendment would correct citations, clarify regulatory requirements, and incorporate conforming changes that were inadvertently omitted by EPA under the permitting standards for owners and operators of hazardous waste treatment, storage, or disposal facilities in 40 CFR Part 264. This amendment is as stringent as the current state rules. EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

The commission also proposes to amend §335.152(c)(7) to update a cross-reference.

§335.155, Additional Reports

The commission proposes to amend §335.155 to make technical corrections.

§335.168, Design and Operating Requirements (Surface Impoundments)

The commission proposes to amend §335.168(c) to conform to federal regulations previously promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). Specifically, this amendment would make corrections to typographical errors in the CFR.

§335.170, Design and Operating Requirements (Waste Piles)

The commission proposes to amend §335.170(c) to conform to federal regulations previously promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment would adopt by reference requirements that reduce the recordkeeping and reporting burden imposed on the regulated community by ensuring that only the information needed and used to implement the hazardous waste program is collected from facilities. In addition, outdated language that references a construction time period would be deleted. This amendment is less stringent than the current state rules, but the reduction in recordkeeping poses minimal risk to human health or the environment. EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

§335.213, Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users

The commission proposes to amend §335.213 to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment would add a reference to Chapter 335, Subchapter U, Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit, to include applicable requirements in 40 CFR Part 267, which EPA inadvertently omitted after the rule was promulgated in September, 2005.

§335.222, Management Prior to Burning

The commission proposes §335.222(c)(1)(E) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). Specifically, subparagraph (E) would add a reference to Chapter 335, Subchapter U to include applicable requirements in 40 CFR Part 267, which EPA inadvertently omitted after the rule was promulgated in September, 2005. Subsequent subparagraph (E) has been relettered accordingly.

§335.251, Applicability and Requirements

The commission proposes to amend §335.251(a) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment would implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment would clarify that entities who transport spent lead-acid batteries in the United States to export them for reclamation in a foreign country or who export spent lead-acid batteries for reclamation in a foreign country are not subject to the requirements of §335.251.

The commission also proposes to amend §335.251(b)(1) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). The amendment would add a reference to Chapter 335, Subchapter U to include applicable requirements in 40 CFR Part 267, which EPA inadvertently omitted after the rule was promulgated in September, 2005.

The commission proposes §335.251(c) to conform to federal regulations promulgated in the January 8, 2010, issue of the *Federal Register* (75 FR 1236). This amendment would implement recent changes to the federal agreements concerning the transboundary movement of hazardous waste among countries belonging to the OECD. Specifically, this amendment would clarify that entities who transport spent lead-acid batteries in the United States to export them for reclamation in a foreign country or who export spent lead-acid batteries for reclamation in a foreign country are subject to the requirements of §335.13 and §335.76(h).

§335.431, Purpose, Scope, and Applicability

The commission proposes to amend §335.431(c)(1) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). This amendment would correct errors in two tables: Treatment Standards for Hazardous Wastes (40 CFR §268.40) and Universal Treatment Standards (40 CFR §268.48). This amendment is as stringent as current state rules. EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

§335.504, Hazardous Waste Determination

The commission proposes to amend §335.504(1) to conform to federal regulations previously promulgated in the July 28, 2006, issue of the *Federal Register* (71 FR 42928). This amendment was inadvertently left out of the last RCRA rulemaking and would exclude CRTs that meet the requirements in 40 CFR §261.4(a)(22) for reuse and recycling from classification as a solid waste. This exclusion is currently found in 40 CFR §261.4. This amendment is less stringent than current state rules and encourages recycling of CRTs. EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

The commission also proposes to amend §335.504(1) - (3) to conform to federal regulations promulgated in the March 18, 2010, issue of the *Federal Register* (75 FR 12989). This amendment would correct typographical errors and citations, and incorporate omissions. This amendment is as stringent as the current state rules. EPA recommends that this amendment be adopted into state rules, but it is not required to maintain RCRA authorization.

Fiscal Note: Costs to State and Local Government

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The proposed rules are not expected to have a fiscal impact on most local governments since they are typically not generators of industrial or hazardous waste nor do they typically treat, store, or dispose of these wastes. However, some units of state and local government may experience cost savings as a result of the proposed rules if they are eligible academic institutions, teaching hospitals, or non-profit research institutes with laboratories generating hazardous waste.

The proposed rules would adopt optional and mandatory parts of some federal rule revisions to the hazardous waste programs of the RCRA. The proposed rulemaking would make these state requirements equivalent to federal requirements and allow the state to maintain its federal authorization of the RCRA program. The proposed rules also contain provisions to correct typographical errors, revise citations, and make other administrative corrections.

The proposed rules are part of a comprehensive rule package implementing RCRA requirements involving proposed changes to several chapters of 30 TAC. This fiscal note applies only to the proposed changes to Chapter 335.

Chapter 335 Optional RCRA Hazardous Waste Rules

Adoption of the optional federal RCRA requirements would provide generators of hazardous waste and hazardous waste facilities with less costly alternatives than those found in current rules. If these optional requirements are not adopted into state rules, these less costly disposal methods will not be available to generators of hazardous waste and operators of hazardous waste facilities in Texas, and they will be required to comply with current and potentially more expensive rules. The proposed optional rules would clarify requirements for notification and recordkeeping to exclude CRTs that meet the requirements in 40 CFR §261.39 and §261.40 for reuse and recycling from classification as a solid waste. Cost savings are estimated to range from $50 to $200 per ton of waste recycled. The proposed rules would revise the definition of "Standard permit" so that it is consistent with the EPA definition at 40 CFR §124.2(a). The proposed rules would also revise the reporting requirements for treatability studies by reducing the amount of information required to be submitted. Cost savings could range from $50 to $10,000 per report. The proposed rules would reduce the requirements for

requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. Resulting cost savings, depending on the type of waste, could range from $50 to $200 per barrel of waste. The proposed rulemaking would reduce the recordkeeping and reporting burden imposed on the regulated community by ensuring that only the information needed and used to implement the hazardous waste program is collected from facilities. In addition, outdated language that references a construction time period would be deleted. Cost savings could range from $50 to $200 per ton of waste that is recycled. The proposed rulemaking would provide academic laboratories increased regulatory flexibility by allowing them to make hazardous waste determinations in the laboratory; at an on-site central accumulation area; or at an on-site treatment, storage, or disposal facility. These rules would also provide incentives for the eligible academic entities to clean-out old and expired chemicals and require them to develop an LMP. An LMP is expected to result in safer laboratory practices and increased awareness of hazardous waste management. There are approximately 93 eligible academic laboratories at colleges, universities, teaching hospitals, and nonprofit research institutions statewide. The annual cost savings for a laboratory classified as a large quantity generator could be as much as $12,000 per year, and savings for a laboratory classified as a small quantity generator could be as much as $1,000 per year if these laboratories manage their hazardous waste under the proposed option. The development of an LMP could cost as much as $2,000. The proposed rulemaking would clarify the requirements for usage of the EPA Uniform Hazardous Waste Manifest form when shipping federally regulated hazardous waste and when shipping state regulated Class 1 waste. The proposed rulemaking would adopt by reference the EPA Uniform Hazardous Waste Manifest system to more closely conform to the EPA manifest requirements for shipping hazardous waste. The rulemaking would specify requirements for manifesting Class 1 waste when the requirements deviate from the EPA manifest requirements. The proposed rulemaking would also correct omissions and inaccuracies in the existing rule.

The proposed rules would also incorporate by reference mandatory federal RCRA requirements concerning the transboundary movement of hazardous waste among countries belonging to the OECD; establish notice and consent requirements for spent lead-acid batteries intended for reclamation in a foreign country; specify that all exception reports concerning hazardous waste exports be sent to the International Compliance and Assurance Division in the Office of Enforcement and Compliance Assurance's Office of Federal Activities in Washington, D.C.; and require United States receiving facilities to match EPA-provided import consent documentation to incoming hazardous waste import shipments and to submit to EPA a copy of the matched import consent documentation and RCRA hazardous waste manifest for each import shipment.

In general, the proposed rules are not expected to have a significant fiscal impact on governmental entities. The optional requirements of the proposed rules are less expensive than compliance with current rules, and estimated cost savings are detailed under each option. The significance of cost savings will depend on the amount of waste generated and, in many cases, on whether an entity has chosen to use consultants when complying with current requirements. There may be increased reporting costs to comply with the mandatory requirements concerning transboundary movement of hazardous waste, but if a regulated entity uses existing staff, the increase in reporting costs is not expected to be significant.

Public Benefits and Costs

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be protection of the environment and public safety through increased recycling, less risk that hazardous materials would be released to the environment, safer management of laboratory waste, and less risk that waste shipped to other countries will be discarded in non-regulated areas. The proposed rules will also allow generators and operators of hazardous waste facilities to continue to operate efficiently because state rules will be consistent with federal RCRA requirements.

In general, the proposed rules are not expected to have a significant fiscal impact on individuals. Most hazardous wastes are not generated by individuals and individuals do not typically own or operate hazardous waste facilities.

The proposed rules are not expected to have a significant fiscal impact on large businesses. Staff estimates that there are 180 permitted hazardous waste treatment, storage, or disposal facilities owned by large businesses and close to 13,000 generators of industrial and hazardous waste that are large businesses. Compliance with the proposed optional requirements is expected to be less expensive than compliance with current rules. Cost savings for a business or individual is expected to be about the same as the cost savings for governmental entities. The significance of cost savings will depend on the amount of waste generated and, in many cases, on whether an entity has chosen to use consultants when complying with current requirements. There may be increased reporting costs to comply with the mandatory requirements concerning transboundary movement of hazardous waste, but if a business uses existing staff, the increase in reporting costs is not expected to be significant.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Most generators of hazardous waste and most owners or operators of hazardous waste facilities are large businesses. If a small business is impacted by the proposed rules, it should experience the same type of cost savings or increases as those experienced by a large business.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment and to comply with federal regulations.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code,

§2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Although the intent of the rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the rulemaking is not a major environmental rule because it will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions under 42 United States Code (USC), §6926(g), which already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. Likewise, there would be no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, or the regulated community would benefit from the greater flexibility and reduced compliance burden. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal rules, equivalent state rules would not cause any adverse effects. There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the proposed rulemaking does not have an adverse material impact on the economy, the rulemaking does not meet the definition of a major environmental rule. Furthermore, the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). First, the proposed rulemaking does not exceed a standard set by federal law because the commission proposes this rulemaking to implement revisions to the federal hazardous waste program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program. The other proposed changes do not alter substantive requirements although various changes may increase flexibility for the regulated community. Second, although the rulemaking proposes some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program. Third, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the waste program. And fourth, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission proposes this rulemaking under Texas Water Code, §5.103 and §5.105 and under Texas Health and Safety Code, §361.017 and §361.024.

The commission solicits public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007 applies. The commission's assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4). The specific purpose of the rulemaking is to maintain state RCRA authorization by adopting state hazardous waste rules that are equivalent to the federal regulations. The rulemaking substantially advances this purpose by adopting rules that incorporate and refer to the federal regulations. Promulgation and enforcement of the rules is not a statutory or constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by 25% or more beyond that which will otherwise exist in the absence of the regulations. The rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must already have complied with the more stringent federal requirements as of the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules does not burden, restrict, or limit the owner's right to property and does not reduce the value of property by 25% or more. Likewise, the regulated community is not unduly burdened by those revisions providing greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is to protect, preserve, restore and enhance the diversity, quality, quantity, functions and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 *et seq.* Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the rulemaking would update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules would not violate any applicable provisions of the CMP's stated goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2012-038-335-WS. The comment period closes November 5, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact Cynthia Palomares, P.G., P.E., Industrial and Hazardous Waste Permits Section, (512) 239-6079, MC-130, P.O. Box 13087, Austin, Texas 78711-3087.

SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

30 TAC §§335.1, 335.2, 335.10 - 335.13, 335.19, 335.24

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings.

(1) Aboveground tank--A device meeting the definition of tank in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(2) Act--Texas Health and Safety Code, Chapter 361.

(3) Active life--The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

(4) Active portion--That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion.")

(5) Activities associated with the exploration, development, and production [~~protection~~] of oil or gas or geothermal resources--Activities associated with:

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

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

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

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

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

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §1.173;

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

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

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

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

(6) Administrator--The administrator of the United States Environmental Protection Agency or his designee.

(7) Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on site, or to a point of shipment for disposal off site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(8) Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(9) Area of concern--Any area of a facility under the control or ownership of an owner or operator where a release to the environment of hazardous wastes or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration.

(10) Authorized representative--The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(11) Battery--As defined in §335.261 of this title (relating to Universal Waste Rule).

(12) Boiler--An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream); and

(ii) fluidized bed combustion units;

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler).

(13) Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(14) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(15) Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(16) Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(17) Cathode ray tube or CRT--A vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means its glass has been removed from its housing, or casing whose vacuum has been released.

(18) Certification--A statement of professional opinion based upon knowledge and belief.

(19) Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(20) Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(21) Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(22) Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

(23) Closure--The act of permanently taking a waste management unit or facility out of service.

(24) Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(25) Component--Either the tank or ancillary equipment of a tank system.

(26) Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(27) Consignee--The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(28) Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(29) Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title (relating to Standards).

(30) Contaminant--Includes, but is not limited to, "solid waste," "hazardous waste," and "hazardous waste constituent" as defined in this subchapter; "pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC), §361.401; "hazardous substance" as defined in THSC, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.267.

(31) Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(32) Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(33) Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated

media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(34) Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(35) Cathode Ray Tube collector--A person who receives used, intact Cathode Ray Tubes for recycling, repair, resale, or donation.

(36) Cathode Ray Tube glass manufacturer--An operation or part of an operation that uses a furnace to manufacture Cathode Ray Tube glass.

(37) Cathode Ray Tube processing--Conducting all of the following activities:

(A) Receiving broken or intact Cathode Ray Tubes (CRTs);

(B) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(C) Sorting or otherwise managing glass removed from CRT monitors.

(38) Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(39) Designated facility--A [~~Class 1 or~~] hazardous waste treatment, storage, or disposal facility which: has received a [~~United States Environmental Protection Agency~~] permit (or [~~a facility with~~] interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 270 and 124; has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271 [~~(in the case of hazardous waste; a permit issued in accordance with §335.2 of this title (relating to Permit Required) (in the case of nonhazardous waste)~~]; or [~~that~~] is regulated under 40 CFR §261.6(c)(2) or 40 CFR Part 266, Subpart F [~~§335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements)~~] and [~~that~~] has been designated on the manifest by the generator pursuant to 40 CFR §262.20. For hazardous wastes, if [~~in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). If~~] a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. For Class 1 wastes, a designated facility is any treatment, storage, or disposal facility authorized to receive the Class 1 waste that has been designated on the manifest by the generator. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §335.12 [~~§335.12(e)~~] of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

(40) Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(41) Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(42) Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(43) Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

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

(45) Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(46) Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(47) Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of non-hazardous industrial solid waste; and

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

(48) United States Environmental Protection Agency (EPA) acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(49) United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D and to each characteristic identified in 40 CFR Part 261, Subpart C.

(50) United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(51) Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the *Federal Register*.

(52) Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(53) Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(54) Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(55) Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(56) Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(57) Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(58) Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(59) Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) or §335.602(a)(5) of this title (relating to Standards), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste).

(60) Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

(61) Food-chain crops--Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(62) Freeboard--The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(63) Free liquids--Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(64) Gasification--For the purpose of complying with 40 Code of Federal Regulations §261.4(a)(12)(i), gasification is a process, conducted in an enclosed device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

(65) Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(66) Groundwater--Water below the land surface in a zone of saturation.

(67) Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 26l. The executive director will maintain in the offices of the commission a current list of hazardous wastes,

a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(68) Hazardous substance--Any substance designated as a hazardous substance under 40 Code of Federal Regulations Part 302.

(69) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq*.

(70) Hazardous waste constituent--A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations (CFR) Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR §261.24.

(71) Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(72) Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(73) In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(74) Inactive portion--That portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

(75) Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(76) Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(77) Individual generation site--The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

(78) Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(79) Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

(80) Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(81) Inground tank--A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(82) Injection well--A well into which fluids are injected. (See also "underground injection.")

(83) Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(84) Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(85) International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

(86) Lamp--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(87) Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management

unit; such facilities are disposal facilities if the waste will remain after closure.

(88) Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(89) Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(90) Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(91) Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(92) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(93) Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(94) Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(95) Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22, (including, if necessary, EPA Form 8700-22A), originated and signed by the generator or offeror in accordance with the instructions in §335.10 of this title and the applicable requirements of 40 CFR Parts 262 - 265. [~~, that will accompany and be used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is the EPA Form 8700-22, obtainable from any printer registered with the EPA.~~]

(96) Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of [~~on~~] the manifest by a registered source.

(97) Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(98) Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

(99) Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(100) Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(101) Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(102) New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system.")

(103) Off-site--Property which cannot be characterized as on-site.

(104) Onground tank--A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(105) On-Site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(106) Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

(107) Operator--The person responsible for the overall operation of a facility.

(108) Owner--The person who owns a facility or part of a facility.

(109) Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(110) PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(111) Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, or disposal facility in accordance with specified limitations.

(112) Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

(113) Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(114) Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq.))* and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels--i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils--i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils--i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils--i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils--i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants--i.e., automotive and industrial lubricants;

(x) building materials--i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials--i.e., transformer oils and cable oils; and

(xii) used oils--See definition for "used oil" in this section.

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, *et seq.))* and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(115) Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(116) Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(117) Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation and Recovery Act and solid waste management units.

(118) Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(119) Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(120) Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(121) Primary exporter--Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 Code of Federal Regulations Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(122) Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.,* as amended.

(123) Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(124) Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(125) Receiving country--A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(126) Regional administrator--The regional administrator for the United States Environmental Protection Agency region in which the facility is located, or his designee.

(127) Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(128) Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under §335.166(5) of this title (relating to Corrective Action Program) or §335.167(c) of this title.

(129) Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, or disposal.

(130) Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency or state approved corrective action.

(131) Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(132) Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(133) Run-on--Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(134) Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.

(135) Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(136) Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(137) Small quantity generator--A generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

(138) Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this

provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq.,* as amended; or

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §§261.4(a)(1) - (22),261.39, and 261.40, as amended through March 18, 2010 (75 FR 12989) [~~July 28, 2006 (71 FR 42928)~~], subject to the changes in this clause, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste). For the purposes of the exclusions under 40 CFR §261.39 and §261.40, 40 CFR §261.41 is adopted by reference as amended through July 28, 2006 (71 FR 42928). For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'solid Waste' in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of 'solid Waste' in §335.1 of this title (relating to Definitions)":

(I) in the certification statement under 40 CFR §261.38(c)(1)(i)(C)(4), the reference to "40 CFR §261.38" is changed to "40 CFR §261.38, as revised under subparagraph (A)(iv) under the definition of 'solid Waste' in 30 TAC §335.1," and the reference to "40 CFR §261.28(c)(10)" is changed to "40 CFR §261.38(c)(10)";

(II) in 40 CFR §261.38(c)(2), the references to "§260.10 of this chapter" are changed to "§335.1 of this title (relating to Definitions)," and the reference to "parts 264 or 265 of this chapter" is changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities)";

(III) in 40 CFR §261.38(c)(3) - (5), the references to "parts 264 and 265, or §262.34 of this chapter" are changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";

(IV) in 40 CFR §261.38(c)(5), the reference to "§261.6(c) of this chapter" is changed to "§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)";

(V) in 40 CFR §261.38(c)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director";

(VI) in 40 CFR §261.38(c)(8), the reference to "§262.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)";

(VII) in 40 CFR §261.38(c)(9), the reference to "§261.2(c)(4) of this chapter" is changed to §335.1(138)(D)(iv) " of this title (relating to Definitions)"; and

(VIII) in 40 CFR §261.38(c)(10), the reference to "implementing authority" is changed to "executive director."

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR

§261.33, not listed in §261.33, but that exhibit one or more of the hazardous waste characteristics, or will be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(17)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

Figure: 30 TAC §335.1(138)(D)(iv)

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2).

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that will otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as will be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel, or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Subchapter R of this chapter (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Subchapter R of this chapter; and

(-b-) does not exceed a concentration limit under §312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

(viii) with the exception of the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate

that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(K) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(139) Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(140) Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(141) Staging pile--An accumulation of solid, non-flowing remediation waste, as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(142) Standard permit [~~Permit~~]--A Resource Conservation and Recovery Act (RCRA) permit authorizing management of hazardous waste issued under Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units) and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit). The standard permit may have two parts, a uniform portion issued in all cases and a supplemental portion issued at the executive director's discretion. [~~A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste non-thermal treatment and/or storage facility in accordance with specified limitations.~~]

(143) Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(144) Sump--Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(145) Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(146) Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(147) Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(148) TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(149) Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

(150) Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(151) Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(152) Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste are held during the normal course of transportation.

(153) Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(154) Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(155) Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(156) Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the

purpose of 40 Code of Federal Regulations §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(157) Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

(158) Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(159) Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

(160) Underground tank--A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

(161) Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

(162) Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(163) Universal waste handler--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(164) Universal waste transporter--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(165) Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(166) Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(167) Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, conditionally exempt small quantity generator hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(168) Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §§466 *et seq.,* §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of tank or tank system as defined in this section.

(169) Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(170) Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(171) Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

§335.2. Permit Required.

(a) Except with regard to storage, processing, or disposal to which subsections (c) - (h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Department of State Health Services (DSHS), or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency (EPA) or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim

status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities that satisfied this requirement by filing an application on or before November 19, 1980, with the EPA are not required to submit a separate application with the DSHS. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Texas Solid Waste Disposal Act (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §§6901 *et seq.,* that render the facilities subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the EPA under RCRA, which first require them to comply with the standards in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit;

(4) the collection, storage, or processing of nonhazardous industrial solid waste, if the waste is collected, stored, or processed as part of a treatability study;

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment;

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the Clean Waste Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit;

(7) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater unit and is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26;

(8) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater treatment unit that discharges to a publicly owned treatment works and the units are located at a noncommercial solid waste management facility; or

(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities.

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b) - (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 CFR §261.4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in 40 CFR §261.4(e) and (f), as amended and adopted in the CFR through April 4, 2006 [~~February 18, 1994~~], as published in the *Federal Register* (71 FR 16862) [(~~59 FR 8362~~)], which are adopted by reference.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill that has qualified for interim status in accordance with 40 CFR Part 270, Subpart G, and that has complied with the standards in Subchapter E of this chapter, by complying with the notification and information requirements in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions, which may include, with-

out limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of 40 CFR §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing permit or site development plan applicable to the facility or a portion of the facility;

(2) polychlorinated biphenyl compounds wastes subject to regulation by 40 CFR Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

(7) radioactive or nuclear waste materials, receipt of which will require a license from the DSHS [~~TDH~~] or the commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.171(c)(3)(B) - (E) of this title (relating to Disposal of Special Wastes). Authorizations obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit application, failure of the facility to operate the facility in compliance with the standards set forth in Subchapter E of this chapter, or as otherwise provided by law.

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under 40 CFR §270.1(c)(5) and (6), or obtain an order in lieu of a post-closure permit, as provided in subsection (m) of this section. If a post-closure permit is required, the permit must address applicable provisions of 40 CFR Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) provisions concerning groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the EPA imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title.

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the definitions and requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(m) At the discretion of the commission, an owner or operator may obtain a post-closure order in lieu of a post-closure permit for interim status units, a corrective action management unit unless authorized by a permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units. The post-closure order must address the facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and groundwater monitoring requirements of §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response).

(n) Except as provided in subsection (d)(9) of this section, owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works are required to obtain a permit under this subchapter. By June 1, 2006, owners or operators of existing commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works must have a permit issued under this subchapter or obtain a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges) to continue operating. A general permit issued under Chapter 205 of this title will authorize operations until a final decision is made on the application for an individual permit or 15 months, whichever is earlier. The general permit shall authorize operations for a maximum period of 15 months except that authorization may be extended on an individual basis in one-year increments at the discretion of the executive director. Should an application for a general permit issued under Chapter 205 of this title be submitted, the applicant shall also submit to the commission, by June 1, 2006, the appropriate information to demonstrate compliance with financial assurance requirements for closure of industrial solid waste facilities in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities). Owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works operating under a general permit issued under Chapter 205 of this title shall submit an application for a permit issued under this subchapter prior to September 1, 2006.

(o) Treatment, storage, and disposal facilities that are otherwise subject to permitting under RCRA and that meet the criteria in paragraphs (1) or paragraph (2) of this subsection, may be eligible for a standard permit under Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit) if they satisfy one of the two following criteria:

(1) facility generates hazardous waste and then non-thermally treats and/or stores hazardous waste on-site; or

(2) facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility.

§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

(a) Except as provided in paragraph (2) of this subsection [~~(g) and (h) of this section~~], no person who generates, transports, processes, stores, or disposes [~~generator~~] of hazardous [~~or Class 1~~] waste

[~~consigned to an off-site solid waste treatment, storage, or disposal facility within the United States or a primary exporter of hazardous waste consigned to a foreign country~~] shall cause, suffer, allow, or permit the shipment of hazardous waste [~~or Class 1 waste~~] unless he complies with the requirements of paragraph (1) of this subsection, and the manifest requirements in 40 Code of Federal Regulations (CFR) §§262.20 - 262.23, 262.27, 262.42, 262.54, 262.55, and 262.60 and the Appendix to 40 CFR Part 262, as these sections are amended through March 18, 2010 (75 FR 12989).[~~:~~]

(1) In addition, generators, owners or operators of treatment, storage, or disposal facilities, and primary exporters shall include a Texas waste code for each hazardous waste itemized on the manifest. [~~for generators of industrial nonhazardous Class 1 waste in a quantity greater than 100 kilograms per month and/or generators of hazardous waste shipping hazardous waste which is part of a total quantity of hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste treatment, storage, or disposal facility in Texas, a standard (nationally uniform) Resource Conservation and Recovery Act (RCRA) manifest form (United States Environmental Protection Agency (EPA) Form 8700-22), under both RCRA and Department of Transportation (DOT) statutory authorities, is prepared;~~]

(2) No manifest is required for a hazardous waste generated by a [~~the generator is either an industrial~~] generator that generates less than [~~100 kilograms of nonhazardous Class 1 waste per month and less than~~] the quantity limits of hazardous waste specified in §335.78 of this title or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).[~~;~~]

(3) For the purposes of the federal hazardous waste manifest requirements incorporated by reference the term, "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B. [~~for generators of hazardous waste or Class 1 waste generated in Texas for consignment to another state the standard (nationally uniform) RCRA manifest form (EPA Form 8700-22) is prepared, unless the generator is identified in paragraph (2) of this section;~~]

(4) For the purposes of the federal hazardous waste manifest requirements incorporated by reference, reference to the United States Environmental Protection Agency (EPA) is changed to the Texas Commission on Environmental Quality. [~~for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a standard (nationally uniform) RCRA manifest form (EPA Form 8700-22); and~~]

[~~(5) a generator designates on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternate facility which is authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "Alternate Facility." If the transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste;~~]

[~~(6) for shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.~~]

(b) No manifest and no marking in accordance with §335.67(b) of this title (relating to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges). [~~Generators may obtain the manifest from any source that is registered with the EPA as a supplier of manifests. A registrant may not print, or have printed, the manifest for use or distribution unless it has received approval from the EPA director of the Office of Solid Waste to do so under 40 Code of Federal Regulations (CFR) §262.21.~~]

(c) Except as provided in subsections (d) and (e) of this section, persons who generate, transport, process, store, or dispose of Class 1 waste shall not cause, suffer, allow, or permit the shipment of Class 1 waste unless the person complies with the manifest requirements listed in subsection (a) of this section except for 40 CFR §262.54 and §262.55 with the following changes: [~~All manifests for hazardous wastes must be prepared according to the instructions found in the Appendix to 40 CFR Part 262, and must also contain the Texas Waste Code for each waste. Manifests for Class 1 wastes must be prepared according to the instructions found in the Appendix to 40 CFR Part 262 (pre-printed on the back of the Uniform Hazardous Waste Manifest) with the addition of the Texas Waste Codes for each waste. When itemizing Class 1 waste, the TCEQ solid waste registration numbers will be used when EPA identification numbers are not required.~~]

(1) When Class 1 waste is itemized on the manifest, use the Texas Commission on Environmental Quality solid waste registration (SWR) number in place of the EPA identification number and the Texas waste code in place of the EPA waste code;

(2) When both hazardous and Class 1 waste are itemized on the same manifest, use EPA identification numbers to identify the generator, transporter, and receiver;

(3) Use Texas waste codes for each waste itemized on the manifest;

(4) The term, "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B; and

(5) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

(d) No manifest is required for the shipment of Class 1 waste where the generator is an industrial generator that generates less than the quantity limits of Class 1 waste specified in §335.78 of this title or is a municipal generator that generates less than the quantity limit of Class 1 waste specified in §335.78 of this title. [~~At the time of waste transfer, the generator shall:~~]

[~~(1) use a manifest system that ensures that interstate and intrastate shipments of hazardous waste are designated for delivery and, in the case of intrastate shipments, are delivered to facilities that are authorized to operate under an approved state program or the federal program; and~~]

[~~(2) ensure that all hazardous and Class 1 wastes offered for transportation are accompanied by a manifest except shipments subject to subsections (g) and (h) of this section or shipments by rail or water, as specified in subsections (e) and (f) of this section.~~]

[~~(e) For shipments of Class 1 waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.~~]

[~~(f) For rail shipments of hazardous waste or Class 1 waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:~~]

[~~(1) the next non-rail transporter, if any;~~]

[~~(2) the designated facility if transported solely by rail; or~~]

[~~(3) the last rail transporter to handle the waste in the United States if exported by rail.~~]

(e) [~~(g)~~] No manifest is required for the shipment of Class 1 waste [~~which is not hazardous waste~~] to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered another source with respect to other plants or operations owned by the same person.

[~~(h) No manifest and no marking in accordance with §335.67(b) of this title (relating to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).~~]

§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste.

(a) Except as provided by §335.10(a)(2), (d), and (e) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), persons who transport hazardous [~~No transporter may cause, suffer, allow, or permit the shipment of solid~~] waste must comply with the manifest requirements in 40 Code of Federal Regulations (CFR) §263.20, §263.21, and the Appendix to 40 CFR Part 262, as these sections are amended through June 16, 2005 (70 FR 35034) as well as the following: [~~for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) to an off-site treatment, storage, or disposal facility, unless the transporter:~~]

(1) the person must comply [~~complies~~] with §335.10 of this title; and

(2) in the case of hazardous waste exports, the person must ensure [~~ensures~~] that the shipment conforms to the requirements set forth in the regulations contained in 40 [~~Code of Federal Regulations (~~]CFR[~~)~~] §263.20.

(b) Except as provided by §335.10(d) and (e) of this title, a person who transports Class 1 waste must comply with the requirements of subsection (a) of this section, except those requirements in 40 CFR §263.20(a)(2). [~~A transporter may not cause, suffer, allow, or permit the delivery of a shipment of hazardous or Class 1 waste to another designated transporter or to a treatment, storage, or disposal facility unless accompanied by a standard (nationally uniform) Resource Conservation and Recovery Act (RCRA) manifest form (United States Environmental Protection Agency (EPA) Form 8700-22) prepared according to §335.10 of this title and complies with 40 CFR Part263.~~]

[~~(c) The requirements of subsections (b) and (d) of this section do not apply to water (bulk shipment) transporters if:~~]

[~~(1) the waste is delivered by water (bulk shipment) to the facility designated on the manifest;~~]

[~~(2) a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste;~~]

[~~(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the facility on either the manifest or the shipping paper;~~]

[~~(4) the person delivering the waste to the initial water (bulk shipment) transporter obtains the date of delivery and the signature of the water (bulk shipment) transporter on the manifest and forwards it to the facility; and~~]

[~~(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §335.14(b) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste).~~]

[~~(d) For shipments involving rail transportation, the requirements of subsections (b) and (c) of this section do not apply and the following requirements do apply.~~]

[~~(1) When accepting Class 1 waste from a non-rail transporter, the initial rail transporter must:~~]

[~~(A) sign and date, the manifest acknowledging acceptance of the waste;~~]

[~~(B) return a copy of the manifest to the non-rail transporter;~~]

[~~(C) forward at least three copies of the manifest to:~~]

[~~*(i)* the next non-rail transporter, if any;~~]

[~~*(ii)* the designated facility, if the shipment is delivered to that facility by rail; or~~]

[~~*(iii)* the last rail transporter designated to handle the waste in the United States;~~]

[~~(D) retain one copy of the manifest and rail shipping paper in accordance with §335.14(c) of this title.~~]

[~~(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.~~]

[~~(3) When delivering Class 1 waste or municipal hazardous waste to the designated facility, a rail transporter must:~~]

[~~(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and~~]

[~~(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title.~~]

[~~(4) When delivering hazardous waste or Class 1 waste to a non-rail transporter, a rail transporter must:~~]

[~~(A) obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and~~]

[~~(B) retain a copy of the manifest in accordance with §335.14(c) of this title.~~]

[~~(5) Before accepting municipal hazardous waste or Class 1 waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.~~]

[~~(e) Transporters who transport hazardous waste or Class 1 waste out of the United States shall comply with manifest requirements according to §335.10 of this title and 40 CFR Part 263.~~]

[~~(f) The transporter must deliver the entire quantity of municipal hazardous waste or Class 1 waste which he has accepted from a generator or a transporter to:~~]

[~~(1) the designated facility listed on the manifest;~~]

[~~(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery;~~]

[~~(3) the next designated transporter; or~~]

[~~(4) the place outside the United States designated by the generator.~~]

[~~(g) If the transporter cannot deliver the waste in accordance with subsection (h) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.~~]

[~~(h) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:~~]

[~~(1) for a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required;~~]

[~~(2) for a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection, and the name, address, phone number, and EPA identification number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment.~~]

§335.12. Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities.

(a) Except as provided by §335.10(a)(2) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), persons who generate, process, store, or dispose of hazardous waste must comply with 40 Code of Federal Regulations (CFR) §265.71 and §265.72, or 40 CFR §264.71 and §264.72, depending on the status of the person, and with the Appendix to 40 CFR Part 262, as these sections are amended through March 18, 2010 (75 FR 12989). [~~No owner or operator of a treatment, storage, or disposal facility may accept delivery of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), for off-site treatment, storage, or disposal unless:~~]

[~~(1) a manifest accompanies the shipment which designates that facility to receive the waste;~~]

[~~(2) the manifest complies with §335.10 of this title and 40 Code of Federal Regulations (CFR) Part 264; Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.~~]

[~~(3) the owner or operator retains one copy of the manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities);~~]

[~~(4) within 30 days after the delivery, the owner or operator sends a copy of the manifest to the generator or primary exporter where appropriate; and~~]

[~~(5) in the case of hazardous waste exports, a copy of the United States Environmental Protection Agency (EPA) acknowledgment of consent also accompanies the waste and the owner or operator has no knowledge that the shipment does not conform to the EPA acknowledgment of consent.~~]

(b) Except as provided by §335.10(d) and (e) of this title, persons who generate, transport, process, store, or dispose of Class 1 waste must comply with 40 CFR §§264.71, 264.72, and 264.76, and the Appendix to 40 CFR Part 262, as amended through March 18, 2010 (75 FR 12989), and a manifest must accompany the shipment which designates that facility to receive the waste. [~~If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste or Class 1 waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall process the manifest in accordance with §335.10 of this title and comply with 40 CFR Part 264.~~]

[~~(c) If a facility receives hazardous waste or Class 1 waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment) by a shipping paper, the owner or operator, or his agent must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).~~]

[~~(1) Manifest discrepancies are:~~]

[~~(A) significant differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;~~]

[~~(B) rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, and disposal facility cannot accept; or~~]

[~~(C) container residues, which are residues that exceed the quantity limits for "empty" containers set forth in 40 CFR §261.7(b).~~]

[~~(2) Significant differences in quantity are for bulk weight, variations greater than 10% in weight; and for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.~~]

[~~(3) Significant differences in type are obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.~~]

[~~(4) Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 CFR §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.~~]

[~~(d) Facilities that receive hazardous waste imported from a foreign source must mail a copy of the manifest for the imported hazardous waste to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460. Manifests that only document the shipment of imported Class 1 waste do not need to be sent to the International Compliance Office.~~]

[~~(e) The guidelines for rejecting waste are as follows.~~]

[~~(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for "empty" containers set forth in 40 CFR §261.7(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste.~~]

[~~(A) If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.~~]

[~~(B) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (2) or (3) of this subsection.~~]

[~~(2) Except as provided in subsection (e)(3) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest as set in §335.10 of this title.~~]

[~~(3) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility.~~]

[~~(4) Except as provided in paragraph (5) of this subsection, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with §335.10 of this title.~~]

[~~(5) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest designating the generator as the alternate facility. The facility must retain a copy for its records then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest.~~]

[~~(6) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for "empty" containers set forth in 40 CFR §261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to the amendments.~~]

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

(a) Unregistered generators who ship hazardous waste or Class 1 waste shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

(b) Unregistered generators or out-of-state primary exporters who export hazardous waste from or through Texas to a foreign country, shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

(c) Registered generators or out-of-state primary exporters who import hazardous or Class 1 waste from a foreign country through Texas to another state shall prepare a complete and correct Foreign Waste Shipment Summary (F1) from the manifests.

(d) The Waste Shipment Summary (S1) and the Foreign Waste Shipment Summary (F1) shall be prepared in a form provided or approved by the executive director and submitted to the executive director on or before the 25th of each month for shipments originating during the previous month. The unregistered generator or in-state/out-of-state primary exporter must keep a copy of each summary for a period of at least three years from the due date of the summary. These generators are required to prepare and submit a Waste Shipment Summary (S1) and/or Foreign Waste Shipment Summary (F1) only for those months in which shipments are actually made. Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.

(e) The following figure is a graphic representation illustrating generator, waste type, shipment type, and report method.
Figure: 30 TAC §335.13(e) (No change.)

(f) A registered generator is defined as an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements), and is assigned a solid waste registration number.

(g) An unregistered generator is defined as an in-state generator who is not a conditionally exempt small quantity generator, as defined in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), that ships hazardous waste and/or Class 1 waste using a temporary solid waste registration number and a temporary Texas waste code number assigned by the executive director.

(h) A primary exporter/importer is defined as:

(1) an in-state generator who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste to a foreign country; or

(2) an out-of-state generator/importer of record who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste through Texas to a foreign country.

(i) The registered/unregistered generator or primary exporter shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) for a minimum of three years from the date of shipment by the registered/unregistered generator or primary exporter.

(j) A registered/unregistered generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class 1 waste.

(k) A registered/unregistered generator or primary exporter of hazardous waste subject to §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments) must submit an exception report to the executive director if he has not received a copy of the manifest with the handwritten signatures of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report must be retained by the registered/unregistered generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.

(l) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(m) The requirements of subsections (j) and (k) of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title.

(n) Primary exporters of hazardous waste as defined in 40 Code of Federal Regulations (CFR) §262.51 must submit an annual report in accordance with the requirements set out in the regulations contained in 40 CFR §262.56, as amended and adopted through March 18, 2010 (75 FR 12989). [~~April 12, 1996, at 61 FedReg 16290.~~]

(o) Primary exporters of hazardous waste as defined in 40 CFR §262.51, or importers of hazardous waste, to or from countries listed in 40 CFR §262.58(a)(1) for recovery, must comply with 40 CFR Part 262, Subparts A and H.

§335.19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following criteria:

(1) the manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) the reason that the applicant has accumulated the material for one or more years without recycling 75% of the weight or volume accumulated at the beginning of the year;

(3) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) the extent to which the material is handled to minimize loss; and

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

[~~(2) the prevalence of the practice on an industry-wide basis;~~]

(2) [~~(3)~~] the extent to which the material is handled before reclamation to minimize loss;

(3) [~~(4)~~] the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) [~~(5)~~] the location of the reclamation operation in relation to the production process;

(5) [~~(6)~~] whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) [~~(7)~~] whether the person who generates the material also reclaims it; and

(7) [~~(8)~~] other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

(1) the degree of processing the material has undergone and the degree of further processing that is required;

(2) the value of the material after it has been reclaimed;

(3) the degree to which the reclaimed material is like an analogous raw material;

(4) the extent to which an end market for the reclaimed material is guaranteed;

(5) the extent to which the reclaimed material is handled to minimize loss; and

(6) other relevant factors.

(d) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities [~~Materials~~]).

§335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials.

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d) - (f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) - (l) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 17 of this title (relating to Tax Relief for Property Used for Environmental Protection); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); and Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings)[~~; and Chapter 261 of this title (relating to Impact Statements)~~].

(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B - I or O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions); Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; [~~Chapter 261 of this title;~~] or Chapter 305 of this title, except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986:

(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 CFR §§262.53, 262.55, 262.56(a)(1) - (4) and (6) and (b), and 262.57, as amended through January 8, 2010 (75 FR 1236) [~~which are in effect as of November 8, 1986~~], export such materials only upon such consent of the receiving country and in conformance with the United States Environmental Protection Agency (EPA) [~~EPA~~] acknowledgment of consent as defined in the regulations contained in 40 CFR Part 262, Subpart E, as amended through January 8, 2010 (75 FR 1236) [~~which are in effect as of November 8, 1986~~], and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export;

(B) transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment;

(2) scrap metal that is not already excluded under 40 CFR §261.4(a)(13);

(3) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 CFR §261.4(a)(12)); and

(4) the following hazardous waste fuels:

(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so

long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter [~~(relating to Standards Applicable to Generators of Hazardous Waste)~~] and Subchapter D of this chapter [~~(relating to Standards Applicable to Transporters of Hazardous Waste)~~], and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a) - (c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; and the notification requirements under §335.6 of this title, except as provided in subsections (a) - (c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a) - (c) of this section:

(1) notification requirements under §335.6 of this title; and

(2) Section 335.12 [~~§335.12~~] of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities).

(g) Recyclable materials (excluding those listed in subsections (b)(4), and (c)(1) - (5) [~~(c)(1) and (2) - (5)~~] of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities, respectively), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of §335.4 of this title. In addition, industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6 of this title. Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsections (b)(4) and (c)(2) of this section may also be subject to the requirements of §§335.10 - 335.15 of this title, as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into nonharmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and

(9) other relevant factors.

(i) Except as provided in Texas Health and Safety Code, §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;

(2) whether hazardous and nonhazardous wastes that are incompatible are stored and/or processed in the same or connected units;

(3) whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;

(4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(7) the potential for the objectionable constituent to degrade into harmful constituents;

(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and

(12) other relevant factors.

(j) Closure cost estimates.

(1) Except as otherwise approved by the executive director, an owner or operator of a recycling facility that stores combustible nonhazardous materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall provide a written cost estimate, in current dollars, showing the cost of hiring a third party to close the facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations. The closure cost estimate for financial assurance must be submitted with any new notification in accordance with §335.6 within 60 days of the effective date of this rule for existing facilities or as otherwise requested by the executive director.

(2) The estimate must:

(A) equal the costs of closure of the facility, including disposition of the maximum inventories of all processed and unprocessed combustible materials stored outdoors on site during the life of the facility, in accordance with all applicable regulations;

(B) be based on the costs of hiring a third party that is not affiliated (as defined in §328.2 of this title (relating to Definitions)) with the owner or operator; and

(C) be based on a per cubic yard and/or short ton measure for collection and disposition costs.

(k) Financial assurance. An owner or operator of a recycling facility that stores nonhazardous combustible recyclable materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall establish and maintain financial assurance for closure of the facility in accordance with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).

(l) Closure requirements.

(1) Closure must include collecting processed and unprocessed materials, and transporting the materials to an authorized facility for disposition unless otherwise approved or directed in writing by the executive director.

(2) Closure of the facility must be completed within 180 days following the most recent acceptance of processed or unprocessed materials unless otherwise approved or directed in writing by the executive director.

(m) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A - I or O of this chapter, but is regulated under Chapter 324 of this title (relating to Used Oil Standards). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(n) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 CFR Part 264 or Part 265, Subparts AA and BB, as adopted by reference under §335.152(a)(17) and (18) and §335.112(a)(19) and (20) of this title (relating to Standards).

(o) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in 40 CFR §262.58(a)(1), for purpose of recovery, and any person who exports or imports such hazardous waste, is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996 at 61 FedReg 16290), if the hazardous waste is subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(p) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste," §335.6 of this title, §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), and Subchapter H of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER C. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

30 TAC §§335.61, 335.62, 335.69, 335.76, 335.78, 335.79

Statutory Authority

The amendments and new section are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024, (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments and new section implement THSC, Chapter 361.

§335.61. Purpose, Scope and Applicability.

(a) Except as provided in subsection (b) of this section, this subchapter establishes standards for generators of hazardous waste. These standards are in addition to any applicable provisions contained

in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste [~~Management~~] in General).

(b) The provisions of this subchapter with which a generator who stores, processes or disposes of hazardous waste on-site must comply are §335.62 of this title (relating to Hazardous Waste Determination and Waste Classification), §335.63 of this title (relating to EPA Identification Numbers), §335.70 of this title (relating to Recordkeeping), §335.73 of this title (relating to Additional Reporting), and, if applicable, §335.77 of this title (relating to Farmers), and §335.69 of this title (relating to Accumulation Time).

(c) Any person who imports hazardous waste into the state from a foreign country shall comply with standards applicable to generators.

(d) An owner or operator who initiates a shipment of hazardous waste from a processing, storage or disposal facility must comply with the generator standards contained in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and this subchapter. The provisions of §335.69 of this title [~~(relating to Accumulation Time)~~] are applicable to on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §335.69 of this title only apply to owners or operators who are shipping hazardous waste which they generate at that facility.

(e) A farmer who generates waste pesticides which are hazardous waste and who complies with §335.77 of this title is not required to comply with this chapter with respect to those pesticides.

(f) A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in Subchapters E, F, H, and O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste) and with Chapter 305 of this title (relating to Consolidated Permits).

(g) Section 335.78(c) and (d) of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) must be used to determine the applicability of provisions of this subchapter that are dependent on calculations of the quantity of hazardous waste generated per month.

(h) The requirements of this subchapter do not apply to persons responding to an explosives or munitions emergency in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

(i) For purposes of this subsection, the terms "laboratory" and "eligible academic entity" shall have the meaning as defined in 40 Code of Federal Regulations §262.200. The laboratories owned by an eligible academic entity that chooses to be subject to the requirements of §335.79 of this title (relating to Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities) are not subject to:

(1) for large and small quantity generators, the requirements of §335.504 of this title (relating to Hazardous Waste Determination) and §335.69 of this title, except as provided in §335.79 of this title; and

(2) for conditionally exempt small quantity generators, the conditions of §335.78 of this title, except as provided in §335.79 of this title.

§335.62. Hazardous Waste Determination and Waste Classification.

A person who generates a solid waste must determine if that waste is hazardous pursuant to §335.504 of this title (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the provisions of Subchapter R of this chapter (relating to Waste Classification). If the waste is determined to be hazardous, the generator must refer to this chapter and to 40 Code of Federal Regulations Parts 261, 264, 265, 266, 267, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste.

§335.69. Accumulation Time.

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f) - (h) and (n) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

(A) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, [~~and~~] BB, and CC, as adopted by reference under §335.112(a) of this title; and/or

(B) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, and CC, except 40 CFR §265.197(c) and §265.200, as adopted by reference under §335.112(a) of this title; and/or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title and maintains the following records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(D) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(i) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or

(ii) documentation that the unit is emptied at least once every 90 days;

(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

(3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) the generator complies with the following:

(A) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D and with 40 CFR §265.16, as adopted by reference in §335.112(a) of this title;

(B) all applicable requirements under 40 CFR Part 268 [~~40 CFR §268.7(a)(5)~~], as adopted by reference under §335.431

[~~§335.431(c)~~] of this title (relating to Purpose, Scope, and Applicability); and

(C) Section 335.113 [~~§335.113~~] of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in 40 CFR §261.31 or §261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264, 265, and 267 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 90-day period. [~~A generator who accumulates hazardous waste for more than 90 days is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title (relating to Consolidated Permits) applicable to such owners and operators, unless he has been granted an extension to the 90-day period.~~] Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General) applicable to generators of Class 1 waste.

(d) A generator, other than a conditionally exempt small quantity generator regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) or (f) of this section provided he:

(1) complies with 40 CFR §§265.171, 265.172, and 265.173(a), as adopted by reference under §335.112(a) of this title; and

(2) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(e) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in excess of the amounts listed in subsection (d) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this section or other applicable provisions of this chapter. During the three-day period, the generator must continue to comply with subsection (d) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) the quantity of waste accumulated on-site never exceeds 6,000 kilograms;

(2) the generator complies with the requirements of 40 CFR Part 265, Subpart I, as adopted by reference under §335.112(a) of this title, except 40 CFR §265.176 and §265.178;

(3) the generator complies with the requirements of 40 CFR §265.201, as adopted by reference under §335.112(a) of this title;

(4) the generator complies with the requirements of:

(A) subsection (a)(2) and (3) of this section;

(B) 40 CFR Part 265, Subpart C, as adopted by reference under §335.112(a) of this title; [~~and~~]

(C) all applicable requirements under 40 CFR Part 267, as adopted by reference under §335.601 and §335.602 of this title (relating to Purpose, Scope, and Applicability; and Standards); and

(D) [~~(C)~~] all applicable requirements under 40 CFR Part 268 [~~40 CFR §268.7(a)(5)~~], as adopted by reference under §335.431 [~~§335.431(c)~~] of this title; and

(5) the generator complies with the following requirements.

(A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph (D) of this paragraph. This employee is the emergency coordinator.

(B) The generator must post the following information next to telephones that may be used to summon emergency assistance:

(i) the name and telephone number of the emergency coordinator;

(ii) location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) the telephone number of the fire department, unless the facility has a direct alarm.

(C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows.

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher.

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using its 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) identification number of the generator;

(II) date, time, and type of incident (e.g., spill or fire);

(III) quantity and type of hazardous waste involved in the incident;

(IV) extent of injuries, if any; and

(V) estimated quantity and disposition of recovered materials, if any.

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste), and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(i) A generator who generates or collects hazardous waste for the purpose of treatability studies is not subject to this section.

(j) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) the generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering the F006 waste or otherwise released to the environment prior to its recycling;

(2) the F006 waste is legitimately recycled through metals recovery;

(3) no more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

(4) the F006 waste is managed in accordance with the following:

(A) the F006 waste is placed:

(i) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC; and/or

(ii) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200; and/or

(iii) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(I) a written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

(II) documentation that the unit is emptied at least once every 180 days;

(B) the generator complies with 40 CFR §265.111 and §265.114, as adopted by reference under §335.112(a)(6) of this title;

(C) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(D) while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

(E) the generator complies with the following:

(i) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D, and 40 CFR §265.16, as adopted by reference under §335.112(a) of this title;

(ii) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title; and

(iii) Section 335.113 [~~§335.113~~] of this title.

(k) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of subsection (j)(1) - (4) of this section.

(l) A generator accumulating F006 waste in accordance with subsection (j) or (k) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title applicable to such owners and operators, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the executive director if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the executive director on a case-by-case basis.

(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment

back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) may accumulate the returned waste on-site in accordance with subsections (a) and (b) or (f) - (h) of this section depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(n) A generator who sends a shipment of Class 1 waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title may accumulate the returned waste on-site. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

§335.76. Additional Requirements Applicable to International Shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58 as amended through January 8, 2010 (75 FR 1236) [~~July 14, 2006 (71 FR 40254)~~], a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title and §335.14 of this title and Subchapter D of this chapter. Exports of hazardous waste are prohibited unless:

(1) notification in accordance with the regulations contained in 40 CFR §262.53, as amended and adopted through April 12, 1996 (61 FR 16290) has been provided;

(2) the receiving country has consented to accept the hazardous waste;

(3) a copy of the United States Environmental Protection Agency (EPA) acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));

(4) the hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA acknowledgment of consent; and

(5) the primary exporter complies with the manifest requirements of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) except that:

(A) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and

(B) the primary exporter may obtain the manifest from any source that is registered with the EPA as a supplier of manifests.

(c) A primary exporter [~~exportor~~] must submit an exception report to the executive director if:

(1) he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter;

(2) within 90 days from the date the waste was accepted by the initial transporter, the primary exporter [~~exportor~~] has not received written confirmation from the foreign consignee that the hazardous waste was received; or

(3) the waste was returned to the United States.

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title and 40 CFR §262.60. [~~for the manifest except:~~]

[~~(1) in place of the generator's name, address, and EPA identification number, the name and address of the foreign generator and the importer's name, address, and EPA identification number must be used;~~]

[~~(2) in place of the generator's signature on the certification statement, the United States importer or his agent must sign and date the certification and obtain the signature of the initial transporter; and~~]

[~~(3) a person who imports hazardous waste may obtain the Uniform Hazardous Waste Manifest from any source that is registered with the EPA as a supplier of the manifests.~~]

(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International Agreements), as amended and adopted through January 8, 2010 (75 FR 1236) [~~April 12, 1996 (61 FR 16290)~~].

(g) Except to the extent that they are clearly inconsistent with Texas Health and Safety Code, Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR §262.57, which are in effect as of November 8, 1986.

(h) Transfrontier shipments of hazardous waste for recovery within countries belonging to the Organization for Economic Cooperation and Development are subject to 40 CFR Part 262, Subpart H, which is adopted by reference as amended and adopted in the CFR through January 8, 2010 (75 FR 1236) [~~July 14, 2006 (71 FR 40254)~~].

§335.78. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (e) - (g) and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Subchapters C - H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action [~~Actions~~] on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests [~~Request~~] for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; [~~Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property);~~] Chapter 305 of this title (relating to Consolidated Permits); or the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) When making the quantity determinations of Subchapters A - C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), the generator must include all hazardous waste it generates, except hazardous waste that:

(1) is exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c) - (f), §335.24(c) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials), §335.41(f)(1) of this title (relating to Purpose, Scope and Applicability), or 40 CFR §261.8;

(2) is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in §335.1 of this title (relating to Definitions);

(3) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under §335.24(f) of this title [~~(relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials)~~];

(4) is used oil managed under the requirements of §335.24(j) of this title and Chapter 324 of this title (relating to Used Oil);

(5) are spent lead-acid batteries managed under the requirements of §335.251 of this title (relating to Applicability and Requirements); [~~or~~]

(6) is universal waste managed under §335.41(j) of this title [~~(relating to Purpose, Scope and Applicability)~~] and Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule); or[~~.~~]

(7) is an unused commercial chemical product (listed in 40 CFR Part 261, Subpart D or exhibiting one or more characteristics in 40 CFR Part 261, Subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity consistent with 40 CFR §262.213. For purposes of this provision, the phrase "eligible academic entity" shall have the meaning as defined in 40 CFR §262.200.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;

(2) hazardous waste which is generated or collected for the purpose of treatability studies;

(3) hazardous waste produced by on-site processing (including reclamation) of his hazardous waste, so long as the hazardous waste that is processed was counted once; or

(4) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C - H and O of this chapter [~~(relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions)~~]; Chapter 1 of this title [~~(relating to Purpose of Rules, General Provisions)~~]; Chapter 3 of this title [~~(relating to Definitions)~~]; Chapter 10 of this title [~~(relating to Commission Meetings)~~]; Chapter 20 of this title [~~(relating to Rulemaking)~~]; Chapter 37 of this title [~~(relating to Financial Assurance)~~]; Chapter 39 of this title [~~(relating to Public Notice)~~]; Chapter 40 of this title [~~(relating to Alternative Dispute Resolution)~~]; Chapter 50 of this title [~~(relating to Actions on Applications)~~]; Chapter 55 of this title [~~(relating to Request for Contested Case Hearings)~~]; Chapter 70 of this title [~~(relating to Enforcement)~~]; Chapter 80 of this title [~~(relating to Contested Case Hearings)~~]; Chapter 86 of this title [~~(relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property)~~]; Chapter 305 of this title [~~(relating to Consolidated Permits)~~]; and the notification requirements of the Resource Conservation and Recovery Act, §3010:

(1) a total of one kilogram of acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination and Waste Classification).

(2) The generator may accumulate acute hazardous waste on-site. If the generator accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C - H and O of this chapter [~~(relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions)~~]; Chapter 1 of this title [~~(relating to Purpose of Rules, General Provisions)~~]; Chapter 3 of this title [~~(relating to Definitions)~~]; Chapter 10 of this title [~~(relating to Commission Meetings)~~]; Chapter 20 of this title [~~(relating to Rulemaking)~~]; Chapter 37 of this title [~~(relating to Financial Assurance)~~]; Chapter 39 of this title [~~(relating to Public Notice)~~]; Chapter 40 of this title [~~(relating to Alternative Dispute Resolution)~~]; Chapter 50 of this title [~~(relating to Actions on Applications)~~]; Chapter 55 of this title [~~(relating to Request for Contested Case Hearings)~~]; Chapter 70 of this title [~~(relating to Enforcement)~~]; Chapter 80 of this title [~~(relating to Contested Case Hearings)~~]; Chapter 86 of this title [~~(relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property)~~]; Chapter 305 of this title [~~(relating to Consolidated Permits)~~]; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of its acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency (EPA) [~~EPA~~] under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258;

(E) permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30;

(F) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title.

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If such generator accumulates at any time more than a total of 1000 kilograms of its hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D - H and O of this chapter [~~(relating to Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions)~~]; Chapter 1 of this title [~~(relating to Purpose of Rules, General Provisions)~~]; Chapter 3 of this title [~~(relating to Definitions)~~]; Chapter 10 of this title [~~(relating to Commission Meetings)~~]; Chapter 20 of this title [~~(relating to Rulemaking)~~]; Chapter 37 of this title [~~(relating to Financial Assurance)~~]; Chapter 39 of this title [~~(relating to Public Notice)~~]; Chapter 40 of this title [~~(relating to Alternative Dispute Resolution)~~]; Chapter 50 of this title [~~(relating to Actions on Applications)~~]; Chapter 55 of this title [~~(relating to Request for Contested Case Hearings)~~]; Chapter 70 of this title [~~(relating to Enforcement)~~]; Chapter 80 of this title [~~(relating to Contested Case Hearings)~~]; Chapter 86 of this title [~~(relating to Special Provisions for Contested Case Hearings~~]; [~~Chapter 261 of this title [(relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property);~~] Chapter 305 of this title [~~(relating to Consolidated Permits)~~]; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title [~~(relating to Accumulation Time)~~] for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 [~~1000~~] kilograms;

(3) A conditionally exempt small quantity generator may either process or dispose of its hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the EPA under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258 or equivalent or more stringent rules under Chapter 330 of this title (relating to Municipal Solid Waste);

(E) permitted, licensed, or registered by a state to manage non-municipal or industrial non-hazardous waste and, if managed in a non-municipal or industrial non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30 or equivalent or more stringent counterpart rules that may be adopted by the commission relating to additional requirements for industrial non-hazardous waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators;

(F) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR Part 261, Subpart C.

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Chapter 324 of this title (relating to Used Oil Standards) and 40 CFR Part 279 [~~if it is destined to be burned for energy recovery~~]. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated [~~if it is destined to be burned for energy recovery~~].

§335.79. Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities.

This section incorporates by reference the federal Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities in 40 Code of Federal Regulations Part 262, Subpart K, §§262.200 - 262.216 (known as the "Academic Laboratories rule"), as amended through December 20, 2010 (75 FR 79304).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 21, 2012.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0779

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SUBCHAPTER E. INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §335.111, §335.112

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.111. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is to establish minimum requirements that define the acceptable management of hazardous waste prior to the issuance or denial of a hazardous waste permit and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. Except as provided in 40 Code of Federal Regulations (CFR) §265.1080(b), this subchapter and the standards of 40 CFR §§264.552, 264.553, and 264.554 apply to owners and operators of hazardous waste storage, processing, or disposal facilities who have fully complied with the requirements for interim status under the Resource Conservation and Recovery Act (RCRA) [~~RCRA~~], §3005(e), except as specifically provided for in §335.41 of this title (relating to Purpose, Scope and Applicability).

(b) United States Environmental Protection Agency (EPA) [~~EPA~~] Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027 must not be managed at facilities subject to regulation under this subchapter, unless:

(1) the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(2) the waste is stored in tanks or containers;

(3) the waste is stored or processed in waste piles that meet the requirements of 40 CFR §264.250(c) as well as all other applicable requirements of 40 CFR Part 265, Subpart L, and §335.120 of this title (relating to Containment for Waste Piles);

(4) the waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 CFR §265.352; or

(5) the waste is burned in facilities that thermally process the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 CFR §265.383.

(c) The requirements of this section apply to owners or operators of all facilities which process, store or dispose of hazardous waste referred to in 40 CFR Part 268, and the 40 CFR Part 268 standards are considered material conditions or requirements of the Part 265 interim status standards incorporated by reference in §335.112 of this title (relating to Standards).

(d) Owners and operators who are subject to the requirements to obtain a post-closure permit under §335.2 and §335.43 of this title (relating to Permit Required), but who obtain a post-closure order in lieu of a post-closure permit as provided in §335.2(m) of this title, must:

(1) submit information about the facility listed in §305.50(b) of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);

(2) comply with facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(3) comply with the groundwater monitoring requirements of §§335.156 - 335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); and

(4) comply with the financial assurance requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities).

(e) The commission may replace all or part of the closure requirements of 40 CFR Part 265, Subpart G (relating to Closure and Post-Closure), as amended and adopted in §335.112(a)(6) of this title and the unit specific standards in §335.123 of this title (relating [~~related~~] to Closure and Post-Closure (Land Treatment Facilities)) applying to a regulated unit with alternative requirements for closure set out in a permit or a post-closure order where the commission determines that:

(1) a regulated unit is situated among solid waste management units or area of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s) or area of concern are likely to have contributed to the release; and

(2) it is not necessary to apply the closure requirement of this subchapter because the alternative requirements will be protective of human health and the environment and will satisfy the closure performance standards of §335.8 of this title (relating [~~related~~] to Closure and Remediation) and §335.167 of this title.

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR 22685) and as further amended as indicated in each paragraph of this subsection:

(1) Subpart B - General Facility Standards (as amended through January 8, 2010 (75 FR 1236)) [~~July 14, 2006 (71 FR 40254))~~];

(2) Subpart C - Preparedness and Prevention;

(3) Subpart D - Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)) [~~July 14, 2006 (71 FR 40254))~~], except 40 CFR §265.56(d);

(4) Subpart E - Manifest System, Recordkeeping and Reporting (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77 [~~April 4, 2006 (71 FR 16862))~~];

(5) Subpart F - Groundwater Monitoring (as amended through April 4, 2006 (71 FR 16862)), except 40 CFR §265.90 and §265.94;

(6) Subpart G - Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H - Financial Requirements (as amended through September 16, 1992 (57 FR 42832)); except 40 CFR §§265.140, 265.141, 265.142(a)(2), 265.142(b) and (c), 265.143(a) - (g), 265.144(b) and (c), 265.145(a) - (g), 264.146, 265.147(a) - (d), 265.147(f) - (k), and 265.148 - 265.150;

(8) Subpart I - Use and Management of Containers (as amended through July 14, 2006 (71 FR 40254));

(9) Subpart J - Tank Systems (as amended through July 14, 2006 (71 FR 40254));

(10) Subpart K - Surface Impoundments (as amended through July 14, 2006 (71 FR 40254));

(11) Subpart L - Waste Piles (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §265.253;

(12) Subpart M - Land Treatment (as amended through July 14, 2006 (71 FR 40254)) except, 40 CFR §§265.272, 265.279, and 265.280;

(13) Subpart N - Landfills (as amended through March 18, 2010 (75 FR 12989)) [~~July 14, 2006 (71 FR 40254))~~], except 40 CFR §§265.301(f) - (i), 265.314, and 265.315;

(14) Subpart O - Incinerators (as amended through October 12, 2005 (70 FR 59402)) [~~September 30, 1999 (64 FR 52828))~~];

(15) Subpart P - Thermal Treatment (as amended through July 17, 1991 (56 FR 32692));

(16) Subpart Q - Chemical, Physical, and Biological Treatment (as amended through July 14, 2006 (71 FR 40254));

(17) Subpart R - Underground Injection;

(18) Subpart W - Drip Pads (as amended through July 14, 2006 (71 FR 40254));

(19) Subpart AA - Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254));

(20) Subpart BB - Air Emission Standards for Equipment Leaks (as amended through April 4, 2006 (71 FR 16862));

(21) Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254));

(22) Subpart DD - Containment Buildings (as amended through July 14, 2006 (71 FR 40254));

(23) Subpart EE - Hazardous Waste Munitions and Explosives Storage (as amended through February 12, 1997 (62 FR 6622)); and

(24) the following appendices contained in 40 CFR Part 265:

(A) Appendix I - Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix III - EPA Interim Primary Drinking Water Standards;

(C) Appendix IV - Tests for Significance;

(D) Appendix V - Examples of Potentially Incompatible Waste; and

(E) Appendix VI - Compounds With Henry's Law Constant Less Than 0.1 Y/X.

(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(C) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(D) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(E) 40 CFR §265.1 is changed to §335.111 of this title (relating to Purpose, Scope, and Applicability);

(F) 40 CFR §265.90 is changed to §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements);

(G) 40 CFR §265.94 is changed to §335.117 of this title (relating to Recordkeeping and Reporting);

(H) 40 CFR §265.314 is changed to §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste);

(I) 40 CFR §270.1 is changed to §335.2 of this title (relating to Permit Required);

(J) 40 CFR §270.28 is changed to §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);

(K) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments [~~Amendment~~]);

(L) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee); and

(M) Qualified professional engineer is changed to Texas licensed professional engineer.

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) is changed to §335.112(a)(3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) Reference to 40 CFR §§265.71, 265.72, 265.76, and 265.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) [~~§335.12(c)(1) and (2)~~] of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 and §335.117 of this title, in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

(c) A copy of 40 CFR Part 265 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
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SUBCHAPTER F. PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

30 TAC §§335.151, 335.152, 335.155, 335.168, 335.170

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and un-

der Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.151. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is to establish minimum standards to define the acceptable management of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste, in accordance with Texas Solid Waste Disposal Act [~~TSWDA~~], and in the evaluation of an investigation report to implement groundwater protection requirements relating to compliance monitoring and corrective action; and in the evaluation of corrective action measures to be instituted in accordance with §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). For facilities that store, process, or dispose of industrial solid waste, in addition to hazardous waste, nothing herein shall be construed to restrict or abridge the commission's authority to implement the provisions of Texas Water Code, Chapter 26, and §335.4 of this title (relating to General Prohibitions), with respect to those activities.

(b) The standards in this subchapter apply to owners and operators of all facilities which process, store, or dispose of hazardous waste, except as specifically provided for in §335.41 of this title (relating to Purpose, Scope, and Applicability).

(c) A facility owner or operator who has fully complied with the requirements for interim status, as defined in the Resource Conservation and Recovery Act (RCRA) [~~RCRA~~], §3005(e), and §335.2 and §335.43 of this title (relating to Permit Required), must comply with the requirements of Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities) in lieu of the requirements of this subchapter, until final administrative disposition of his permit application is made, except as provided under 40 Code of Federal Regulations (CFR) Part 264, Subpart S.

(d) The regulations of this subchapter apply to all owners and operators subject to the requirements of §335.2(m) of this title when the commission issues either a post-closure permit or a post-closure order at the facility. When the commission issues a post-closure order, references in this subchapter to "in the permit" also mean "in the order."

(e) The commission may replace all or part of the requirements of 40 CFR Part 264 Subpart G (relating [~~related~~] to Closure and Post-Closure), as amended and adopted in §335.152(a)(5) of this title (relating to Standards) and the unit specific standards in §§335.169, 335.172, and 335.174 of this title (relating to Closure and Post-Closure Care (Surface Impoundments); Closure and Post-Closure Care (Land Treatment Units), and Closure and Post-Closure Care (Landfills)) applying to regulated units, with alternative requirements as set out in a permit or order where the commission determines that:

(1) a regulated unit is situated among solid waste management units or area of concern, a release has occurred, and both the regulated unit and one or more solid waste management unit(s) or area of concern are likely to have contributed to the release; and

(2) it is not necessary to apply the closure requirements of this subchapter (and those referenced herein) because the alternative requirements will be protective of human health and the environment and will satisfy the performance standards of §335.8 of this title (relating to Closure and Remediation) and §335.167 of this title [~~(relating to Corrective Action for Solid Waste Management Units)~~].

(f) If a permitted facility obtains an order setting out alternative requirements provided in subsection (e) of this section, then the alternative requirements shall also be referenced in the facility's permit.

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR 22685) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) Subpart B--General Facility Standards (as amended through January 8, 2010 (75 FR 1236)) [~~July 14, 2006 (71 FR 40254))~~]; in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C--Preparedness and Prevention;

(3) Subpart D--Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)) [~~April 4, 2006 (71 FR 16862))~~], except 40 CFR §264.56(d);

(4) Subpart E--Manifest System, Recordkeeping and Reporting (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §§264.71, 264.72, 264.76, and 264.77 [~~April 4, 2006 (71 FR 16862))~~]; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G--Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H--Financial Requirements (as amended through April 4, 2006 (71 FR 16862)); except 40 CFR §§264.140, 264.141, 264.142(a)(2), 264.142(b) and (c), 264.143(a) - (h), 264.144(b) and (c), 264.145(a) - (h), 264.146, 264.147(a) - (d), 264.147(f) - (k), and 264.148 - 264.151; and subject to the following limitations: facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.142(a), 264.144(a), and §37.6031(c) of this title (relating to Financial Assurance Requirements for Liability);

(7) Subpart I--Use and Management of Containers (as amended through July 14, 2006 (71 FR 40254));

(8) Subpart J--Tank Systems (as amended through July 14, 2006 (71 FR 40254));

(9) Subpart K--Surface Impoundments (as amended through July 14, 2006 (71 FR 40254)) [~~August 1, 2005 (70 FR 44150))~~], except 40 CFR §264.221 and §264.228:

(A) reference to 40 CFR §264.221 is changed to §335.168 of this title (relating to Design and Operating Requirements (Surface Impoundments));

(B) reference to 40 CFR §264.228 is changed to §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments));

(10) Subpart L--Waste Piles (as amended and adopted through July 14, 2006 (71 FR 40254)), except 40 CFR §264.251;

(11) Subpart M--Land Treatment (as amended and adopted through July 14, 2006 (71 FR 40254)), except 40 CFR §264.273 and §264.280;

(12) Subpart N--Landfills (as amended through March 18, 2010 (75 FR 12989)) [~~July 14, 2006 (71 FR 40254))~~], except 40 CFR §§264.301, 264.310, 264.314, and 264.315;

(13) Subpart O--Incinerators (as amended through April 8, 2008 (73 FR 18970));

(14) Subpart S--Special Provisions for Cleanup (as amended through March 18, 2010 (75 FR 12989)) [~~(July 14, 2006 (71 FR 40254))~~];

(15) Subpart W--Drip Pads (as amended through July 14, 2006 (71 FR 40254));

(16) Subpart X--Miscellaneous Units (as amended through July 14, 2006 (71 FR 40254));

(17) Subpart AA--Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254));

(18) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through July 14, 2006 (71 FR 40254));

(19) Subpart CC--Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254));

(20) Subpart DD--Containment Buildings (as amended through July 14, 2006 (71 FR 40254));

(21) Subpart EE--Hazardous Waste Munitions and Explosives Storage (as amended through August 1, 2005 (70 FR 44150)); and

(22) the following appendices contained in 40 CFR Part 264:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix IV--Cochron's Approximation to the Behrens-Fisher Students' T-Test;

(C) Appendix V--Examples of Potentially Incompatible Waste;

(D) Appendix VI--Political Jurisdictions in Which Compliance With §264.18(a) Must Be Demonstrated; and

(E) Appendix IX--Ground-Water Monitoring List (as amended through June 13, 1997 (62 FR 32451)).

(b) The provisions of 40 CFR §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201 - 335.206 of this title (relating to Purpose, Scope, and Applicability; Definitions; Site Selection to Protect Groundwater or Surface Water; Unsuitable Site Characteristics; Prohibition of Permit Issuance; and Petitions for Rulemaking). A copy of 40 CFR §264.18(b) is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(c) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (relating to Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);

(C) 40 CFR §264.280 is changed to §335.172 of this title (relating to Closure and Post-Closure Care (Land Treatment Units));

(D) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(E) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(F) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(G) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments); and

(H) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 264, Subpart D is changed to §335.152(a)(3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) Reference to 40 CFR §§264.71, 264.72, 264.76, and 264.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) [~~§335.12(c)(1) and (2)~~] of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.155 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to

Recordkeeping and Reporting), in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

(11) Reference to qualified professional engineer is changed to Texas licensed professional engineer.

(d) A copy of 40 CFR Part 264 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

§335.155. Additional Reports.

In addition to submitting the waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or [~~and~~] Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities), the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations (CFR) §264.56(j);

(2) facility closure as specified in 40 CFR §264.115;

(3) as otherwise required by 40 CFR Part 264, Subparts F, K - N, X, AA, [~~and~~] BB, and CC.

§335.168. Design and Operating Requirements (Surface Impoundments).

(a) Any surface impoundment that is not covered by subsection (c) of this section or 40 Code of Federal Regulations (CFR) §265.221 must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with §335.169(a)(1) of this title (relating to Closure and Post-Closure Care (Surface Impoundments)). For impoundments that will be closed in accordance with §335.169(a)(2) of this title, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(b) The owner or operator will be exempted from the requirements of subsections (a) and (j) of this section if the commission finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see §335.159 of this title (relating to Hazardous Constituents)) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the adopted alternate design and operation;

(3) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992, must meet the requirements of 40 CFR §264.221(c), as amended through July 14, 2006 (71 FR 40254) [~~January 29, 1992 (57 FR 3487)~~].

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that he meets the requirements of 40 CFR §264.221(d), as amended through January 29, 1992 (57 FR 3462).

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics in 40 CFR §261.24, and is in compliance with either of the following requirements:

(1) the monofill:

(A) has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this subsection, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (c) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post-closure requirements, including, but not limited to, groundwater monitoring and corrective action;

(B) is located more than 1/4 mile from an underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)); and

(C) is in compliance with groundwater monitoring requirements of this subchapter; or

(2) the owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater or surface water at any future time.

(f) The owner or operator of any replacement surface impoundment unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of Resource Conservation and Recovery Act, §3004(o)(1)(A)(i) and (o)(5); and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind, and wave action; rainfall; run-off, malfunctions of level controllers, alarms, and other equipment; and human error.

(h) A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(i) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(j) A surface impoundment (except for an existing portion of a surface impoundment) that will be closed in accordance with §335.169(a)(2) of this title must have an additional liner to that required in subsection (a) of this section which:

(1) prevents any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the post-closure care period; and

(2) minimizes the rate of migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water so as not to pose a substantial present or potential hazard to human health and the environment.

§335.170. Design and Operating Requirements (Waste Piles).

(a) A waste pile (except for an existing portion of a waste pile) must have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the pile into the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the waste pile. The liner may be constructed of materials that may allow waste to migrate into the liner itself (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility. The liner must be:

(A) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(B) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(C) installed to cover all surrounding earth likely to be in contact with the waste or leachate; and

(2) a leachate collection and removal system immediately above the liner that is designed, constructed, maintained, and operated to collect and remove leachate from the pile. The commission will specify design and operating conditions in the permit to ensure that the leachate depth over the liner does not exceed 30 centimeters (one foot). The leachate collection and removal system must be:

(A) constructed of materials that are:

(i) chemically resistant to the waste managed in the pile and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlaying wastes, waste cover materials, and by any equipment used at the pile; and

(B) designed and operated to function without clogging through the scheduled closure of the waste pile.

(b) The owner or operator will be exempted from the requirements of subsection (a) of this section if the commission finds, based on a demonstration by the owner or operator, the alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including attenuative capacity and thickness of the liners and soils present between the pile and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner and operator of each new waste pile unit [~~on which construction commences after January 29, 1992~~], each lateral expansion of a waste pile unit [~~on which construction commences after July 29, 1992~~], and each replacement of an existing waste pile unit [~~that is to commence reuse after July 29, 1992~~], must comply with the requirements of 40 CFR §264.251(c), as amended through April 4, 2006 (71 FR 16862) [~~January 29, 1992, at 57 FedReg 3488~~].

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that such design and operating practices, together with location characteristics:

(1) will prevent the migration of any hazardous constituent into the groundwater or surface water at least as effectively as the liners and leachate collection and removal systems specified in subsection (c) of this section; and

(2) will allow detection of leaks of hazardous constituents through the top liner at least as effectively.

(e) Subsection (c) of this section does not apply to monofills that are granted a waiver by the Commission in accordance with §335.168(e) of this title (relating to Design and Operating Requirements (Surface Impoundments)).

(f) The owner or operator of any replacement waste pile unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of §3004(o)(1)(A)(i) and (o)(5) of the Resource Conservation and Recovery Act; and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) The owner or operator must design, construct, operate, and maintain a run-on control system capable of preventing flow onto the

active portion of the pile during peak discharge from at least a 100-year storm.

(h) The owner or operator must design, construct, operate, and maintain a run-off management system to collect and control at least the water volume from active portions resulting from a 24-hour, 100-year storm.

(i) Collection and holding facilities (e.g., tanks or basins) associated with run-on and run-off control systems must be emptied or otherwise managed expeditiously after storms to maintain design capacity of the system.

(j) If the pile contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the pile to control wind dispersal.

(k) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

DIVISION 1. RECYCLABLE MATERIALS USED IN A MANNER CONSTITUTING DISPOSAL

30 TAC §335.213

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.213. Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste [~~Management~~] in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities), Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action [~~Actions~~] on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests [~~Request~~] for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); [~~Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property);~~] Chapter 305 of this title (relating to Consolidated Permits), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 2. HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

30 TAC §335.222

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial

solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.222. Management Prior to Burning.

(a) Generators. Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(b) Transporters. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste).

(c) Storage and processing facilities. The provisions listed under paragraph (1) of this subsection apply to storage or processing by burners and by intermediaries such as processors, blenders, and distributors between the generator and the burner.

(1) Owners and operators of facilities that store or process hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of the following, except as provided by paragraph (2) of this subsection:

(A) Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste [~~Management~~] in General);

(B) Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions);

(C) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities), except §335.112(a)(12) - (19) of this title (relating to Standards);

(D) Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities), except §335.152(11) - (16) of this title (relating to Standards);

(E) Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit); and

(F) [~~(E)~~] Chapter 305 of this title (relating to Consolidated Permits).

(2) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulations under the small quantity burner provisions of 40 Code of Federal Regulations §266.108, only hazardous waste that they generate are exempt from regulation under the provisions listed above in paragraph (1) of this subsection applicable to storage units for those units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage or processing of hazardous waste by such owners and operators prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (1) of this subsection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. SPENT LEAD-ACID BATTERIES BEING RECLAIMED

30 TAC §335.251

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.251. Applicability and Requirements.

(a) The regulations of this section adopt by reference 40 Code of Federal Regulations (CFR) Part 266, Subpart G as amended through January 8, 2010 (75 FR 1236). This section applies [~~apply~~] to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, who store spent batteries that are to be regenerated, [~~or~~] who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated), who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country are not subject to regulation under this chapter, except that §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) applies; and are not subject to regulation under Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action [~~Actions~~] on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests [~~Request~~] for Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); [~~Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property);~~] or Chapter 305 of this title (relating to Consolidated Permits). Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.

(b) Owners or operators of facilities that store spent lead-acid batteries before reclaiming them (other than spent batteries that are to be regenerated) are subject to the following requirements:

(1) all applicable provisions in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste [~~Management~~] in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities), [~~and~~] Subchapter F of this chapter (relating to Permitting Standards of Owners and Operators of Hazardous Waste Treatment, Storage, [~~Processing,~~] or Disposal Facilities), and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit), except for the requirements in §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [~~Processing,~~] or Disposal Facilities) and 40 CFR [~~Code of Federal Regulations~~] §265.13; and

(2) all applicable provisions in Chapter 1 of this title [~~(relating to Purpose of Rules, General Provisions)~~]; Chapter 3 of this title [~~(relating to Definitions)~~]; Chapter 10 of this title [~~(relating to Commission Meetings)~~]; Chapter 20 of this title [~~(relating to Rulemaking)~~]; Chapter 37 of this title [~~(relating to Financial Assurance)~~]; Chapter 39 of this title [~~(relating to Public Notice)~~]; Chapter 40 of this title [~~(relating to Alternative Dispute Resolution)~~]; Chapter 50 of this title [~~(relating to Actions on Applications)~~]; Chapter 55 of this title [~~(relating to Request for Contested Case Hearings)~~]; Chapter 70 of this title [~~(relating to Enforcement)~~]; Chapter 80 of this title [~~(relating to Contested Case Hearings)~~]; Chapter 86 of this title [~~(relating to Special Provisions for Contested Case Hearings)~~]; [~~Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property);~~] and Chapter 305 of this title [~~(relating to Consolidated Permits)~~].

(c) In addition to the regulations in this section, persons who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country are subject to the requirements of §335.13 and §335.76(h) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; and Additional Requirements Applicable to International Shipments, respectively).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
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Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0779

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SUBCHAPTER O. LAND DISPOSAL RESTRICTIONS

30 TAC §335.431

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC) §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.431. Purpose, Scope, and Applicability.

(a) Purpose. The purpose of this subchapter is to identify hazardous wastes that are restricted from land disposal and define those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Scope and Applicability.

(1) Except as provided in paragraph (2) of this subsection, the requirements of this subchapter apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(2) The requirements of this subchapter do not apply to any entity that is either specifically excluded from coverage by this subchapter or would be excluded from the coverage of 40 Code of Federal Regulations (CFR)[~~,~~] Part 268 by 40 CFR[~~,~~] Part 261, if those parts applied.

(3) Universal waste handlers and universal waste transporters, as defined in and subject to regulation under Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule) are exempt from 40 CFR §268.7 and §268.50.

(c) Adoption by Reference.

(1) except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR Part 268, as amended through March 18, 2010 (75 FR 12989) [~~July 14, 2006 (71 FR 40254)~~] are adopted by reference.

(2) The following sections of 40 CFR Part 268 are excluded from the sections adopted in paragraph (1) of this subsection: §§268.1(f), 268.5, 268.6, 268.7(a)(10), 268.13, 268.42(b), and 268.44.

(3) Appendices IV, VI - IX, and XI of 40 CFR Part 268 are adopted by reference as amended through July 14, 2006 (71 FR 40254).

(d) Changes to Adopted Parts. The parts of the CFR that are adopted by reference in subsection (c) of this section are changed as follows:

(1) The words "Administrator" or "Regional Administrator" are changed to "Executive Director;"

(2) The word "treatment" is changed to "processing;"

(3) The words "Federal Register," when they appear in the text of the regulation, are changed to "Texas Register;"

(4) In 40 CFR §268.7(a)(6) and (a)(7), the applicable definition of hazardous waste and solid waste is the one that is set out in this chapter rather than the definition of hazardous waste and solid waste that is set out in 40 CFR Part 261.

(5) In 40 CFR §268.50(a)(1), the citation to "§262.34" is changed to "§335.69."

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Commission on Environmental Quality
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SUBCHAPTER R. WASTE CLASSIFICATION

30 TAC §335.504

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy) which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste); THSC, §361.024 (relating to Rules and Standards); and THSC, §361.036 (relating to Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste) which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.504. Hazardous Waste Determination.

A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded or exempted from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions) or identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart A, as amended through March 18, 2010 (75 FR 12989), or identified in 40 CFR Part 261, Subpart E, as amended through July 28, 2006 (71 FR 42928) [~~January 2, 2008 (73 FR 57)~~].

(2) If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 CFR Part 261, Subpart D, as amended through March 18, 2010 (75 FR 12989) [~~June 4, 2008 (73 FR 31756)~~].

(3) If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C, as amended through March 18, 2010 (75 FR 12989) [~~July 14, 2006 (71 FR 40254)~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

The Texas Parks and Wildlife Department proposes the repeal of §§51.621 - 51.624, 51.632, 51.643, 51.644, 51.661, 51.662, 51.673, and 51.674 and amendments to §§51.3, 51.70, 51.71, 51.151, 51.201, 51.204, 51.300, 51.303, 51.304, and 51.601. The proposed repeals and amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

Parks and Wildlife Code, §11.0162, authorizes the Chairman of the Texas Parks and Wildlife Commission to "appoint committees to advise the commission on issues under its jurisdiction." Government Code, Chapter 2110, requires that rules be adopted regarding each state agency advisory committee. Unless otherwise provided by specific statute, the rules must (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Under the provisions of 31 TAC §51.601(d), all advisory committees expired on October 1, 2010 unless otherwise provided by law. In 2010, the department amended rules regarding several advisory committees to extend the expiration of those committees until October 2014 (October 15, 2010, issue (35 TexReg 9321)). The advisory committees that were not extended expired in October 2010 pursuant to §51.601. The proposed repeal of §§51.621 - 51.624, 51.632, 51.643, 51.644, 51.661, 51.662, 51.673, and 51.674 would eliminate advisory groups that have expired and which the department has determined are no longer necessary, either because they have served their purpose and become superfluous or because their function has been subsumed within another advisory group. Sections 51.621 (Artificial Reef Advisory Committee), 51.622 (Blue Crab Advisory Committee), 51.623 (Oyster Advisory Committee), and 51.624 (Shrimp Advisory Committee) are being repealed because they have expired and the Coastal Resources Advisory Committee can perform the advisory functions regarding those coastal fisheries resources. Section 51.632 (Texas Rivers Conservation Advisory Board) is being repealed because the term of the committee has expired and the Freshwater Fisheries Advisory Committee can perform the advisory functions regarding freshwater fisheries resources in Texas rivers. Section 51.643, concerning Historic Sites Advisory Committee and §51.644, concerning Big Bend Ranch State Park Task Force, are being repealed because the term of the Historic Sites Advisory Committee has expired and the Big Bend Ranch State Park

Figure: 30 TAC §305.69(k)

Modifications	Class
A. General Permit Provisions	
1. Administrative and informational changes	1
2. Correction of typographical errors	1
3. Equipment replacement or upgrading with functionally equivalent components (e.g., pipes, valves, pumps, conveyors, controls)	1
4. Changes in the frequency of or procedures for monitoring, reporting, sampling, or maintenance activities by the permittee:	
a. To provide for more frequent monitoring, reporting, sampling, or maintenance	1
b. Other changes	2
5. Schedule of compliance	
a. Changes in interim compliance dates, with prior approval of the executive director	1[1]
b. Extension of final compliance date	3
6. Changes in expiration date or permit to allow earlier permit expiration, with prior approval of the executive director	1[1]
7. Changes in ownership or operational control of a facility, provided the procedures of §305.64(g) of this title (relating to Transfer of Permits) are followed	1[1]
8. Six months or less extension of the construction period time limit applicable to commercial hazardous waste management units in accordance with §305.149(b)(2) or (4) of this title (relating to Time Limitation for Construction of Commercial Hazardous Waste Management Units)	2
9. Greater than six-month extension of the commercial hazardous waste management unit construction period time limit in accordance with §305.149(b)(3) or (4) of this title	3
10. Any extension in accordance with §305.149(b)(3) of this title of a construction period time limit for commercial hazardous waste management units which has been previously authorized under §305.149(b)(2) of this title	3
11. Changes to remove permit conditions that are no longer applicable (i.e., because the standards upon which they are based are no longer applicable to the facility)	1[1]

B. General Facility Standards

1. Changes to waste sampling or analysis methods:

a. To conform with agency guidance or regulations.....1

b. To incorporate changes associated with F039 (multi-source leachate) sampling or analysis methods.....1[1]

c. To incorporate changes associated with underlying hazardous constituents in ignitable or corrosive wastes.....1[1]

d. Other changes.....2

2. Changes to analytical quality assurance/control plan:

a. To conform with agency guidance or regulations.....1

b. Other changes.....2

3. Changes in procedures for maintaining the operating record.....1

4. Changes in frequency or content of inspection schedules.....2

5. Changes in the training plan:

a. That affect the type or decrease the amount of training given to employees.....2

b. Other changes.....1

6. Contingency plan:

a. Changes in emergency procedures (i.e., spill or release response procedures).....2

b. Replacement with functionally equivalent equipment, upgrade, or relocate emergency equipment listed.....1

c. Removal of equipment from emergency equipment list.....2

d. Changes in name, address, or phone number of coordinators or other persons or agencies identified in the plan.....1

7. Construction quality assurance (CQA) plan:

a. Changes that the CQA officer certifies in the operating record will provide equivalent or better certainty that the unity components meet the design specifications.....1

b. Other Changes.....2

Note: When a permit modification (such as introduction of a new unit) requires a change in facility plans or other general facility standards, that change shall be reviewed under the same procedures as the permit modification.

C. Groundwater Protection

1. Changes to wells:

a. Changes in the number, location, depth, or design of upgradient or downgradient wells of permitted groundwater monitoring system.....2

b. Replacement of an existing well that has been damaged or rendered inoperable, without change to location, design, or depth of the well.....1

2. Changes in groundwater sampling or analysis procedures or monitoring schedule, with prior approval of the executive director.....1[1]

3. Changes in statistical procedure for determining whether a statistically significant change in groundwater quality between upgradient and downgradient wells has occurred, with prior approval of the executive director.....1[1]

4. Changes in point of compliance.....2

5. Changes in indicator parameters, hazardous constituents, or concentration limits (including alternate concentration limits (ACLs)):

a. As specified in the groundwater protection standard.....3

b. As specified in the detection monitoring program.....2

6. Changes to a detection monitoring program as required by §335.164(8) of this title (relating to Detection Monitoring Program), unless otherwise specified in this appendix.....2

7. Compliance monitoring program:

a. Addition of compliance monitoring program pursuant to §335.164(7)(D) of this title, and §335.165 of this title (relating to Compliance Monitoring Program).....3

b. Changes to a compliance monitoring program as required by §335.165(13) of this title, unless otherwise specified in this appendix.....2

8. Corrective action program:

a. Addition of a corrective action program pursuant to §335.165(11)(B) of this title and §335.166 of this title (relating

to Corrective Action Program).....3

b. Changes to a corrective action program as required by §335.166(8) of this title, unless otherwise specified in this appendix.....2

D. Closure

1. Changes to the closure plan:

a. Changes in estimate of maximum extent of operations or maximum inventory of waste on-site at any time during the active life of the facility, with prior approval of the executive director.....1[1]

b. Changes in the closure schedule for any unit, changes in the final closure schedule for the facility, or extension of the closure period, with prior approval of the executive director.....1[1]

c. Changes in the expected year of final closure, where other permit conditions are not changed, with prior approval of the executive director.....1[1]

d. Changes in procedures for decontamination of facility equipment or structures, with prior approval of the executive director.....1[1]

e. Changes in approved closure plan resulting from unexpected events occurring during partial or final closure, unless otherwise specified in this appendix.....2

f. Extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes under 40 Code of Federal Regulations (CFR), §264.113(d) and (e).....2

2. Creation of a new landfill unit as part of closure.....3

3. Addition of the following new units to be used temporarily for closure activities:

a. Surface impoundments.....3

b. Incinerators.....3

c. Waste piles that do not comply with 40 CFR §264.250(c).....3

d. Waste piles that comply with 40 CFR §264.250(c).....2

e. Tanks or containers (other than specified below).....2

f. Tanks used for neutralization, dewatering, phase separation, or component separation, with prior approval of the executive director.....1[1]

g. Staging Pile 2

E. Post-Closure

1. Changes in name, address, or phone number of contact in post-closure plan.....1

2. Extension of post-closure care period.....2

3. Reduction in the post-closure care period.....3

4. Changes to the expected year of final closure, where other permit conditions are not changed.....1

5. Changes in post-closure plan necessitated by events occurring during the active life of the facility, including partial and final closure.....2

F. Containers

1. Modification or addition of container units:

a. Resulting in greater than 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix.....3

b. Resulting in up to 25% increase in the facility's container storage capacity, except as provided in F(1)(c) and F(4)(a) of this appendix.....2

c. Or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes or narrative descriptions of wastes. It is not applicable to dioxincontaining wastes (F020, 021, 022, 023, 026, 027, and 028).....1[1]

2. Modification of container units, as follows:

a. Modification of a container unit without increasing the capacity of the unit.....2

b. Addition of a roof to a container unit without alteration of the containment system.....1

3. Storage of different wastes in containers, except as provided in F(4) of this appendix:

a. That require additional or different management practices from those authorized in the permit.....3

b. That do not require additional or different management practices from those authorized in the permit.....2

Note: See §305.69(g) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for modification procedures to be used for the management of newly listed or identified wastes.

4. Storage or treatment of different wastes in containers:

a. That require addition of units or change in treatment process or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards, or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1[1]

b. That do not require the addition of units or a change in the treatment process or management standards, and provided that the units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

5. Other changes in container management practices (e.g., aisle space, types of containers, segregation).....2

G. Tanks

1. Modification or addition of tank units or treatment processes, as follows:

a. Modification or addition of tank units resulting in greater than 25% increase in the facility's tank capacity, except as provided in G(1)(c), G(1)(d), and G(1)(e) of this appendix.....3

b. Modification or addition of tank units resulting in up to 25% increase in the facility's tank capacity, except as provided in G(1)(d) and G(1)(e) of this appendix.....2

c. Addition of a new tank (no capacity limitation) that will operate for more than 90 days using any of the following physical or chemical treatment technologies: neutralization, dewatering, phase separation, or component separation.....2

d. After prior approval of the executive director, addition of a new tank (no capacity limitation) that will operate for up to 90 days using any of the following physical or chemical treatment technologies:

neutralization, dewatering, phase separation, or component separation.....1[1]

e. Modification or addition of tank units or treatment processes necessary to treat wastes that are restricted from land disposal to meet some or all of the applicable treatment standards or to treat wastes to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), with prior approval of the executive director. This modification may also involve addition of new waste codes. It is not applicable to dioxincontaining wastes (F020, 021, 022, 023, 026, 027, and 028).....1[1]

2. Modification of a tank unit or secondary containment system without increasing the capacity of the unit.....2

3. Replacement of a tank with a tank that meets the same design standards and has a capacity within +/-10% of the replaced tank provided:.....1

a. The capacity difference is no more than 1,500 gallons;

b. The facility's permitted tank capacity is not increased; and

c. The replacement tank meets the same conditions in the permit.

4. Modification of a tank management practice.....2

5. Management of different wastes in tanks:

a. That require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(c) of this appendix.....3

b. That do not require additional or different management practices, tank design, different fire protection specifications, or significantly different tank treatment process from that authorized in the permit, except as provided in G(5)(d) of this appendix.....2

c. That require addition of units or change in treatment processes or management standards, provided that the wastes are restricted from land disposal and are to be treated to meet some or all of the applicable treatment standards or that are to be treated to satisfy (in whole or in part) the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(1)(ii), with prior approval of the executive director. The modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027,and 028).....1[1]

d. That do not require the addition of units or a change in the treatment process or management standards, and provided that the

units have previously received wastes of the same type (e.g., incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

H. Surface Impoundments

1. Modification or addition of surface impoundment units that result in increasing the facility's surface impoundment storage or treatment capacity.....3

2. Replacement of a surface impoundment unit.....3

3. Modification of a surface impoundment unit without increasing the facility's surface impoundment storage or treatment capacity and without modifying the unit's liner, leak detection system, or leachate collection system.....2

4. Modification of a surface impoundment management practice.....2

5. Treatment, storage, or disposal of different wastes in surface impoundments:

a. That require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....3

b. That do not require additional or different management practices or different design of the liner or leak detection system than authorized in the permit.....2

c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), and provided that the unit meets the minimum technological requirements stated in 40 CFR §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a unit that meets the minimum technological requirements stated in 40 CFR §268.5(h)(2), and provided further that the surface impoundment has previously received wastes of the same type (for example, incinerator scrubber water). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

6. Modifications of unconstructed units to comply with 40 CFR §§264.221(c), 264.222, 264.223, and 264.226(d)..... .....1[1]

7. Changes in response action plan:

a. Increase in action leakage rate.....3

b. Change in a specific response reducing its frequency or effectiveness.....3

c. Other Changes.....2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

I. Enclosed Waste Piles. For all waste piles except those complying with 40 CFR §264.250(c), modifications are treated the same as for a landfill. The following modifications are applicable only to waste piles complying with 40 CFR §264.250(c).

1. Modification or addition of waste pile units:

a. Resulting in greater than 25% increase in the facility's waste pile storage or treatment capacity.....3

b. Resulting in up to 25% increase in the facility's waste pile storage or treatment capacity.....2

2. Modification of waste pile unit without increasing the capacity of the unit.....2

3. Replacement of a waste pile unit with another waste pile unit of the same design and capacity and meeting all waste pile conditions in the permit.....1

4. Modification of a waste pile management practice.....2

5. Storage or treatment of different wastes in waste piles:

a. That require additional or different management practices or different design of the unit.....3

b. That do not require additional or different management practices or different design of the unit.....2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

6. Conversion of an enclosed waste pile to a containment building unit.....2

J. Landfills and Unenclosed Waste Piles

1. Modification or addition of landfill units that result in increasing the facility's disposal capacity.....3

2. Replacement of a landfill.....3

3. Addition or modification or a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....3

4. Modification of a landfill unit without changing a liner, leachate collection system, leachate detection system, run-off control, or final cover system.....2

5. Modification of a landfill management practice.....2

6. Landfill different wastes:

a. That require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.....3

b. That do not require additional or different management practices, different design of the liner, leachate collection system, or leachate detection system.....2

c. That are wastes restricted from land disposal that meet the applicable treatment standards or that are treated to satisfy the standard of "use of practically available technology that yields the greatest environmental benefit" contained in 40 CFR §268.8(a)(2)(ii), and provided that the landfill unit meets the minimum technological requirements stated in 40 CFR §268.5(h)(2). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

d. That are residues from wastewater treatment or incineration, provided that disposal occurs in a landfill unit that meets the minimum technological requirements stated in 40 CFR §268.5(h)(2), and provided further that the landfill has previously received wastes of the same type (for example, incinerator ash). This modification is not applicable to dioxin-containing wastes (F020, 021, 022, 023, 026, 027, and 028).....1

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

7. Modifications of unconstructed units to comply with 40 CFR §§264.251(c), 264.252, 264.253, 264.254(c), 264.301(c), 264.302, 264.303(c), and 264.304.....1[1]

8. Changes in response action plan:

a. Increase in action leakage rate.....3

b. Change in a specific response reducing its frequency or effectiveness.....3

c. Other changes.....2

K. Land Treatment

1. Lateral expansion of or other modification of a land treatment unit to increase areal extent.....3

2. Modification of run-on control system.....2

3. Modify run-off control system.....3

4. Other modifications of land treatment unit component specifications or standards required in the permit.....2

5. Management of different wastes in land treatment units:

a. That require a change in permit operating conditions or unit design specifications.....3

b. That do not require a change in permit operating conditions or unit design specifications.....2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly listed or identified wastes.

6. Modification of a land treatment management practice to:

a. Increase rate or change method of waste application.....3

b. Decrease rate of waste application.....1

7. Modification of a land treatment unit management practice to change measures of pH or moisture content, or to enhance microbial or chemical reactions.....2

8. Modification of a land treatment unit management practice to grow food chain crops, or add to or replace existing permitted crops with different food chain crops, or to modify operating plans for distribution of animal feeds resulting from such crops.....3

9. Modification of operating practice due to detection of releases from the land treatment unit pursuant to 40 CFR §264.278(g)(2).....3

10. Changes in the unsaturated zone monitoring system, resulting in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components that have specifications different from permit requirements.....3

11. Changes in the unsaturated zone monitoring system that do not result in a change to the location, depth, or number of sampling points, or that replace unsaturated zone monitoring devices or components thereof with devices or components having specifications not different from permit requirements.....2

12. Changes in background values for hazardous constituents in soil and soilpore liquid.....2

13. Changes in sampling, analysis, or statistical procedure.....2

14. Changes in land treatment demonstration program prior to or during the demonstration.....2

15. Changes in any condition specified in the permit for a land treatment unit to reflect results of the land treatment demonstration, provided performance standards are met, and the executive director's prior approval has been received.....1[1]

16. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the wastes can be treated completely, provided the conditions for the second demonstration are substantially the same as the conditions for the first demonstration and have received the prior approval of the executive director.....1[1]

17. Changes to allow a second land treatment demonstration to be conducted when the results of the first demonstration have not shown the conditions under which the waste can be treated completely, where the conditions for the second demonstration are not substantially the same as the conditions for the first demonstration.....3

18. Changes in vegetative cover requirements for closure.....2

L. Incinerators, Boilers and Industrial Furnaces

1. Changes to increase by more than 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feed rate limit; a chlorine feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3

2. Changes to increase by up to 25% any of the following limits authorized in the permit: A thermal feed rate limit; a feedstream feedrate limit; chlorine/chloride feed rate limit, a metal feed rate limit, or an ash feed rate limit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....2

3. Modification of an incinerator, boiler, or industrial furnace unit by changing the internal size of geometry of the primary or secondary combustion units, by adding a primary or secondary combustion unit, by substantially changing the design of any component used to remove HCl/Cl2, metals or particulate from the combustion gases, or by changing other features of the incinerator, boiler, or industrial furnace that could affect its capability to meet the regulatory performance standards. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3

4. Modification of an incinerator, boiler, or industrial furnace unit in a manner that would not likely affect the capability of the unit to meet the regulatory

performance standards but which would change the operating conditions or monitoring requirements specified in the permit. The executive director may require a new trial burn to demonstrate compliance with the regulatory performance standards.....2

5. Operating requirements:

a. Modification of the limits specified in the permit for minimum or maximum combustion gas temperature, minimum combustion gas residence time, oxygen concentration in the secondary combustion chamber, flue gas carbon monoxide and hydrocarbon concentration, maximum temperature at the inlet to the particulate matter emission control system, or operating parameters for the air pollution control system. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3

b. Modification of any stack gas emission limits specified in the permit, or modification of any conditions in the permit concerning emergency shutdown or automatic waste feed cutoff procedures or controls.....3

c. Modification of any other operating condition or any inspection or recordkeeping requirement specified in the permit.....2

6. Burning different wastes:

a. If the waste contains a principal organic hazardous constituent (POHC) that is more difficult to burn than authorized by the permit or if burning of the waste requires compliance with different regulatory performance standards than specified in the permit. The executive director will require a new trial burn to substantiate compliance with the regulatory performance standards unless this demonstration can be made through other means.....3

b. If the waste does not contain a POHC that is more difficult to burn than authorized by the permit and if burning of the waste does not require compliance with different regulatory performance standards than specified in the permit.....2

Note: See §305.69(g) of this title for modification procedures to be used for the management of newly regulated wastes and units.

7. Shakedown and trial burn:

a. Modification of the trial burn plan or any of the permit conditions applicable during the shakedown period for determining operational readiness after construction, the trial burn period, or the period immediately following the trial burn.....2

b. Authorization of up to an additional 720 hours of waste burning during the shakedown period for determining operational readiness after construction, with the prior approval of the executive director.....1[1]

c. Changes in the operating requirements set in the permit for conducting a trial burn, provided the change is minor and has received the prior approval of the executive director.....1[1]

d. Changes in the ranges of the operating requirements set in the permit to reflect the results of the trial burn, provided the change is minor and has received the prior approval of the executive director.....1[1]

8. Substitution of an alternate type of nonhazardous waste fuel that is not specified in the permit.....1

9. Technology changes needed to meet standards under Title 40 CFR Part 63 (Subpart EEE - National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors), provided the procedures of §305.69(i) of this title are followed.....1[1]

10. Changes to Resource Conservation and Recovery Act permit provisions needed to support transition to §113. 620 of this title and 40 CFR Part 63, Subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) provided the procedures of 40 CFR §270.42(k) are followed.....1[1]

M. Corrective Action

1. Approval of a corrective action management unit pursuant to 40 CFR §264.552.....3

2. Approval of a temporary unit or time extension for a temporary unit pursuant to 40 CFR §264.553.....2

3. Approval of a staging pile or staging pile operating term extension pursuant to 40 CFR §264.554.....2

N. Containment Buildings

1. Modification or addition of containment building units:

a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity.....3

b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity.....2

2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit.....2

3. Replacement of a containment building with a containment building that meets the same design standards provided:

a. The unit capacity is not increased.....1

b. The replacement containment building meets the same conditions in the permit.....1

4. Modification of a containment building management practice.....2

5. Storage or treatment of different wastes in containment buildings:

a. That require additional or different management practices.....3

b. That do not require additional or different management practices.....2

O. Burden Reduction

1. Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to 40 CFR §264.52(b).....1

2. Changes to recordkeeping and reporting requirements pursuant to: 40 CFR §§264.56(i), 264.343(a)(2), 264.1061(b)(1) and (d), 264.1062(a)(2), 264.196(f), 264.100(g), and 264.113(e)(5).....1

3. Changes to inspection frequency for tank systems pursuant to 40 CFR §264.195(b) 1

4. Changes to detection and compliance monitoring program pursuant to 40 CFR §§264.98(d), (g)(2), and (g)(3), 264.99(f), and (g).....1

Figure: 30 TAC §335.1(138)(D)(iv)

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i)(1)	Energy Recovery/Fuel S.W. Def. (D)(ii)(2)	Reclamation S.W. Def. (D)(iii)(3)[2]	Speculative Accumulation S.W. Def. (D)(iv)(4)
Spent materials (listed hazardous and not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous)[1]	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous)[1]	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous)[1]	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal that is not excluded under §335.1(138)(A)(iv) of this title (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(9) of this title) (nonhazardous)[1]	*	*	*	*

NOTE: The terms "spent materials," "sludges," "by-products," "scrap metal," and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

[1] These materials are governed by the provisions of §335.24(h) of this title only.
[2] Except as provided in 40 CFR §261.4(a)(17) for mineral processing secondary materials.