

The Texas Natural Resource Conservation Commission (commission) adopts the amendment to §335.69, Accumulation Time. Amended §335.69 is adopted *without change* to the proposed text as published in the December 1, 2000 issue of the *Texas Register* (25 TexReg 11894) and will not be republished.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The primary purpose of this adoption is to revise the commission's rules to conform to changes under Title 40 Code of Federal Regulations (CFR) §262.34, Accumulation Time, promulgated by the United States Environmental Protection Agency (EPA) on January 21, 1999 at 64 FedReg 3382 and March 8, 2000 at 65 FedReg 12378. The January 21, 1999 promulgation corrects rule language concerning requirements to comply with certain hazardous waste air emission standards in order to qualify under the accumulation time exemption from hazardous waste permitting or interim status requirements. The March 8, 2000 promulgation allows large quantity generators of certain sludges from the treatment of electroplating wastewaters (i.e., EPA hazardous waste number F006) up to 180 days (or 270 days, as applicable) to accumulate F006 waste without a hazardous waste permit or interim status, provided that these generators recycle the F006 waste through metals recovery and meet certain other conditions.

The commission adopts this accumulation time rule primarily to address existing economic barriers to the recycling of F006 waste through metals recovery and to provide large quantity generators of F006 waste with an incentive to choose metals recovery instead of land disposal. By this adoption, the amended rule will further the public policy concerning hazardous waste under Texas Health and Safety Code (THSC), §361.023 by encouraging recycling, which is a method of hazardous waste management preferred over land disposal. Also, the adopted rule includes conforming changes that are needed to establish equivalency with

the federal regulations, which enable the State of Texas to increase its level of authorization to implement hazardous waste regulations in lieu of the EPA. Finally, the adopted rule includes administrative and formatting changes and cross-reference corrections.

#### SECTION BY SECTION DISCUSSION

Amended §335.69(a)(1)(A) and (B) is adopted to include references to 40 CFR Part 265, Subparts AA, BB, and CC, concerning requirements to comply with certain air emission standards. Section 335.69(j) and (k) is adopted to allow large quantity generators of F006 electroplating sludge to accumulate F006 waste on-site for up to 180 days (or 270 days, if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more) in tanks, containers, or containment buildings without a permit or interim status, if certain conditions are met. Section 335.69(l) is adopted to state that a generator accumulating F006 waste in accordance with §335.69(j) or (k), but who exceeds the 180- or 270-day limit, or who exceeds the 20,000 kilogram limit, is a hazardous waste storage facility subject to the requirements of Chapter 335, relating to Industrial Solid Waste and Municipal Hazardous Waste and 30 TAC Chapter 305, relating to Consolidated Permits, applicable to such owners and operators, unless the generator has been granted an extension to the time limit or exception to the weight limitation by the executive director. Adopted §335.69(l) allows the executive director to grant such extensions and exceptions under certain conditions.

#### FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has determined that the adopted rule is not subject to the regulatory analysis requirements of Texas Government Code, §2001.0225 because it does not meet any of the four applicability requirements

listed in §2001.0225(a). The adopted rule does not exceed a standard set by federal law because the purpose of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in this rule are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because there is no express requirement in state law concerning F006 wastes. This adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The state is adopting the rule to maintain EPA authorization of its RCRA program and accordingly is conforming its rules to fit the framework of the corresponding federal regulations. See 40 CFR §271.21, relating to procedures for revision of state programs and 40 CFR §262.34, relating to accumulation time. Finally, the rule is adopted under specific state law (i.e., THSC, Solid Waste Disposal Act, §361.017 and §361.024).

#### TAKINGS IMPACT ASSESSMENT

The commission prepared a takings impact assessment for the adopted rule pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the adopted rule is to facilitate recycling by providing regulatory flexibility for large quantity generators of certain sludges. The adopted rule will advance this stated purpose by extending the current accumulation time limit up to 180 days (or 270 days, as applicable) to accumulate these sludges (i.e., F006 waste that is destined for legitimate recycling through metal recovery). This additional time is intended to increase the likelihood that a full truckload of F006 can be accumulated prior to shipment, thus enabling a reduction in transportation costs per unit over a partial truckload. Promulgation and enforcement of the adopted rule will not affect private real property which is the subject of the rules because the adopted rule language

provides regulatory flexibility to large quantity generators of F006 waste who choose metals recovery in lieu of other more stringent hazardous waste regulations (e.g., the 90-day accumulation time limit). The adopted standards are not considered to be more stringent than existing standards. In addition, this reduction of regulatory requirements may be taken only at the initiative of certain persons managing F006 waste. For these reasons, this action is not considered a burden to private real property and does not constitute a taking under Texas Government Code, Chapter 2007. The subject adopted regulations do not affect a landowner's rights in private real property.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking for consistency with Coastal Management Program (CMP) goals and policies in accordance with the rules of the Coastal Coordination Council. The commission has found that the adoption is a rulemaking which relates to an action or actions subject to the CMP, in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §33.201 *et seq.*), and the commission's rules at 30 TAC Chapter 281, Subchapter B, relating to Consistency with the Texas CMP. Therefore, as required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2) relating to actions and rules subject to the CMP, this rulemaking must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this adoption pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals 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 United States Code §§6901 *et seq.* Promulgation and enforcement of this rule will be consistent with the applicable CMP goals and policies because the rule will facilitate the environmentally sound recycling of F006 waste and reduce the quantity of these wastes going to hazardous waste landfills. Thus, the rule will serve to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also serve to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are 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 United States Code §§6901 *et seq.* The commission has determined that the specific actions detailed in this section and earlier in this preamble under the sections concerning background and summary of the factual basis for the adopted rules, regulatory impact analysis determination, and takings impact assessment will comply with the goals and policies of the CMP. In addition, the adopted rule does not violate any applicable provisions of the CMP's stated goals and policies.

#### HEARING AND COMMENTERS

The commission did not hold a public hearing on the adopted changes. The comment period for the proposed rules closed at 5:00 p.m., January 2, 2001. There were no comments received.

#### STATUTORY AUTHORITY

The amendment is adopted under 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 under THSC, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

**SUBCHAPTER C: STANDARDS APPLICABLE TO  
GENERATORS OF HAZARDOUS WASTE**

**§335.69**

**§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) - (k) 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, as adopted by reference under §335.112(a) of this title (relating to Standards), and 40 CFR Part 265, Subpart CC; and/or

(B) 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 (relating to Standards), and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200; and/or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title (relating to drip pads) 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) the waste is placed 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 (relating to Standards) 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 (relating to Standards);

(B) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title (relating to Purpose, Scope, and Applicability); and

(C) §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(b) 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 Management 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 §261.33(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) 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 (relating to Standards); 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 §261.33(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 (relating to Standards), except 40 CFR §265.176;

(3) the generator complies with the requirements of 40 CFR §265.201, as adopted by reference under §335.112(a) of this title (relating to Standards);

(4) the generator complies with the requirements of:

(A) subsections (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 (relating to Standards); and

(C) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title (relating to Purpose, Scope, and Applicability); 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 their 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 kg 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 Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, 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 (relating to Standards), 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 (relating to Standards), 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 (relating to Standards), 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 (relating to Standards);

(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 (relating to Standards);

(ii) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title (relating to Purpose, Scope, and Applicability); and

(iii) §335.113 of this title (relating to Reporting of Emergency Situations

by Emergency Coordinator).

(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 (relating to Consolidated Permits) 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.

