The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §§335.1, 335.2, 335.29, 335.31, 335.47, 335.69, 335.76, 335.112, 335.116, 335.118, 335.125, 335.152, 335.163 - 335.166, 335.173, 335.175, 335.221, 335.224, 335.261, 335.431, 335.504, 335.582 - 335.584, and 335.590 - 335.593. The commission proposes new §335.601 and §335.602.

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 and June 14, 2005 (Clusters III - X). A RCRA authorization rule package for parts of RCRA Rule Clusters XI - XV was submitted to EPA Region VI on July 25, 2007. Texas is currently waiting on authorization of these clusters. (A cluster is a grouping of federal RCRA amendments during a one year period.)

The commission proposes in this rule package to adopt parts of RCRA Rule Clusters XIV, XV, XVI, XVII and XVIII that implement revisions to the federal hazardous waste program, which were made by EPA between July 1, 2005 and June 30, 2008. Both mandatory and optional federal rule changes in these clusters are proposed to be adopted. Adoption of two 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. 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 below in the SECTION BY SECTION DISCUSSION.

The Hazardous Waste Combustion Maximum Achievable Control Technology (MACT) regulations are multi-media 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 air quality regulations at 30 TAC Chapter 113, Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants. The purpose of this proposed rulemaking is to propose adoption of other parts of the federal combustion MACT program, which are encoded at 40 CFR Parts 264 - 266, and

270. This proposed rulemaking would incorporate those aspects of the combustion MACT rules affecting waste management as part of the changes to 30 TAC Chapters 305 and 335.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 305, Consolidated Permits.

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 amending §335.1 to conform to federal regulations promulgated in the July 28, 2006, issue of the *Federal Register* (71 FR 42928). Specifically, this amendment would add the definitions of "cathode ray tube or CRT," "CRT collector," "CRT glass manufacturer," and "CRT processing" to the list of definitions. Subsequent paragraphs have been renumbered accordingly. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes amending §335.1 to conform to federal regulations promulgated in the January 2, 2008, issue of the *Federal Register* (73 FR 57). Specifically, this amendment would add the definition of "gasification" to the list of definitions. This amendment is as stringent as the current state

rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes amending §335.1(133)(A)(iv) to conform to regulations promulgated in the April 4, 2006 issue of the *Federal Register* (71 FR 16862). This amendment would reduce the paperwork burden for generators that exclude wood preserving wastewaters and spent wood preserving solutions from the definition of solid waste by no longer requiring a one-time notification stating that the plant intends to claim the exclusion. The generator will be required to maintain a copy of the notification in the on-site records for the life of the facility. This amendment is less stringent than the current state rules because it reduces the notification requirements that are currently in effect. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes amending §335.1(133)(A)(iv) to conform to federal regulations promulgated in the July 28, 2006 issue of the *Federal Register* (71 FR 42928). This amendment 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 the current state rules and will encourage recycling of CRTs. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes adding a definition for "standard permit" in §335.1(145) to conform to federal regulations promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). Specifically, this amendment would incorporate the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-

thermally treat hazardous waste on-site in tanks, containers, and containment buildings. To be eligible for a standard permit, facilities must manage hazardous waste on-site in tanks, container storage areas, or containment buildings. Standardizing this aspect of the permitting process will reduce the amount of agency technical review and processing time required by the traditional RCRA permit process. In addition, the standard permit will streamline the permitting process by allowing facilities to obtain and modify permits more easily, while still achieving the same level of environmental protection as individual permits. For a proposed facility, an applicant may submit a standard permit application in lieu of a Part B application for those units that qualify for a standard permit. If additional hazardous waste units that do not qualify for a standard permit are to be permitted at the same facility, a Part B application must be submitted. If a permittee chooses to apply for a standard permit in lieu of submitting a Part B permit renewal application for a tank, container storage area, or containment building, a standard permit application must be submitted. If the current authorization also contains other hazardous waste management units not eligible for a standard permit, a Part B permit renewal application must be submitted for those units. A contested case hearing for a standard permit may be requested by the executive director, applicant, or Office of the Public Interest Council. The term limit for a standard permit is ten years. Because facility storage units must meet the same technical standards as units permitted under a traditional permit, the proposed amendment is more flexible but equivalent to the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.2, Permit Required

The commission proposes adding new language at §335.2(o) to conform to federal regulations promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). This amendment

would incorporate application requirements for a standard permit. Specifically, this amendment would incorporate the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings. Because facility storage units must meet the same technical standards as units permitted under a traditional permit, the proposed amendment is more flexible but equivalent to the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.2(h)(8) to correct cross-referenced citations to sections in 30 TAC Chapter 330, Municipal Solid Waste, due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission proposes amending §335.2(h)(8) to replace the reference of §330.136(b)(6)(B) - (E) with §330.171(c)(3)(B) - (E). This amendment is as stringent as the current state rules.

§335.29, Adoption of Appendices by Reference

The commission proposes amending §335.29(1) to conform to federal regulations promulgated in the June 14, 2005 issue of the *Federal Register* (70 FR 34538) and amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment would adopt by reference deletion of the requirement to use "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, EPA Publication SW-846." This amendment would eliminate the requirement that facility owners and operators use SW-846 sampling methods but would not eliminate the requirement that facility owners and operators receive prior approval for specific sampling methods from the executive director through approval of a sampling and analysis plan. Facility owners and operators may propose appropriate

methods in their sampling and analysis plan. This amendment is less stringent but provides greater flexibility than the current rules and is protective of human health and the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes amending §335.29(3) and (4) to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment would adopt by reference corrections to errors made in the CFR. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.31, Incorporation of References

The commission proposes amending §335.31 to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment would incorporate by reference revisions to references found in 40 CFR §260.11. Specifically, this amendment would update a number of American Society for Testing and Materials (ASTM) and SW-846 analytical methods to reflect the most recent available analytical methods. This amendment is at least as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.31 to conform to federal regulations promulgated in the September 8, 2005 issue of the *Federal Register* (70 FR 53420). Specifically, this amendment would incorporate the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste

on-site in tanks, containers, and containment buildings. Because facility storage units must meet the same technical standards as units permitted under a traditional permit, the proposed amendment is more flexible but equivalent to the current state rules. Because portions of the rule may be affected by more than one federal rule change, only the latest *Federal Register* citation appears in the rule text. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.47, Special Requirements for Persons Eligible for a Federal Permit by Rule

The commission proposes amending §335.47(c) to update language that clarifies an existing requirement that specific documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer and/or Texas licensed professional geoscientist. This revised language would replace outdated language adopted from 40 CFR Part 264 previously that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer and/or Texas licensed professional geoscientist." This proposed amendment is at least as stringent as the current state rules. This amendment is not required to maintain authorization.

§335.69, Accumulation Time

The commission proposes amending §335.69(a) and (m) to correct typographical errors that were made to referenced citations. Amendments to §335.69(a) and (m) were adopted in a previous rulemaking, and the corrections are required by EPA to maintain authorization.

§335.76, Additional Requirements Applicable to International Shipments

The commission proposes amending §335.76(a) and (h) to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment would incorporate by reference corrections to errors in the CFR. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.112, Standards

The commission proposes amending §335.112(a)(1), (3), (6), (8) - (13), (16), (18) - (20), and (22) to conform to federal regulations promulgated through the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment would incorporate by reference corrections to errors made in the CFR. As indicated below some of these sections are impacted by other federal rule changes. The latest *Federal Register* citation appears in the proposed text. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(1), (4) - (6), (8) - (11), (13), (18), (20), and (22) to conform to federal regulations 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. This amendment is less stringent than the current state rules, but the reduction in recordkeeping poses minimal risk to human health or the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(1) to clarify that emergency response training for facility personnel required by safety regulations can fulfill the requirements of this section. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(4) to revise the default retention time for manifests and other records from 'until closure' to three years, unless otherwise specified. Records of wastes received, the location and quantity of all hazardous wastes placed in disposal cells, groundwater monitoring, and response action plans would continue to be required to be kept until closure. Closure and post-closure cost estimates, along with monitoring and analytical data would be required to be kept until closure. This amendment is less stringent than the current state rules, but the reduction in recordkeeping poses minimal risk to human health or the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(5) to no longer require the submission of groundwater quality assessment plans, but to maintain them in the facility operating file until closure of the site. This amendment is less stringent than the current state rules, but the reduction in reporting poses minimal risk to human health or the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(6) to require only annual instead of semi-annual submission of corrective action progress reports to address equipment leaks. This amendment is less

stringent than the current state rules, but the reduction in reporting poses minimal risk to human health or the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(9) to incorporate federally promulgated amendments to 40 CFR §§265.191, 265.192, 265.193, and 265.196. The proposed amendments would remove outdated language that includes requirements to install secondary containment for tanks by 1989 and replace them with requirements to install secondary containment on existing hazardous waste storage tanks which have been in service more than 15 years. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(10) to clarify that liner and leachate management requirements apply to all new surface impoundments, and to delete outdated language that specifically references 'new' units constructed after 1992. The proposed amendment would also remove the requirement to submit an excessive leakage rate response action plan; instead facilities would be allowed to keep the plan on-site until closure. This amendment is less stringent than the current state rules, but the reduction in reporting poses minimal risk to human health or the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(11) to remove the requirement to submit an excessive leakage rate response action plan; instead facilities would be allowed to keep the plan on-site until closure. This amendment is less stringent than the current state rules, but the reduction in reporting poses

minimal risk to human health or the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(13) to clarify that liner and leachate management requirements apply to all new landfills, and to delete outdated language that specifically references 'new' units constructed after 1992. The proposed amendment also removes the requirement to submit an excessive leakage rate response action plan; instead facilities would be allowed to keep the plan on-site until closure. This amendment is less stringent than the current state rules, but the reduction in reporting poses minimal risk to human health or the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(20) to remove requirements to notify the executive director if a facility chooses to follow alternative management standards. This amendment is less stringent than the current state rules, but the reduction in reporting poses minimal risk to human health or the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.112(a)(22) to remove outdated language that includes an option to notify the executive director prior to 1993 and recordkeeping requirements with 1993 action dates. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes adding language in §335.112(b)(4)(R) to the existing requirement that clarifies that specific documents submitted must be signed and sealed by a Texas licensed professional engineer. This added language would replace outdated language. The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer," as required by the Texas Engineering Practice Act. This proposed amendment is at least as stringent as the current state rules. This amendment is not required to maintain authorization.

§335.116, Applicability of Groundwater Monitoring Requirements

The commission proposes amending §335.116(d) to update language clarifying the existing requirement that specific documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer and/or Texas licensed professional geoscientist. This revised language would replace outdated language adopted from 40 CFR previously that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer and/or Texas licensed professional geoscientist." This proposed amendment is at least as stringent as the current state rules. This amendment is not required to maintain authorization.

The commission proposes to amend §335.116(d)(1) and (3) to conform to federal regulations 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. Specifically, this amendment would no longer require submission of annual groundwater monitoring plans and reports under paragraphs (1) and (3), respectively, to the

executive director for interim status hazardous waste units. Rather, the proposed amendment would require facilities to maintain these documents in the facility's operating record until closure of the facility. This proposed amendment is less stringent than the current state rules but poses minimal risk to human health and the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.118, Closure Plan; Submission and Approval of Plan

The commission proposes amending §335.118 to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment would adopt corrections to errors made in the CFR. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.125, Special Requirements for Bulk and Containerized Waste

The commission proposes amending §335.125 to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment would incorporate changes made in 40 CFR §265.314(d) which replaces Method 9095 with Method 9095B. This amendment is at least as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes amending §335.125(a) - (f) to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment would update language adopted from the CFR. Specifically, the proposed amendment would remove subsection (a)

which describes bulk and containerized landfill options available prior to 1985, renumber remaining subsections as (a) - (f), and update them to describe the post-1985 requirements as the only options currently available. This proposed amendment is at least as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.152, Standards

The commission also proposes amending §335.152(a)(1), (5), (7), (8), (10) - (12), and (14) - (20) to conform to federal regulations promulgated through the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment would adopt by reference corrections to errors made in the CFR. As indicated below some of these sections are impacted by other federal rule changes. The latest *Federal Register* citation appears in the proposed text. This amendment is at least as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.152(a)(3), (4), and (6) to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment would adopt by reference changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment would streamline the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. This proposed amendment is less stringent than the current state rules but poses minimal risk to human health and the

environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.152(a)(8), (9), and (17) - (21) to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). Specifically, this amendment would adopt by reference updates to a number of ASTM and SW-846 analytical methods to reflect the most recent available analytical methods. This amendment is at least as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.152(a)(13) to conform to federal regulations promulgated in the April 8, 2008 issue of the *Federal Register* (73 FR 18970). This amendment would revise several compliance and monitoring provisions to simplify the monitoring requirements for sources that select mercury or semi-volatile metal feed rate limits averaged over periods greater than 12 hours, clarify compliance requirements for data to demonstrate compliance with the feed rate limits of up to a 12-hour rolling average, and correct the compliance requirements for Notice of Intent To Comply for new units. This amendment is at least as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes adding §335.152(c)(11) to update language to the existing requirement that specific documents submitted in a Part B permit application must be signed and sealed by a Texas licensed professional engineer and/or Texas licensed professional geoscientist. This added language

would replace language adopted by reference that states that documents must be signed and sealed by a "registered professional engineer." The new language specifically states that documents must be signed and sealed by a "Texas licensed professional engineer" as required by the Texas Engineering Practice Act. This proposed amendment is at least as stringent as the current state rules. This amendment is not required to maintain authorization.

§335.163, General Groundwater Monitoring Requirements

The commission also proposes amending §335.163 to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment would adopt corrections to errors made in the CFR. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.164, Detection Monitoring Program

The commission proposes amending §335.164 to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment would adopt changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment would streamline the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. Specifically, this amendment would eliminate the requirement that a sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during detection monitoring. This amendment would also eliminate the requirement to immediately sample the groundwater in all monitoring wells that exhibit

statistically significant evidence of contamination and determine whether constituents in the list of Appendix IX of 40 CFR Part 264 are present. Instead, the executive director may allow sampling for a site-specific subset of constituents from the Appendix IX list. In addition, the owner or operator may resample within one month or an alternative site-specific schedule approved by the executive director and repeat the analysis for those compounds detected. This proposed amendment is more flexible than the current state rules but is protective of human health and the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.165, Compliance Monitoring Program

The commission proposes amending §335.165 to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 40254). This amendment would adopt changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment would streamline the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. Specifically, this amendment would eliminate the requirement that the owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in 40 CFR Part 264, Appendix IX at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and if so, at what concentration. Instead, the owner or operator may consult with the executive director to determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and the specific constituents from 40 CFR

Part 264, Appendix IX for which these samples must be analyzed. This proposed amendment provides more flexibility than the current state rules by allowing determination of a sampling program based on site-specific conditions, but is still protective of human health and the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.166, Corrective Action Program

The commission proposes amending §335.166 to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment would adopt changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment would streamline the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. Specifically, the proposed amendment would revise the requirement that owners or operators report in writing to the executive director on the effectiveness of their corrective action program from semiannually to annually. This amendment is less stringent than the current state rules, but the reduction in reporting poses minimal risk to human health or the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.173, Design and Operating Requirements (Landfills)

The commission proposes amending §335.173 to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 16862). This amendment would adopt by reference corrections to errors made in the CFR. This amendment is as stringent as the current state rules. This

amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.175, Special Requirements for Bulk and Containerized Waste

The commission proposes amending §335.175(a) to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 16862). This amendment would adopt by reference corrections to errors made in the CFR. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes amending §335.175(c) to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment would adopt by reference revisions to analytical test methods and procedures and would replace "Test Method 9095" with "Test Method 9095B." This amendment is at least as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.221, Applicability and Standards

The commission proposes amending §335.221(a)(1), (6), (8), (10), (11), (14), (17), and (20) to conform to federal regulations promulgated through the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment would adopt by reference corrections to errors made in the CFR. As indicated below several sections are impacted by another federal rule change. The latest *Federal Register* citation appears

in the proposed text. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.221(a), (a)(1), (17), and (23), to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). These amendments would adopt by reference updated revisions in analytical test methods, methodology, and procedures. These amendments are as stringent as the current state rules. These amendments are recommended by EPA to be adopted into state rules, but are not required to maintain authorization.

The commission also proposes amending §335.221 to conform to federal regulations promulgated in the October 12, 2005, issue of the *Federal Register* (70 FR 59402). This amendment would incorporate final National Emission Standards for Hazardous Air Pollutants (NESHAP) for hazardous waste combustors. These standards implement Section 112(d) of the Clean Air Act by requiring hazardous waste combustors to meet hazardous air pollutants emission standards reflecting the performance of the MACT. The proposed amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission proposes amending §335.221(a) to conform to federal regulations promulgated in the April 8, 2008, issue of the *Federal Register* (73 FR 18970). This amendment would adopt by reference relettering of subparagraphs. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes amending §335.221(a)(6) and (14) to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment would adopt changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment would streamline the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. Specifically, the proposed amendment would revise the requirement that owners or operators retain records at their facility until closure to being required to retain records at their facility for five years. The proposed amendment is less stringent than the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.224, Additional Interim Status Standards for Burners

The commission proposes amending §335.224(11) to conform to federal regulations promulgated in the April 4, 2006, issue of the *Federal Register* (71 FR 16862). This amendment would adopt changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. This amendment would streamline the agency's information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained. Specifically, when owners or operators conduct interim status compliance testing for burners, the proposed amendment would revise the requirement that owners and operators submit to the executive director a recertification of compliance within three years from submitting the previous certification or recertification, to submitting the recertification of compliance

within five years. This amendment is less stringent than the current state rules, but the reduction in reporting poses minimal risk to human health or the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.261, Universal Waste Rule

The commission proposes amending §335.261 to conform to federal regulations promulgated in the July 14, 2006, issue of the *Federal Register* (71 FR 40254). This amendment would adopt by reference corrections to errors made in the CFR. This amendment is as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.431, Purpose, Scope, and Applicability

The commission proposes amendments to §335.431 to conform to federal regulations promulgated through the June 14, 2005, issue of the *Federal Register* (70 FR 34538) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment would adopt by reference updated revisions in analytical test methods. This amendment is less stringent and more flexible than the current state rules but is protective of human health and the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes amending §335.431 to conform to federal regulations promulgated in the April 22, 2004, issue of the *Federal Register* (69 FR 21737), and October 25, 2004, issue of the *Federal Register* (69 FR 62217). The proposed amendment provides hazardous waste generators the option of determining if a hazardous waste must be treated while they classify the waste, and the option to send the

waste to a permitted treatment facility that must determine if treatment is required. This amendment is as stringent as the current state rules. In the proposed rule text, only the latest *Federal Register* citation appears. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.504, Hazardous Waste Determination

The commission proposes amending §335.504(1) - (3). The commission proposes to amend §335.504(1) to conform to federal regulations promulgated in the February 24, 2005 (70 FR 9138), June 14, 2005 (70 FR 34538), August 1, 2005 (70 FR 44150), June 16, 2005 (70 FR 35032), October 4, 2005 (70 FR 57769), July 28, 2006 (71 FR 42928), January 2, 2008 (73 FR 57), and June 4, 2008 (73 FR 31756), issues of the *Federal Register*. The amendment would incorporate by reference revisions to both the definitions of "solid waste" and "hazardous waste." In the proposed rule text, only the latest *Federal Register* citation appears.

Specifically, the amendment to the definition of a "Solid waste" would conditionally exclude cathode ray tubes that are recycled; expand the exclusion from the definition of a solid waste for oil-bearing hazardous secondary materials generated at a petroleum refinery including adding "gasification" to the list of recognized petroleum refinery processes; and remove the requirement to use analytical methods from SW-846, Third Edition in 40 CFR §261.3(a)(2)(v). This portion of the amendment is less stringent than current state rules but encourages recycling and is protective of human health and the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

In addition, the amendment to the definition of hazardous waste would incorporate by reference: revisions to the wastewater treatment exemption for hazardous waste mixtures (i.e., the "headworks exemptions") found in 40 CFR §261.3(a)(2)(iv) that would expand the scope of the exemption and makes corrections to a previous amendment that added K-181 to the list of hazardous wastes under 40 CFR §261.32. The portion of the amendment that expands the scope of the headwater exemptions specifically adds benzene and 2-ethoxyethanol to the list of solvents whose mixtures with wastewaters are exempted from the definition of hazardous waste. To qualify for the exemption, the concentrations of benzene and 2-ethoxyethanol in wastewater must be at levels protective of human heath and the environment. The portion of the amendment that makes corrections to the K-181 listing are nontechnical administrative corrections only and are required by EPA to maintain authorization. The portion relating to expansion of waste exemptions is less stringent than the current rules, but is protective of human health and the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

In addition, the commission proposes to amend §335.504(2) to conform to federal regulations promulgated in the June 14, 2004, issue of the *Federal Register* (70 FR 34538), as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150), and June 4, 2008, issue of the *Federal Register* (73 FR 31756). This amendment would incorporate by reference the revisions to 40 CFR §261.31 which would amend the definition of F-019 wastes to exclude from the definition of hazardous waste certain wastewater treatment sludges from the manufacturing of motor vehicles; the replacement of references to SW-836, Method 8290 with "by using an appropriate method;" and a revised definition to the term "not detected" as found in 40 CFR §261.35(b)(2)(iii)(B). The F-019 exclusion will only apply if the waste is disposed in a landfill unit subject to certain liner requirements. This amendment is less stringent than

current state rules but is protective of human health and the environment. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

The commission also proposes amending §335.504(3) to conform to federal regulations promulgated in the June 14, 2005, issue of the *Federal Register* (70 FR 34528) and as amended in the August 1, 2005, issue of the *Federal Register* (70 FR 44150). This amendment would adopt by reference updated revisions in analytical test methods. This amendment is at least as stringent as the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.582, Prohibited Wastes

The commission proposes amending §335.582 to correct cross-referenced citations to sections in Chapter 330, due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. Specifically, the commission proposes amending §335.582(1) to reference the correct citation for the definition of "Municipal solid waste" as defined in §330.3. The commission proposes amending §335.582(4) to reference the correct citation for the definition of "Putrescible waste" as defined in §330.3. The commission also proposes amending §335.582(4) to replace the reference of §330.126 with §330.151. The commission also proposes amending §335.582(4) to replace the reference of §330.300 with §330.545. The commission proposes amending §335.582(7) to reference the correct citation for the definition of "Medical waste" as defined in §330.3. The commission proposes amending §335.582(8) to reference the correct citation for the definition of "Liquid waste" as defined in §330.3. The commission proposes amending §335.582(9) to replace the reference of §330.5(e)(1) - (5) with §330.15(e)(1) - (5). The commission proposes amending §335.582(10) to replace the reference of §330.136(b)(3) and (4) with

§330.171(c)(3) and (4). This amendment is as stringent as the current state rules. This amendment is not required to maintain authorization.

§335.583, Permit Procedures

The commission proposes amending §335.583 to correct cross-referenced citations to sections in Chapter 330 because all sections of Chapter 330 have been reorganized and amended in a previous rulemaking. Specifically, the commission proposes amending §335.583(a)(1) to replace §330.50 with §330.53. The commission also proposes amending §335.583(a)(2) to replace §330.51 with §330.57. The commission also proposes amending §335.583(a)(2) to add "and Registration" after "Permit" in the paragraph. The commission additionally proposes amending §335.583(a)(2) to replace "Application" with "Applications" in the paragraph. The commission furthermore proposes amending §335.583(a)(2) to replace "Facility" with "Facilities" in the paragraph. The commission proposes amending §335.583(a)(3) to replace §330.52 with §330.59. The commission also proposes amending §335.583(a)(3) to replace "Technical Requirements" with "Contents" in the paragraph. The commission additionally proposes amending §335.583(a)(3) to replace §330.52(b)(11) with §330.63(j). The commission furthermore proposes amending §335.583(a)(3) to replace "financial assurance" with "cost estimate for closure and post-closure care." The commission proposes amending §335.583(a)(4) to replace §330.53 with §330.61. The commission also proposes amending §335.583(a)(4) to replace "Technical Requirements" with "Contents" in the paragraph. The commission proposes amending §335.583(a)(5) to replace "§330.54" with §330.63. The commission also proposes amending §335.583(a)(5) to replace "Technical Requirements" with "Contents" in the paragraph. The commission additionally proposes amending §335.583(a)(5) to replace §330.54(3) with §330.61(b)(1)(A). The commission proposes to delete existing §335.583(a)(6). Proposed §335.583(a)(5), when adopted, will address the requirements in the current

§335.583(a)(6). The commission proposes to delete §335.583(a)(7). Proposed §335.583(a)(5), when adopted, will address the requirements in the current §335.583(a)(7). The commission proposes to renumber §335.583(a)(8) as §335.583(a)(6). The commission also proposes amending current §335.583(a)(8) (proposed to be renumbered as §335.583(a)(6)) to replace §330.57 with §330.65. The commission additionally proposes amending current §335.583(a)(8) (proposed to be renumbered as §335.583(a)(6)) to replace "Technical Requirements" with "Contents" in the paragraph. The commission proposes to delete §335.583(a)(9) and replace it with §335.583(a)(7). The commission proposes amending §335.583(a)(7) to replace §330.58 with §330.219(a). The commission proposes to renumber §335.583(a)(10) as §335.583(a)(8) and also replace §330.62 with §330.67. The commission proposes to renumber §335.583(a)(11) as §335.583(a)(9) and also replace §330.64 with §330.73. The commission additionally proposes §335.583(a)(9) to add "and Registration" after "Permit" in the paragraph. These amendments are as stringent as the current state rules. These amendments are not required to maintain authorization.

§335.584, Location Restrictions

The commission proposes amending §335.584 to correct cross-referenced citations to sections in Chapter 330 due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission proposes amending §335.584(a)(1) to replace §330.301 with §330.547. The commission proposes amending §335.584(a)(2) to replace §330.302 with §330.553. The commission proposes amending §335.584(a)(3) to replace §330.303 with §330.555. The commission proposes amending §335.584(a)(4) to replace §330.304 with §330.557. The commission proposes amending §335.584(a)(5) to replace §330.305 with §330.559. These amendments are as stringent as the current state rules. These amendments are not required to maintain authorization.

§335.590, Operational and Design Standards

The commission proposes amending §335.590 to correct cross-referenced citations to sections in Chapter 330 due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission proposes amending §335.590(1) to replace §330.111 with §330.121. The commission proposes amending §335.590(2) to replace §330.112 with §330.123. The commission also proposes amending §335.590(2) to replace Notices with Notice. The commission proposes amending §335.590(3) to replace §330.113 with §330.125. The commission also proposes amending §335.590(3) to replace §330.113(b)(3) with §330.125(b)(3). The commission proposes amending §335.590(4) to replace §330.114 with §330.127. The commission proposes amending §335.590(5) to replace §330.115 with §330.129. The commission proposes amending §335.590(6) to replace §330.116 with §330.131. The commission proposes amending §335.590(7) to replace §330.117(a) - (c) with §330.133(a) - (c). The commission proposes amending §335.590(8) to replace §330.119 with §330.137. The commission proposes amending §335.590(9) to replace §330.120 with §330.139. The commission proposes amending §335.590(10) to replace §330.121 with §330.141. The commission proposes amending §335.590(11) to replace §330.122 with §330.143(a). The commission also proposes amending §335.590(11) to replace Benchmarks with Benchmark. The commission proposes amending §335.590(12) to replace §330.125 with §330.149. The commission also proposes amending §335.590(12) to replace "Air Criteria" with "Odor Management Plan." The commission proposes amending §335.590(13) to replace §330.127 with §330.153. The commission proposes amending §335.590(14) to replace §330.128 of this title with §330.155. The commission proposes amending §335.590(15) to replace §330.129 with §330.157. The commission proposes amending §335.590(16) to replace §330.130 with §330.159. The commission proposes amending §335.590(17) to replace §330.131 with §330.161. The commission also proposes

amending §335.590(17) to replace "Abandoned Oil and Water Wells" with "Oil, Gas, and Water Wells." The commission proposes amending §335.590(18) to replace §330.132 with §330.163. The commission proposes amending §335.590(19) to replace §330.133 with §330.165. The commission proposes amending §335.590(20) to replace §330.134 with §330.167. The commission proposes amending §335.590(21) to replace §330.138 with §330.175. The commission also proposes amending §335.590(21) to add "Visual" after "relating to." The commission proposes amending §335.590(22) to replace §330.139 with §330.207. The commission also proposes amending §335.590(22) to replace "Discharge" with "Management." The commission proposes amending §335.590(24)(A)(i)(I) to add "for constituents" after "the concentration values" to clarify the intent of the requirement. The commission also proposes amending §335.590(24)(A)(i)(I) to replace "Table 1 of §330.241" with "§330.419(a)." The commission additionally proposes amending §335.590(24)(A)(i)(I) to delete "relevant" before "point of compliance." The commission proposes amending §335.590(24)(A)(iv) to delete "relevant" before "point of compliance" in all sentences in the subparagraph. The commission also proposes amending §335.590(24)(A)(iv) to reference the definition of point of compliance as defined in §330.3. The commission proposes amending §335.590(24)(C) to replace §330.54 with §330.63. The commission also proposes amending §335.590(24)(C) to replace "Technical Requirements" with "Contents." The commission proposes amending §335.590(24)(D) to replace "Subchapter I" with "Subchapter J." The commission proposes amending §335.590(24)(E) to replace §330.253 in two sentences in the paragraph with §330.457, respectively. The commission also proposes amending §335.590(24)(E) to delete "and MSW Sites." These amendments are as stringent as the current state rules. These amendments are not required to maintain authorization.

§335.591, Groundwater Protection Design and Operation

The commission proposes amending §335.591 to correct cross-referenced citations to sections in Chapter 330 due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission proposes amending §335.591(1) to replace §330.201 with §330.333. The commission proposes amending §335.591(2) to replace §330.202 with §330.335. The commission also proposes amending §335.591(2) to replace "Alternate" with "Alternative." The commission furthermore proposes to add "Liner" after "Alternative." The commission proposes amending §335.591(3) to replace §330.203 with §330.337. The commission also proposes to replace "Special Conditions (Liner Design Constraints)" with "Special Liner Design Constraints." The commission proposes amending §335.591(4) to replace §330.204 with §330.555. The commission also proposes to replace "Geological Faults" with "Fault Areas." The commission proposes amending §335.591(5) to replace §330.205 with §330.339. The commission also proposes amending §335.591(5) to delete "Soil and" after "relating to." The commission proposes amending §335.591(6) to replace §330.206 with §330.341. The commission also proposes to replace "Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER)" with "Soil Liner Evaluation Report and Geomembrane Liner Evaluation Report." These amendments are as stringent as the current state rules. These amendments are not required to maintain authorization.

§335.592, Groundwater Monitoring and Corrective Action

The commission proposes amending §335.592 to correct cross-referenced citations to sections in Chapter 330 due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission proposes amending §335.592(1) to replace §330.230 with §330.401. The commission proposes amending §335.592(2) to replace §330.231 with §330.403. The commission proposes amending §335.592(3) to replace §330.233 with §330.405. The commission proposes amending §335.592(4) to

replace §330.234 with §330.407. The commission also proposes to add "Program for Type I Landfills" after "Detection Monitoring." The commission proposes amending §335.592(5) to replace §330.235 with §330.409. The commission proposes amending §335.592(6) to replace §330.236 with §330.411. The commission proposes amending §335.592(7) to replace §330.237 with §330.413. The commission proposes amending §335.592(8) to replace §330.238 with §330.415. The commission proposes amending §335.592(9) to replace §330.241 with §330.419. The commission proposes amending §335.592(10) to replace §330.242 with §330.421. These amendments are as stringent as the current state rules. These amendments are not required to maintain authorization.

§335.593, Closure and Post-Closure Care Requirements

The commission proposes amending §335.593 to correct cross-referenced citations to sections in Chapter 330 due to all sections of Chapter 330 being reorganized and amended in a previous rulemaking. The commission proposes amending §335.593 to replace §330.253 with §330.457. The commission also proposes amending §335.593 to delete "and MSW sites." These amendments are as stringent as the current state rules. These amendments are not required to maintain authorization.

§335.601, Purpose, Scope and Applicability

The commission proposes new §335.601 to conform to federal regulations promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). This amendment would incorporate requirements for a standard permit. Specifically, this new section would incorporate the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings. Because facility storage units must meet the same technical standards as units

permitted under a traditional permit, the proposed amendment is more flexible but equivalent to the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain authorization.

§335.602, Standards

The commission proposes new §335.602 to conform to federal regulations promulgated in the September 8, 2005, issue of the *Federal Register* (70 FR 53420). This new section would incorporate by reference requirements for a standard permit. Specifically, this new section would incorporate the availability of a standard permit to RCRA treatment, storage, and disposal facilities otherwise subject to RCRA permitting that generate and then store or non-thermally treat hazardous waste on-site in tanks, containers, and containment buildings. Because facility storage units must meet the same technical standards as units permitted under a traditional permit, the proposed amendment is more flexible but equivalent to the current state rules. This amendment is recommended by EPA to be adopted into state rules, but is not required to maintain 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. Local governments and businesses that are classified as large quantity generators of hazardous waste could experience cost savings under the proposed rules.

The proposed rules would update Chapter 335 to incorporate federal rule changes that are both mandatory

and optional for the RCRA hazardous waste program that were adopted by the EPA from July 2005 through June 2008. A corresponding rulemaking includes proposed amendments to Chapter 305 and fiscal impacts to Chapter 305 are detailed in a separate fiscal note.

The proposed rules would incorporate several federal rule changes that remove some wastes from the definition of hazardous waste. Changing the classification of these wastes would encourage these wastes to be recycled instead of being placed into landfills where releases of the wastes can occur. Wastes to be removed from the definition of hazardous waste include: wastewater mixtures with benzene and 2-ethoxyethanol; oil-bearing hazardous secondary materials generated at a petroleum refinery when these materials are recycled by inserting them back into the petroleum refining process; cathode ray tubes when they are reused or recycled; and wastewater treatment sludges from the zinc phosphating process when used in the motor vehicle manufacturing industry.

The proposed rules would also incorporate optional federal amendments that: remove the requirement to use specific EPA methods when conducting RCRA monitoring programs; amend reporting requirements that reduce the paperwork burden of RCRA programs; correct administrative errors; defer MACT provisions to the Air Quality Title V permit; maintain risk-based requirements in the RCRA permit; clarify several NESHAP compliance and monitoring provisions; and allow for a standard permit for units that store or non-thermally treat hazardous waste.

Staff estimates that there may be as many as ten governmental entities that might choose to use the compliance options included in the proposed rules. These governmental entities, which include large airports and military bases, could save from $20 to $100 per sample if they can use less expensive, but

equally or more protective monitoring methods. If a governmental facility that stores or non-thermally treats hazardous waste chooses to apply for a standard permit, savings on permit applications could range from $500 to $20,000 per application. Fewer permit modifications may be required, which could save governmental entities from $500 to $5,000 per modification. A reduction in the amount of times waste is transported will diminish the risk of spills and reduces the amount of air emissions that result from transporting waste. If a governmental entity that has generated wastes no longer treated as hazardous waste under the proposed rules, savings could range from $50 to $200 per barrel of waste, depending on the type of waste generated. Reduction in reporting requirements could save governmental entities from $50 to $10,000 per report.

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: increased recycling of certain wastes and decreased disposal in landfills; better sampling and analytical methods in monitoring RCRA programs; burden reduction in reporting requirements; and paperwork reduction in permitting.

The RCRA hazardous waste program regulates generators of hazardous waste and facilities that have a permit to treat, store, or dispose of those wastes. Typically, these are large businesses, and staff estimates that there may be as many as 6,000 generators of hazardous waste registered in Texas and as many as 200 permitted facilities that could be affected by the proposed rules.

The proposed rules provide opportunities for cost savings. If a large business that has generated wastes no longer treated as hazardous waste under the proposed rules, savings could range from $50 to $200 per

barrel of waste, depending on the type of waste generated. Reduction in reporting requirements could save from $50 to $10,000 per report. If less expensive but equally protective sampling and monitoring methods can be used, savings could range from $20 to $100 per sample. Facilities that store or non-thermally treat hazardous waste could apply for a standard permit, which could save from $500 to $20,000 in permitting costs and from $500 to $5,000 in permit modification requests.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses are usually exempt from RCRA regulations because they generate very small volumes of hazardous waste. If a small business is classified as a large quantity generator of hazardous waste, it could experience the same cost savings as that of a large business if it chooses to utilize the options afforded by the proposed rules.

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 do not adversely affect a small or micro-business in a material way for the first five years that 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 rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §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 the regulated community benefits from the greater flexibility, reduced recordkeeping, reporting, inspection, and sampling requirements. 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, the adopted 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.

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 rulemaking to maintain authorization of the state hazardous 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 (TWC), §5.103 and §5.105 and under Texas Health and Safety Code (THSC), §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 a preliminary assessment of whether Texas Government Code, Chapter 2007 applies. The commission's preliminary 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 proposing state hazardous waste rules that are equivalent to the federal regulations. The rulemaking will substantially advance this purpose by adopting rules that incorporate and refer to the federal regulations.

Promulgation and enforcement of the rules will not be 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 will not burden, restrict, or limit the owner's right to property and will 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 that 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 rule amendments will update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules do 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.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on June 16, 2009, at 10:00 a.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Devon Ryan, Office of Legal Services, at (512) 239-6090. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Devon Ryan, MC 205, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. File size restrictions may apply to comments being

submitted via the eComments system. All comments should reference Rule Project Number 2008-024-335-PR. The comment period closes June 22, 2009. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Cynthia Palomares, Waste Permits Division, (512) 239-6079.

SUBCHAPTER A: INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

§§335.1, 335.2, 335.29, 335.31

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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.

§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 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) [(17)] Certification--A statement of professional opinion based upon knowledge and belief.

(19) [(18)] 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) [(19)] 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) [(20)] 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) [(21)] 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) [(22)] Closure--The act of permanently taking a waste management unit or facility out of service.

(24) [(23)] 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) [(24)] Component--Either the tank or ancillary equipment of a tank system.

(26) [(25)] 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) [(26)] Consignee--The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

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

(29) [(28)] 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) [(29)] 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) [(30)] 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) [(31)] 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) [(32)] 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) [(33)] 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) [(34)] 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) [(35)] 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; a permit 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 §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 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. 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(e) of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

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

(41) [(37)] 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) [(38)] Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(43) [(39)] 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) [(40)] 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) [(41)] 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) [(42)] 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) [(43)] 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) [(44)] 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) [(45)] 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) [(46)] 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) [(47)] 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) [(48)] Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(53) [(49)] 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) [(50)] 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) [(51)] 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) [(52)] 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) [(53)] 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) [(54)] 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) [(55)] 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), 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) [(56)] 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) [(57)] Food-chain crops--Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

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

(63) [(59)] 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) [(60)] 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) [(61)] Groundwater--Water below the land surface in a zone of saturation.

(67) [(62)] 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) [(63)] Hazardous substance--Any substance designated as a hazardous substance under 40 Code of Federal Regulations Part 302.

(69) [(64)] 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) [(65)] 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) [(66)] 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) [(67)] 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) [(68)] In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

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

(75) [(70)] 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) [(71)] 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) [(72)] 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) [(73)] 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) [(74)] 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) [(75)] 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) [(76)] 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) [(77)] Injection well--A well into which fluids are injected. (See also "underground injection.")

(83) [(78)] 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) [(79)] 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) [(80)] International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

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

(87) [(82)] 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) [(83)] 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) [(84)] 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) [(85)] Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(91) [(86)] 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) [(87)] 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) [(88)] 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) [(89)] 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) [(90)] Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22, originated and signed by the generator or offeror, 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) [(91)] Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed on the manifest by a registered source.

(97) [(92)] 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) [(93)] 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) [(94)] Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(100) [(95)] 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) [(96)] 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) [(97)] 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) [(98)] Off-site--Property which cannot be characterized as on-site.

(104) [(99)] 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) [(100)] 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) [(101)] 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) [(102)] Operator--The person responsible for the overall operation of a facility.

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

(109) [(104)] 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) [(105)] PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(111) [(106)] 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) [(107)] 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) [(108)] Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(114) [(109)] 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) [(110)] 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) [(111)] 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) [(112)] 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) [(113)] Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(119) [(114)] 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) [(115)] 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) [(116)] 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) [(117)] 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) [(118)] 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) [(119)] 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) [(120)] 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) [(121)] Regional administrator--The regional administrator for the United States Environmental Protection Agency region in which the facility is located, or his designee.

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

(128) [(123)] 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) [(124)] 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) [(125)] 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) [(126)] 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) [(127)] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

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

(134) [(129)] Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.

(135) [(130)] Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(136) [(131)] 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) [(132)] Small quantity generator--A generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

(138) [(133)] 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) [(21)], as amended through July 28, 2006 (71 FR 42928) [July 24, 2002 (67 FR 48393)], 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 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(133)(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(141)(D)(iv)

[Figure: 30 TAC §335.1(133)(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 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) [(134)] 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) [(135)] 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) [(136)] 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--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) [(137)] 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) [(138)] 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) [(139)] 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) [(140)] 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) [(141)] Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(148) [(142)] 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) [(143)] 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) [(144)] Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(151) [(145)] 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) [(146)] 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) [(147)] Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(154) [(148)] 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) [(149)] Transporter--Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(156) [(150)] 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) [(151)] 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) [(152)] Treatment zone--A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(159) [(153)] 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) [(154)] 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) [(155)] 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) [(156)] 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) [(157)] Universal waste handler--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(164) [(158)] Universal waste transporter--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(165) [(159)] Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(166) [(160)] 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) [(161)] 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) [(162)] 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) [(163)] 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) [(164)] 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) [(165)] 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, [Processing,] 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 February 18, 1994, as published in the *Federal Register* (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 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) [§330.136(b)(6)(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, [Processing,] 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 paragraph (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.

§335.29. Adoption of Appendices by Reference.

The following appendices contained in 40 Code of Federal Regulations Part 261 are adopted by reference as amended and adopted through April 1, 1987, and as further amended as indicated in each paragraph:

(1) Appendix I--Representative Sampling Methods (as amended through August, 1 2005 (70 *Federal Register* (FR) 44150);

(2) Appendix VII--Basis for Listing Hazardous Waste (as amended through February 24, 2005 (70 FR 9138));

(3) Appendix VIII--Hazardous Constituents (as amended through July 14, 2006 (71 FR 40254) [February 24, 2005 (70 FR 9138)]); and

(4) Appendix IX--Wastes Excluded Under §260.20 and §260.22 (as amended through July 14, 2006 (71 FR 40254) [October 19, 1999 (64 FR 56256)]).

§335.31. Incorporation of References.

When used in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), the references contained in 40 Code of Federal Regulations (CFR) §260.11 are incorporated by reference as amended and adopted in the CFR through September 8, 2005 (70 FR 53420) [June 28, 2001 (66 FR 34374)].

SUBCHAPTER B: HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

§335.47

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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.

§335.47. Special Requirements for Persons Eligible for a Federal Permit by Rule.

(a) The following persons are eligible for a permit by rule under 40 Code of Federal Regulations (CFR) §270.60:

(1) the owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal;

(2) the owner or operator of a publicly owned treatment works (POTW) which accepts hazardous waste for treatment; and

(3) the owner or operator of an injection well used to dispose of hazardous waste.

(b) To be eligible for a permit by rule, such person shall comply with the requirements of 40 CFR §270.60 and the following rules:

(1) 40 CFR §264.11 (EPA identification number);

(2) 40 CFR §264.73(a) and (b)(1) (operating record);

(3) 40 CFR §264.75 (biennial report);

(4) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); and

(5) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(c) In addition to the requirements stated in subsection (b) of this section, the owner or operator of an injection well used to dispose of hazardous waste shall:

(1) comply with the applicable personnel training requirements of 40 CFR §264.16;

(2) when abandonment is completed, submit to the executive director certification by the owner or operator and certification by a Texas licensed professional engineer [an independent registered professional engineer] that the facility has been closed in accordance with the specifications in §331.46 of this title (relating to Closure Standards [Plugging and Abandonment Standards]); and

(3) for underground injection control permits issued after November 8, 1984, comply with §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). Where the underground injection well is the only unit at a facility which requires a permit, comply with 40 CFR §270.14(d) (concerning information requirements for solid waste management units). Persons who dispose of hazardous waste by means of underground injection must obtain a permit under the Texas Water Code, Chapter 27.

(d) In addition to the requirements stated in subsection (b) of this section, the owner or operator of a POTW which accepts hazardous waste for treatment shall:

(1) meet all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance; and

(2) for National Pollutant Discharge Elimination System permits issued after November 8, 1984, comply with §335.167 of this title.

SUBCHAPTER C: STANDARDS APPLICABLE TO GENERATORS

OF HAZAROUS WASTE

§335.69, §335.76

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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.

§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) [(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, 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) [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 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) 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 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, 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) 40 CFR §268.7(a)(5), as adopted by reference under §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) §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) [(d), (e), and (f)] of this section depending on the amount of hazardous waste on-site in that calendar month.

§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 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 [(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)]. 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 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 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 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 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 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 July 14, 2006 (71 FR 40254) [April 12, 1996 (61 FR 16290)].

SUBCHAPTER E: INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE OR DISPOSAL FACILITIES

§§335.112, 335.116, 335.118, 335.125

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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.

§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 July 14, 2006 (71 FR 40254) [December 8, 1997 (62 FR 64636)]);

(2) Subpart C - Preparedness and Prevention;

(3) Subpart D - Contingency Plan and Emergency Procedures[,] (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §265.56(d);

(4) Subpart E - Manifest System, Recordkeeping and Reporting (as amended through April 4, 2006 (71 FR 16862)) [June 16, 2005 (70 CFR 35037))].

(5) Subpart F - Groundwater Monitoring (as amended through April 4, 2006 (71 FR 16862)) [October 22, 1998 (63 FR 56709))], except 40 CFR §265.90 and §265.94;

(6) Subpart G - Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)) [October 22, 1998 (63 FR 56709))]; 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)) [November 25, 1996 (61 FR 59932))];

(9) Subpart J - Tank Systems (as amended through July 14, 2006 (71 FR 40254)), [November 25, 1996 (61 FR 59932))];

(10) Subpart K - Surface Impoundments (as amended through July 14, 2006 (71 FR 40254)) [November 25, 1996 (61 FR 59932))];

(11) Subpart L - Waste Piles (as amended through July 14, 2006 (71 FR 40254)) [January 29, 1992 (57 FR 3493))], 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 July 14, 2006 (71 FR 40254)) [July 10, 1992 (57 FR 30658))], except 40 CFR §§265.301(f) - (i), 265.314, and 265.315;

(14) Subpart O - Incinerators (as amended through 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)) [December 24, 1992 (57 FR 61492))];

(19) Subpart AA - Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254)) [December 8, 1997 (62 FR 64636))];

(20) Subpart BB - Air Emission Standards for Equipment Leaks (as amended through April 4, 2006 (71 FR 16862)) [April 26, 2005 (69 FR 22601))];

(21) Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254)) [January 21, 1999 (64 FR 33820))];

(22) Subpart DD - Containment Buildings (as amended through July 14, 2006 (71 FR 40254)) [August 18, 1992 (57 FR 37194))];

(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 Amendment); [and]

(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)**;** [.]

(M) Qualified professional engineer is changed to Texas licensed professional engineer; and

(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(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.

§335.116. Applicability of Groundwater Monitoring Requirements.

(a) On November 19, 1981, the owner or operator of a surface impoundment, landfill, or land treatment facility which is used to manage hazardous waste must implement a groundwater monitoring program capable of determining the facility's impact on the quality of groundwater in the uppermost aquifer underlying the facility, except as provided in subsection (c) of this section.

(b) Except as provided in subsections (c), (d), and (g) of this section, the owner or operator must install, operate, and maintain a groundwater monitoring system which meets the requirements of 40 Code of Federal Regulations (CFR) §265.91, and must comply with 40 CFR §265.92 and §265.93, and §335.117 of this title (relating to Recordkeeping and Reporting). This groundwater monitoring program must be carried out during the active life of the facility, and for disposal facilities during the post-closure care period as well.

(c) All or part of the groundwater monitoring requirements of this subchapter may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste or hazardous waste constituents from the facility via the uppermost aquifer to water supply wells (domestic, industrial, or agricultural) or to surface water. This demonstration must be in writing and must be kept at the facility. This demonstration shall be certified by a licensed professional geoscientist or geotechnical engineer and must establish the following:

(1) the potential for migration of hazardous waste constituents from the facility to the uppermost aquifer, by an evaluation of:

(A) a water balance of precipitation, evapotranspiration, runoff, and infiltration; and

(B) unsaturated zone characteristics (i.e., geologic materials, physical properties, and depth to groundwater); and

(2) the potential for hazardous waste or hazardous waste constituents which enter the uppermost aquifer to migrate to a water supply well or surface water, by an evaluation of:

(A) saturated zone characteristics (i.e., geologic materials, physical properties, and rate of groundwater flow); and

(B) the proximity of the facility to water supply wells or surface water.

(d) If an owner or operator assumes (or knows) that groundwater monitoring of indicator parameters in accordance with 40 CFR §265.91 and §265.92 would show statistically significant increases (or decreases in the case of pH) when evaluated under 40 CFR §265.93(b), he may install, operate, and maintain an alternate groundwater monitoring system (other than the one described in 40 CFR §265.91 and §265.92). If the owner or operator does decide to use an alternate groundwater monitoring system he must:

(1) prior to November 19, 1981, develop [submit to the executive director] a specific plan certified by a Texas licensed professional geoscientist [qualified geologist] or geotechnical engineer which satisfies the requirements of 40 CFR §265.93(d)(3), for an alternate groundwater monitoring system. This plan is to be placed in the facility's operating record and maintained until closure of the facility;

(2) prior to November 19, 1981, initiate the determinations specified in 40 CFR §265.93(d)(4);

(3) prepare [and submit] a written report in accordance with 40 CFR §265.93(d)(5) and place it in the facility's operating record and maintain until closure of the facility.;

(4) continue to make the determinations specified in 40 CFR §265.93(d)(4) on a quarterly basis until final closure of the facility; and

(5) comply with the recordkeeping and reporting requirements in §335.117 of this title.

(e) The groundwater monitoring requirements of this subchapter may be waived with respect to any surface impoundment that:

(1) is used to neutralize wastes which are hazardous solely because they exhibit the corrosivity characteristic under 40 CFR §261.22 or are listed as hazardous wastes in 40 CFR Part 261, Subpart D, only for this reason; and

(2) contains no other hazardous wastes, if the owner or operator can demonstrate that there is no potential for migration of hazardous wastes from the impoundment. The demonstrations must establish, based upon consideration of the characteristics of the wastes and the impoundment, that the corrosive wastes will be neutralized to the extent that they no longer meet the corrosivity characteristic before they can migrate out of the impoundment. The demonstration must be in writing and must be certified by a qualified professional.

(f) For owners and operators who have not established background concentrations or values in accordance with 40 CFR §265.92(c) by November 19, 1982, the executive director may require the implementation of a groundwater assessment plan under 40 CFR §265.93, whenever he determines that existing data indicates that there is a substantial likelihood that hazardous waste or hazardous constituents from the facility have entered the uppermost aquifer.

(g) The commission may replace all or part of the requirements of this subchapter applying to a regulated unit with alternative requirements developed for groundwater monitoring 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 requirement of this subchapter because the alternative requirements will be protective of human health and the environment. The alternative standards for the regulated unit must meet the requirements of §335.8 and §335.167 of this title (related to Closure and Remediation and Corrective Action for Solid Waste Management Units).

§335.118. Closure Plan; Submission and Approval of Plan.

(a) Except as provided in this section, the owner or operator must submit his closure plan to the executive director in accordance with the procedures outlined in 40 Code of Federal Regulations (CFR) §265.112. The owner or operator must submit his closure plan to the executive director no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act [RCRA] or Texas Health and Safety Code, Chapter 361, to cease receiving wastes or close.

(b) Except as provided in subsection (c) of this section, the executive director will provide the owner or operator and the public, through newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The executive director will give public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of receipt. If the executive director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan within 30 days after receiving such written statement. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved closure plan. The executive director's decision must assure that the approved closure plan is consistent with 40 CFR §§265.111 - 265.115, and the applicable closure requirements contained in this chapter for specific waste management methods, and contained in 40 CFR §265.1102 [§264.1102]. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(c) Closure plans submitted in an application for a post-closure order in accordance with §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) must comply with the public notice and comment requirements specified in Chapter 39, Subchapter N of this title (relating to [regarding] Public Notice of Post Closure Orders).

§335.125. Special Requirements for Bulk and Containerized Waste.

[(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if prior to disposal, the liquid waste or waste containing free liquids is processed or stabilized, chemically or physically (e.g., by mixing with a sorbent solid), so that free liquids are no longer present.]

(a) [(b)] Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(b) [(c)] A container holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

(1) the container is designed to hold liquids or free liquids for use other than storage, such as a capacitor or battery;

(2) the container is very small, such as an ampule; or

(3) the container is disposed of in accordance with 40 Code of Federal Regulations (CFR) §265.316.

(c) [d] To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095B [9095] (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §335.31 of this title (relating to Incorporation of References).

(d) [e] The date for compliance with subsection (a) of this section is November 19, 1981. The date for compliance with subsection (b) [(c)] of this section is March 22, 1982.

(e) [f] The [Effective November 8, 1985, the] placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the executive director, or the executive director determines that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)).

SUBCHAPTER F: PERMITTING STANDARDS FOR OWNERS AND OPERATORS HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

§§335.152, 335.163 - 335.166, 335.173, 335.175

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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.

§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 July 14, 2006 (71 FR 40254) [December 8, 1997 (62 FR 64636)]); 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 April 4, 2006 (71 FR 16862)), except 40 CFR §264.56(d);

(4) Subpart E--Manifest System, Recordkeeping and Reporting (as amended through April 4, 2006 (71 FR 16862) [June 16, 2005 (70 FR 35037)]); 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) [October 22, 1998 (63 FR 56709)]); 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) [June 10, 1994 (59 FR 29958)]); 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) [November 25, 1996 (61 FR 59932)]);

(8) Subpart J--Tank Systems (as amended through July 14, 2006 (71 FR 40254) [November 25, 1996 (61 FR 59932)]);

(9) Subpart K--Surface Impoundments (as amended through August 1, 2005 (70 FR 44150)) [November 25, 1996 (61 FR 59932))], 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)) [January 29, 1992 (57 FR 3462))], 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 July 14, 2006 (71 FR 40254)) [November 18, 1992 (57 FR 54452))], 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)) [July 3, 2001 (66 FR 35087))];

(14) Subpart S--Special Provisions for Cleanup (as amended through July 14, 2006 (71 FR 40254)) [January 22, 2002 (67 FR 2962))];

(15) Subpart W--Drip Pads (as amended through July 14, 2006 (71 FR 40254)) [December 24, 1992 (57 FR 61492))];

(16) Subpart X--Miscellaneous Units (as amended through July 14, 2006 (71 FR 40254)) [September 30, 1999 (64 FR 52828))];

(17) Subpart AA--Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254)) [January 21, 1999 (64 FR 3382))];

(18) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through July 14, 2006 (71 FR 40254)) [December 8, 1997 (62 FR 64636))];

(19) Subpart CC--Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254)) [January 21, 1999 (64 FR 3382))];

(20) Subpart DD--Containment Buildings (as amended through July 14, 2006 (71 FR 40254)) [August 18, 1992 (57 FR 37194))];

(21) Subpart EE--Hazardous Waste Munitions and Explosives Storage (as amended through August 1, 2005 (70 FR 44150)) [February 12, 1997 (62 FR 6622))]; 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 [Location Standards for Hazardous Waste Storage, Processing, or Disposal]). 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(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.

§335.163. General Groundwater Monitoring Requirements.

If a facility contains more than one waste management area, separate groundwater monitoring systems must be installed. The owner or operator must comply with the following requirements for any groundwater monitoring program developed to satisfy §§335.164 - 335.166 of this title (relating to Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program).

(1) The groundwater monitoring system must consist of a sufficient number of wells, installed at appropriate locations and depths to yield groundwater samples from the uppermost aquifer that:

(A) represent the quality of background groundwater [water] that has not been affected by leakage from a regulated unit:

(i) a determination of background groundwater quality may include sampling of wells that are not hydraulically upgradient of the waste management area where hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; and

(ii) sampling at other wells will provide an indication of background groundwater quality that is representative or more representative than that provided by the upgradient wells;

(B) represent the quality of groundwater passing the point of compliance; and

(C) allow for detection of contamination when hazardous waste or hazardous constituents have migrated from the waste management area to the uppermost aquifer.

(2) If a waste management area contains more than one regulated unit, separate groundwater monitoring systems are not required for each regulated unit, provided that provisions for sampling the groundwater in the uppermost aquifer will enable detection and measurement at the compliance point of hazardous constituents from the regulated units that have entered the groundwater in the uppermost aquifer.

(3) All monitoring wells must be cased in a manner that maintains the integrity of the monitoring-well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater.

(4) The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide a reliable indication of groundwater quality below the waste management area. At a minimum, the program must include procedures and techniques for:

(A) sample collection;

(B) sample preservation and shipment;

(C) analytical procedures; and

(D) chain of custody control.

(5) The groundwater monitoring program must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents in groundwater samples.

(6) The groundwater monitoring program must include a determination of the groundwater surface elevation each time groundwater is sampled.

(7) In detection monitoring or where appropriate in compliance monitoring, data on each hazardous constituent specified in the permit will be collected from background wells and wells at the compliance point(s). The number and kinds of samples collected to establish background shall be appropriate for the form of statistical test employed and shall follow generally accepted statistical principles. The sample size shall be as large as necessary to ensure with reasonable confidence that a contaminant released to groundwater from a facility will be detected. The owner or operator will determine an appropriate sampling procedure and interval for each hazardous constituent listed in the facility permit. This sampling procedure shall be:

(A) a sequence of at least four samples, taken at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained, by reference to the uppermost aquifer's effective porosity, hydraulic conductivity, and hydraulic gradient, and the fate and transport characteristics of the potential contaminants; or

(B) an alternate sampling procedure proposed by the owner or operator of the facility and approved by the commission.

(8) The owner or operator will specify one of the following statistical methods to be used in evaluating groundwater monitoring data for each hazardous constituent which, upon approval by the commission, will be specified in the facility's permit on a unit by unit basis. The statistical test chosen shall be conducted separately for each hazardous constituent in each well. Where practical quantification limits (PQLs) are used in any of the following statistical procedures to comply with paragraph (9)(E) of this section, the PQL must be proposed by the owner or operator and approved by the executive director. Use of any of the following statistical methods must be protective of human health and the environment and must comply with the performance standards outlined in paragraph (9) of this section:

(A) a parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent;

(B) an [analysis of variance (]ANOVA[)] based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent;

(C) a tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit;

(D) a control chart approach that gives control limits for each constituent;

(E) another statistical test method submitted by the owner or operator and approved by the executive director.

(9) Any statistical method chosen under paragraph (8) of this section for specification in the unit permit shall comply with the following performance standards, as appropriate.

(A) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(B) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons

must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(C) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be proposed by the owner or operator and approved by the commission if it finds it to be protective of human health and the environment.

(D) If a tolerance interval or a prediction interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be proposed by the owner or operator and approved by the commission if it finds these parameters to be protective of human health and the environment. These parameters will be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(E) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any PQL approved by the executive director under paragraph (8) of this section that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(F) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(10) Groundwater monitoring data collected in accordance with paragraph (7) of this section including actual levels of constituents must be maintained in the facility operating record. The commission will specify in the permit when the data must be submitted for review.

§335.164. Detection Monitoring Program.

An owner or operator required to establish a detection monitoring program must, at a minimum, discharge the following responsibilities:

(1) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The commission will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(A) the types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(B) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(C) the detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(D) the concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §335.161 of this title (relating to Point of Compliance). The groundwater monitoring system must comply with §335.163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) The owner or operator must conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in its permit pursuant to paragraph (1) of this section in accordance with §335.163(7) of this title. The owner or operator must maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under §335.163(8) of this title.

(A) The owner or operator must comply with §335.163(7) of this title in developing the data base used to determine background values.

(B) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under §335.163(8) of this title.

(C) In taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with §335.163(1)(A), (2), and (3) of this title.

(4) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (1) of this section in accordance with §335.163(7) of this title. [A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during detection monitoring.]

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(6) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter or hazardous constituent specified in the permit pursuant to paragraph (1) of this section at a frequency specified under paragraph (4) of this section.

(A) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title. These method(s) must compare data collected at the compliance point(s) to the background groundwater quality data.

(B) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time after completion of sampling. The commission will specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(7) If the owner or operator determines pursuant to paragraph (6) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(B) immediately sample the groundwater in all monitoring wells that exhibit statistically significant evidence of contamination and determine whether constituents in the list of Appendix IX of 40 Code of Federal Regulations Part 264 are present, and if so, in what concentration. However, the executive director, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list and other representative/related waste constituents;

(C) For any Appendix IX compounds found in the analysis pursuant to subparagraph (B) of this paragraph, the owner or operator may resample within one month or an

alternative site-specific schedule approved by the executive director and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found in [pursuant to] subparagraph (B) of this paragraph, the hazardous constituents found during this initial Appendix IX analysis will form the basis for compliance monitoring.

(D) within 90 days, submit to the executive director an application for a permit amendment or modification to establish a compliance monitoring program meeting the requirements of §335.165 of this title (relating to Compliance Monitoring Program). The application must include the following information:

(i) an identification of the concentration of any Appendix IX constituent detected in the groundwater at each monitoring well that exhibits statistically significant evidence of contamination at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of §335.165 of this title;

(iii) any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of §335.165 of this title; and

(iv) for each hazardous constituent detected at the compliance point, a proposed concentration limit under §335.160(a)(1) or (2) of this title (relating to Concentration Limits), or a notice of intent to seek an alternate concentration limit under §335.160(b) of this title;

(E) within 180 days, submit to the executive director:

(i) all data necessary to justify an alternate concentration limit sought under §335.160(b) of this title [(relating to Concentration Limits)];

(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirements of §335.166 of this title (relating to Corrective Action Program), unless:

(I) all hazardous constituents identified under subparagraph(b) of this paragraph are listed in Table 1 of §335.160 of this title [(relating to Concentration Limits)] and their concentrations do not exceed the respective values given in that table; or

(II) the owner or operator has sought an alternate concentration limit under §335.160(b) of this title [(relating to Concentration Limits)] for every hazardous constituent identified under subparagraph (B) of this paragraph.

(F) if the owner or operator determines, pursuant to paragraph (6) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents

specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit amendment or modification application under subparagraph (D) of this paragraph; however, the owner or operator is not relieved of the requirement to submit a permit amendment or modification application within the time specified in subparagraph (D) of this paragraph unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(i) notify the executive director in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) within 90 days, submit a report to the executive director which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) within 90 days, submit to the executive director an application for a permit amendment or modification to make any appropriate changes to the detection monitoring program at the facility; and

(iv) continue to monitor in accordance with the detection monitoring program established under this section.

(8) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit amendment or modification to make any appropriate changes to the program.

§335.165. Compliance Monitoring Program.

An owner or operator required to establish a compliance monitoring program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard). The commission will specify the groundwater protection standard in the compliance plan, including:

(A) a list of the hazardous constituents identified under §335.159 of this title (relating to Hazardous Constituents);

(B) concentration limits under §335.160 of this title (relating to Concentration Limits) for each of those hazardous constituents;

(C) the compliance point under §335.161 of this title (relating to Point of Compliance); and

(D) the compliance period under §335.162 of this title (relating to Compliance Period).

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §335.161 of this title. The groundwater monitoring system must comply with §335.163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) The commission will specify the sampling procedures and statistical methods appropriate for the constituents at the facility, consistent with §335.163(7) and (8) of this title.

(A) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with §335.163(7) of this title.

(B) The owner or operator must record groundwater analytical data as measured by and in a form necessary for the determination of statistical significance under §335.163(8) of this title for the compliance period of the facility.

(4) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the

permit, pursuant to paragraph (1) of this section, at a frequency specified under paragraph (6) under this section.

(A) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title. The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with §335.163 of this title.

(B) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The commission will specify that time period in the facility permit after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(6) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with §335.163(7) of this title. [A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during the compliance period of the facility.]

(7) Annually, the owner or operator must determine whether additional hazardous constituents from Appendix IX of 40 Code of Federal Regulations Part 264, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in paragraph (6) of this section. To accomplish this, the owner or operator must consult with the executive director to determine on a case-by-case basis: [The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix IX of 40 Code of Federal Regulations Part 264 reasonably expected to be in or derived from waste managed at the site at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in §335.164(6) of this title (relating to Detection Monitoring Program). If the owner or operator finds Appendix IX constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the executive director within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he must report the concentrations of these additional constituents to the executive director within seven days after completion of the initial analysis and add them to the monitoring list.]

(A) Which sample collection event during the year will involve enhanced sampling;

(B) The number of monitoring wells at the compliance point to undergo enhanced sampling;

(C) The number of samples to be collected from each of these monitoring wells; and

(D) The specific constituents from Appendix IX of 40 Code of Federal Regulations Part 264 for which these samples must be analyzed.

(8) If the enhanced sampling event indicates that Appendix IX of 40 Code of Federal Regulations Part 264 constituents are present in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the executive director, and repeat the analysis.

(9) If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the executive director within seven days after the completion of the second analysis and add them to the monitoring list.

(10) If the owner or operator chooses not to resample, then the concentrations of these additional constituents must be reported to the executive director within seven days after completion of the initial analysis, and must be added to the monitoring list.

(11) [8] If the owner or operator determines, pursuant to paragraph (4) of this section, that any concentration limits under §335.160 of this title are being exceeded at any monitoring well at the point of compliance, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded;

(B) submit to the executive director an investigation report to establish a corrective action program meeting the requirements of §335.166 of this title (relating to Corrective Action Program) within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the executive director under §335.164(7)(E) of this title. The report must at a minimum include the following information:

(i) a detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under paragraph (1) of this section; and

(ii) a plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(12) [9] If the owner or operator determines, pursuant to paragraph (4) of this section, that the groundwater concentration limits are being exceeded at any monitoring well at the point of

compliance, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by error in sampling, analysis, or evaluation or natural variation in groundwater. In making a demonstration under this subsection, the owner or operator must:

(A) notify the executive director in writing within seven days that he intends to make a demonstration under this section;

(B) within 90 days submit a report to the executive director which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(C) within 90 days submit to the executive director an application for a compliance plan amendment or compliance modification to make any appropriate change to the compliance monitoring program at the facility; and

(D) continue to monitor in accord with the compliance monitoring program established under this section.

(13) [10] If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

(14) [11] The owner or operator shall prepare an annual summary to include the groundwater quality data and groundwater flow rate and direction required under paragraphs (3) and (5) of this section. Such annual summary shall be submitted to the executive director by January 21 of each year on forms provided or approved by the executive director. An owner or operator must keep a copy of the summary for a period of at least three years from the due date of the summary. The period of record retention required by this section is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

§335.166. Corrective Action Program.

An owner or operator required to establish a corrective action program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must take corrective action to ensure that regulated units are in compliance with the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard). The commission will specify the groundwater protection standard in the compliance plan, including:

(A) a list of the hazardous constituents identified under §335.159 of this title (relating to Hazardous Constituents);

(B) concentration limits under §335.160 of this title (relating to Concentration Limits) for each of those hazardous constituents;

(C) the compliance point under §335.161 of this title (relating to Point of Compliance); and

(D) the compliance period under §335.162 of this title (relating to Compliance Period).

(2) The owner or operator must implement a corrective action program that prevents hazardous constituents from exceeding their respective concentration limits at the compliance point by removing the hazardous waste constituents or treating them in place. The plan will specify the specific measures that will be taken.

(3) The owner or operator must begin corrective action within a reasonable time period after the groundwater protection standard is exceeded. The commission will specify that time period in the plan. If a compliance plan includes a corrective action program in addition to a compliance monitoring program, the plan will specify when the corrective action will begin and such a requirement will operate in lieu of §335.165(9)(B) of this title (relating to Compliance Monitoring Program).

(4) In conjunction with a corrective action program, the owner or operator must establish and implement a groundwater monitoring program to demonstrate the effectiveness of the corrective action program. Such a monitoring program may be based on the requirements for a compliance monitoring program under §335.165 of this title [(relating to Compliance Monitoring Program)] and must

be as effective as that program in determining compliance with the groundwater protection standard under paragraph (5) of this section, where appropriate.

(5) In addition to the other requirements of this section, the owner or operator must conduct a corrective action program to remove or treat in place any hazardous constituents under §335.159 of this title [(relating to Hazardous Constituents)] that exceed concentration limits under §335.160 of this title [(relating to Concentration Limits)] in groundwater between the compliance point under §335.161 of this title [(relating to Point of Compliance)] and the downgradient facility property boundary and beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the executive director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. The plan will specify the measures to be taken.

(A) Corrective action measures under this section must be initiated and completed within a reasonable period of time considering the extent of contamination.

(B) Corrective action measures under this section may be terminated once the concentration of hazardous constituents under §335.159 of this title [(relating to Hazardous Constituents)] is reduced to levels below their respective concentration under §335.160 of this title [(relating to Concentration Limits)].

(6) The owner or operator must continue corrective action measures during the compliance period to the extent necessary to ensure that the groundwater protection standard is not exceeded. If the owner or operator is conducting corrective action at the end of the compliance period, he must continue that corrective action for as long as necessary to achieve compliance with the groundwater protection standard. The owner or operator may terminate corrective action measures taken beyond the period equal to the active life of the waste management area (including the closure period) if he can demonstrate, based on data from the groundwater monitoring program under paragraph (4) of this section, that the groundwater protection standard of §335.158 of this title [(relating to Groundwater Protection Standard)] has not been exceeded for a period of three consecutive years.

(7) The owner or operator must report in writing to the executive director on the effectiveness of the corrective action program. The owner or operator must submit these reports annually [semiannually].

(8) If the owner or operator determines that the corrective action program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

§335.173. Design and Operating Requirements (Landfills).

(a) Any landfill that is not covered by subsection (c) of this section or 40 Code of Federal Regulations (CFR) §265.301(a) must have a liner system for all portions of the landfill (except for existing portions of such landfill). The liner system must have:

(1) a liner that is designed, constructed, and installed to prevent any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the landfill. The liner must be constructed of materials that prevent wastes from passing into the liner 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 liner that:

(A) prevents any migration of wastes out of the landfill to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the post-closure care period; and

(B) minimizes the rate of migration of wastes out of the landfill 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; and

(3) a leachate collection and removal system immediately above the top liner that is designed, constructed, maintained, and operated to collect and remove leachate from the landfill. 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 landfill and the leachate expected to be generated; and

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(B) designed and operated to function without clogging through the scheduled closure of the landfill.

(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, that alternative 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 proposed 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 landfill 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 landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July

29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992, must comply with 40 CFR §264.301(c) as amended through January 29, 1992, at 57 FedReg 3489.

(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) 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 [Code of Federal Regulations] §261.24, and is in compliance with either paragraph (1) or (2) of this subsection.

(1) The monofill:

(A) has at least one liner for which there is no evidence that such liner is leaking;

(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.

(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 landfill 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 landfill 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 landfill contains any particulate matter which may be subject to wind dispersal, the owner or operator must cover or otherwise manage the landfill 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.

§335.175. Special Requirements for Bulk and Containerized Waste.

[(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if before disposal, the liquid waste or waste containing free liquids is treated or stabilized, chemically or physically (e.g., by mixing with a sorbent solid), so that free liquids are no longer present.]

(a) [(b)] The [Effective May 8, 1985, the] placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(b) [c] To demonstrate the absence or presence of free liquids in either a containerized or bulk waste, the following test must be used: Method 9095B [Method 9095] (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 Code of Federal Regulations (CFR) §260.11 and in §335.31 [§335.30] of this title (relating to Incorporation of References).

(c) [d] The [Effective November 8, 1985, the] placement of any liquid which is not a hazardous waste in a landfill is prohibited, unless the owner or operator of such landfill demonstrates to the commission, or the commission determines[,] that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains or may reasonably be anticipated to contain hazardous waste; and

(2) placement in such owner or operator's landfill will not present a risk of contamination of any "underground source of drinking water" (as that term is defined in §331.2 of this title (relating to Definitions)).

(d) [e] Containers holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

(1) the container is very small, such as an ampule; or

(2) the container is designed to hold free liquids for use other than storage, such as a battery or capacitor; or

(3) the container is a lab pack as defined in 40 CFR §264.316 and is disposed of in accordance with 40 CFR §264.316.

SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

DIVISION 2: HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

§335.221, §335.224

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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.

§335.221. Applicability and Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the CFR through April 8, 2008 (73 FR 18970) [February 14, 2002 (67 FR 6968)], except as noted in this section:

(1) §266.100--Applicability (as amended through July 14, 2006 (71 FR 40254)), except §266.100(c); and reference to "the applicable requirements of subparts A through H, BB, and CC of parts 264 and 265 of this chapter" is changed to "the applicable requirements of §§335.111 of this title (relating to Purpose, Scope, and Applicability), 335.112(a)(1) - (7), (20), and (21) of this title (relating to Standards), 335.151 of this title (relating to Purpose, Scope, and Applicability), and 335.152(a)(1) - (6), (18), and (19) of this title (relating to Standards)";

(2) §266.102(a)--Permit Standards for Burners - Applicability, excepting those portions of §266.102(a) containing references to §§264.56(d), 264.71 - 264.72, 264.75 - 264.77, 264.90, 264.101, and 264.142(a)(2);

(3) §266.102(b)--Permit Standards for Burners - Hazardous Waste Analysis;

(4) §266.102(c)--Permit Standards for Burners - Emission Standards;

(5) §266.102(d)--Permit Standards for Burners - Permits;

(6) §266.102(e)--Permit Standards for Burners - Operating Requirements (as amended through July 14, 2006 (71 FR 40254));

(7) §266.103 (a)(1) - (3)--Interim Status Standards for Burners - Purpose, Scope, and Applicability--General; Exemptions; and Prohibition on Burning Dioxin-Listed Wastes, respectively, except §266.103(a)(1)(iii) and §266.103(a)(2);

(8) §266.103(a)(4)--Interim Status Standards for Burners--Purpose, Scope, and Applicability--Applicability of Part 265 Standards (as amended through (July 14, 2006 (71 FR 40254)), excepting those portions of §266.103(a)(4) containing references to §§265.56(d), 265.71 - 265.72, 265.75 - 265.77, 265.142(a)(2); facilities qualifying for a corporate guarantee for liability are subject to §265.147(g)(2) and §264.151(h)(2), as amended;

(9) §266.103(a)(5) - (6)--Interim Status Standards for Burners - Purpose, Scope, and Applicability: Special Requirements for Furnaces; and Restrictions on Burning Hazardous Waste That Is Not a Fuel;

(10) §266.103(b)--Interim Status Standards for Burners - Certification of Precompliance (as amended through (July 14, 2006 (71 FR 40254)), except §266.103(b)(1) and (6);

(11) §266.103(c)--Interim Status Standards for Burners - Certification of Compliance (as amended through (July 14, 2006 (71 FR 40254)), except §266.103(c)(3)(i);

(12) §266.103(f)--Interim Status Standards for Burners - Start-Up and Shut-Down;

(13) §266.103(g)(1) - (2)--Interim Status Standards for Burners - Automatic Waste Feed Cutoff (as amended through (July 14, 2006 (71 FR 40254));

(14) §266.103(h) - (l)--Interim Status Standards for Burners: Fugitive Emissions; Changes; Monitoring and Inspections; Recordkeeping; and Closure, respectively, as amended through April 4, 2006 (71 FR 16862); [.]

(15) §266.104--Standards to Control Organic Emissions, except §266.104(h);

(16) §266.105--Standards to Control Particulate Matter, except §266.105(d);

(17) §266.106--Standards to Control Metals Emissions (as amended through (July 14, 2006 (71 FR 40254)), except §266.106(i);

(18) §266.107--Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas ($C1_2$) Emissions, except §266.107(h);

(19) §266.108--Small Quantity On-Site Burner Exemption, except §266.108(d), and except that hazardous wastes subject to §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) may not be burned in an off-site device under the exemption provided by §266.108;

(20) §266.109--Low-Risk Waste Exemption (as amended through (July 14, 2006 (71 FR 40254));

(21) §266.110--Waiver of DRE Trial Burn for Boilers;

(22) §266.111--Standards for Direct Transfer; and

(23) §266.112--Regulation of Residues.

(b) The following hazardous wastes and facilities are not regulated under this division:

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C, from use versus mixing. Such used oil is subject to regulation by the United States Environmental Protection Agency (EPA) under 40 CFR Part 279 and Chapter 324 of this title (relating to Used Oil Standards). This exception does not apply if the used oil has been made hazardous by mixing with characteristic or listed hazardous waste other than by a conditionally exempt small quantity generator or household generator;

(2) hazardous wastes that are exempt from regulation under the provisions of 40 CFR §261.4, and §335.24(c)(3) - (4) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title [(relating

to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)];

(3) gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery; and

(4) coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

§335.224. Additional Interim Status Standards for Burners.

In addition to the interim status standards for burners under §335.221(a)(7) - (14) of this title (relating to Applicability and Standards), owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), as follows:

(1) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the owner or operator must comply with the applicable rules and regulations dealing with permit amendments or modifications under Chapter 305 of this title (relating to Consolidated

Permits) and 40 Code of Federal Regulations (CFR) §270.42, or revisions of applications for hazardous waste permits and changes during interim status under Chapter 305 of this title and 40 CFR §270.72.

(2) The requirements of this section and §335.221(a)(7) - (14) of this title do not apply to hazardous wastes and facilities exempt under §335.221(b) of this title or exempt under 40 CFR §266.108, as adopted under §335.221(a)(19) of this title.

(3) Owners and operators of existing boilers and industrial furnaces that burn hazardous waste are subject to the following provisions:

(A) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(B) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

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

(D) [(E)] §335.115 of this title (relating to Additional Reports);

(E) [(F)] §335.127 of this title (relating to Cost Estimate for Closure);

(4) The owner or operator must provide complete and accurate information specified in 40 CFR §266.103(b)(2) to the executive director on or before August 21, 1992, and must establish limits for the operating parameters specified in 40 CFR §266.103(b)(3). Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in 40 CFR §266.103(b)(3), the owner or operator believes that, using best engineering judgment, emissions of particulate matter, metals, HCl and $C1_2$ are not likely to exceed the limits provided under 40 CFR §§266.105, 266.106, and 266.107. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under 40 CFR §266.103(b)(3) until the owner or operator submits a revised certification of precompliance under 40 CFR §266.103(b)(8) or a certification of compliance under 40 CFR §266.103(c), or until a permit is issued.

(5) On or before August 21, 1992, the owner or operator must submit a notice for publication in a newspaper regularly published, and generally circulated within the county and area wherein the facility is located and send a copy of the notice of those persons and entities listed under §39.413 of this title (relating to Mailed Notice). The owner and operator must provide to the executive director, with the certification of precompliance, evidence of submittal of the notice for publication. The public notice requirements of this subsection do not apply to recertifications under 40 CFR §266.103(b)(8). The notice shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 Code of Federal Regulations §266.103(b) and 30 TAC §335.224(4) and (5)." An owner or operator who satisfied the public notice requirements under 40 CFR §266.103(b)(6) will be considered compliant with this paragraph provided that the owner or operator

submits evidence of such public notice on or before 30 days after the effective date of this paragraph. The notice shall include:

(A) name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;

(B) date that the certification of precompliance was submitted to the executive director;

(C) brief description of the regulatory process required to comply with the interim status requirements of this section, §335.221(a)(7) - (14) of this title, and 40 CFR §266.103, including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl_2;

(D) types and quantities of hazardous waste burned including, but not limited to, source(s), whether solids or liquids, as well as an appropriate description(s) of the waste(s);

(E) type of device(s) in which the hazardous waste is burned including a physical description and maximum production rate of each device;

(F) types and quantities per year of other fuels and industrial furnace feedstocks fed to each unit;

(G) brief description of the basis for this certification of precompliance as specified in 40 CFR §266.103(b)(2);

(H) locations where the record for the facility can be viewed and copied by interested parties. These records and locations shall at a minimum include:

(i) The administrative record kept by the local Texas Natural Resource Conservation Commission regional office; and

(ii) The Boiler and Industrial Furnace (BIF) correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and the Regional Director of the United States Environmental Protection Agency (EPA), state and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and state site visit reports submitted to the owner or operator.

(I) notification of the establishment by the facility owner or operator of a facility mailing list whereby interested parties shall notify the facility owner or operator that they wish to be placed on the mailing list to receive future information and notices about this facility; and

(J) location (mailing address) of the local Texas Commission on Environmental Quality (TCEQ) [Texas Natural Resource Conservation Commission (TNRCC)] regional office, where further information can be obtained on TCEQ [TNRCC] regulation of hazardous waste burning.

(6) On or before August 21, 1992, the owner or operator shall conduct emissions testing to document compliance with the emissions standards of 40 CFR §§266.103(a)(5)(i)(D), 266.104(b) - (e), and 266.105 - 266.107, under the procedures prescribed by this paragraph and paragraphs (7) and (8) of this section and 40 CFR §266.103(c), except under extensions of time provided by 40 CFR §266.103(c)(7). Based on the compliance test, the owner or operator shall submit to the executive director a complete and accurate "certification of compliance," in accordance with 40 CFR §266.103(c)(4), with those emission standards establishing limits on the operating parameters specified in 40 CFR §266.103(c)(1). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the certification of compliance or require additional information to be submitted within specified time frames.

(7) Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under 40 CFR §266.103(b) and paragraphs (4) - (5) of this section, and under conditions established in the notification of compliance testing required by 40 CFR §266.103(c)(2). The owner and operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the

hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of §266.103(c).

(8) If the owner or operator chooses to submit a revised certification of compliance (recertification of compliance) under 40 CFR §266.103(c)(8), or if the owner or operator is required to submit a recertification of compliance under paragraphs (9) or (11) of this section, then the owner or operator shall submit the recertification of compliance to the executive director under the procedures in 40 CFR §266.103(c)(8)(i) - (iv). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(9) The owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR §266.103(c), within 150 days of rejection by the executive director under this paragraph and paragraphs (6) and (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames. Except for the activities necessary for the owner or operator to conduct the compliance testing in accordance with 40 CFR §266.103(c)(8)(i) - (iv), and except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon rejection by the executive director and until a subsequent recertification of compliance is approved under paragraph (8) of this section, the owner or operator shall not burn hazardous waste in the unit for which a certification of compliance or recertification of compliance was rejected.

(10) Except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon receipt of the third rejection by the executive director of a certification of compliance and/or recertification of compliance for the burning of hazardous waste in a boiler or industrial furnace, the owner or operator shall stop burning hazardous waste in the unit for which the certification and/or recertification were rejected, begin closure activities under 40 CFR §266.103(l), and shall not resume the burning of hazardous waste except under an operating permit issued under Chapter 305 of this title (relating to Consolidated Permits);

(11) Notwithstanding any requirement for a recertification under paragraph (9) of this section, the owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR §266.103(c) within five [three] years from submitting the previous certification or recertification (excluding recertification(s) submitted under paragraph (9) of this section). If the owner or operator seeks to recertify compliance under new operating conditions, then the owner or operator must comply with the requirements of paragraph (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(12) The executive director may reject certifications or recertifications of compliance based on the failure of the owner or operator to meet the substantive requirements under 40 CFR §266.103 or this section, including, but not limited to, the following:

(A) incorrect or inappropriate calculations or other mathematical techniques which lead to significant effects on operating condition limitations;

(B) incorrect or inappropriate sampling, physical measurements, or analysis techniques which lead to significant effects on operating condition limitations;

(C) equipment failure or malfunction during the compliance test which leads to inadequate results or incorrect results which significantly affects the limits on operating conditions;

(D) inappropriate feed rates of waste, raw production materials, and/or fuels which leads to significant effects on operating condition limitations;

(E) failure to operate the compliance test under steady-state conditions; or

(F) other significant deficiencies which, in the opinion of the executive director will lead to endangerment to public health and welfare or insufficient protection of public property or the environment.

(13) The owner or operator may appeal to the commission any rejection of a certification or recertification by the executive director. Owners and operators who appeal to the commission any rejection of a certification or recertification by the executive director may continue operations under the rejected certification or recertification until the rejection is upheld by the commission.

(14) If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (4) - (6), (9), or (11) of this section, hazardous waste burning must terminate on the date of the deadline, closure activities must begin under 40 CFR §266.103(l), and hazardous waste burning may not resume except under an operating permit issued under Chapter 305 of this title. For purposes of compliance with the closure provisions of paragraph (4) of this subsection and 40 CFR §265.112(d)(2) and §265.113 (as adopted in §335.112(a)(6) of this title (relating to Standards)) the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

(15) During the compliance test required by paragraph (7) of this section and 40 CFR §266.103(c)(3), and upon certification of compliance under 40 CFR §266.103(c), a boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in 40 CFR §266.103(c)(1)(i) and (v) - (xiii) deviate from those established in the certification of compliance, and the boiler or industrial furnace must be operated in accordance with 40 CFR §266.103(g)(1) - (2).

SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

DIVISION 5: UNIVERSAL WASTE RULE

§335.261

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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.

§335.261. Universal Waste Rule.

(a) This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under 30 Texas Administrative Code. Except as provided in subsection (b) of this section, 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference

as amended and adopted in the *Federal Register* through July 14, 2006 (71 FR 40254) [August 5, 2005 (70 FR 45508)].

(b) 40 CFR Part 273, except §273.1, is adopted subject to the following changes.

(1) The term "regional administrator" is changed to "executive director" or "commission" consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5.

(2) The terms "U.S. Environmental Protection Agency" and "EPA" are changed to "the Texas Commission on Environmental Quality," "the agency," or "the commission" consistent with the organization of the commission as set out in Texas Water Code, Chapter 5. This paragraph does not apply to 40 CFR §273.32(a)(3) or §273.52 or to references to the following: "EPA Acknowledgment of Consent" or "EPA Identification Number."

(3) The term "treatment" is changed to "processing."

(4) The term "universal waste" is changed to "universal waste as defined under §335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(5) The term "this part" is changed to "Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule)."

(6) In 40 CFR §273.2(a) and (b), references to "40 CFR part 266, subpart G," are changed to "§335.251 of this title (relating to Applicability and Requirements)."

(7) In 40 CFR §273.2(b)(2), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(8) In 40 CFR §273.3(b)(1), the reference to "40 CFR §262.70" is changed to "§335.77 of this title (relating to Farmers)." Also, the phrase "(40 CFR §262.70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR 261.7(b)(3))" is deleted.

(9) In 40 CFR §273.3(b)(2), the reference to "40 CFR parts 260 through 272" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(10) In 40 CFR §273.3(b)(3), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(11) In 40 CFR §273.3(d)(1)(i) and (ii), references to "40 CFR §261.2" are changed to "§335.1 of this title (relating to Definitions)."

(12) In 40 CFR §273.4(a), the reference to "§273.9" as it relates to the definition of "mercury-containing equipment" is amended to include the commission definition of "thermostats" as contained in §335.261(b)(16)(E) of this title (relating to Universal Waste Rule) and in 40 CFR

§273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(13) In 40 CFR §273.5(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(14) In 40 CFR §273.8(a)(1), the reference to "40 CFR §261.4(b)(1)" is changed to "§335.1 of this title (relating to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(15) In 40 CFR §273.8(a)(1), the reference to "40 CFR §261.4(b)(1)" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)" and to "§335.402(5) of this title (relating to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(16) In 40 CFR §273.9, the following definitions are changed to the meanings described in this paragraph.

(A) Destination facility--A facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.

(B) Generator--Any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation.

(C) Large quantity handler of universal waste--A universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total universal waste is accumulated.

(D) Small quantity handler of universal waste--A universal waste handler (as defined in this section) who does not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively.

(E) Thermostat--A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR §273.13(c)(2) or §273.33(c)(2) as adopted by reference in this section.

(F) Universal waste--Any of the following hazardous wastes that are subject to the universal waste requirements of this section:

(i) batteries, as described in 40 CFR §273.2;

(ii) pesticides, as described in 40 CFR §273.3;

(iii) mercury-containing equipment, including thermostats, as described in 40 CFR §273.4;

(iv) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and

(v) lamps, as described in 40 CFR §273.5.

(17) In 40 CFR §273.10, the reference to "40 CFR §273.9" is changed to "§335.261(b)(16)(D) of this title (relating to Universal Waste Rule)."

(18) 40 CFR §273.11(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.17; managing specific wastes as provided in 40 CFR §273.13; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(19) In 40 CFR §273.13(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(20) In 40 CFR §273.13(c)(2)(iii) and (iv), references to "40 CFR §262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(21) In 40 CFR §273.13(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(22) In 40 CFR §273.17(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(23) In 40 CFR §273.20(a), the reference to "40 CFR §§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§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 §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(24) In 40 CFR §273.20(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(25) In 40 CFR §273.30, the reference to "§273.9" is changed to "§335.261(b)(16)(C) of this title (relating to Universal Waste Rule)."

(26) 40 CFR §273.31(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.37; managing specific wastes as provided in 40 CFR §273.33; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(27) In 40 CFR §273.33(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(28) In 40 CFR §273.33(c)(2)(iii) and (iv), the references to "40 CFR §262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(29) In 40 CFR §273.33(c)(4)(i), the reference, "40 CFR part 261, subpart C," is changed to "Chapter 335, Subchapter R of this title (relating to Waste Classification)."

(30) In 40 CFR §273.33(c)(3)(ii), the reference, "40 CFR parts 260 through 272," is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(31) In 40 CFR §273.33(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(32) In 40 CFR §273.37(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(33) In 40 CFR §273.40(a), the reference to "40 CFR §§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§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 §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(34) In 40 CFR §273.40(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(35) In 40 CFR §273.52(a), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(36) In 40 CFR §273.52(b), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(37) In 40 CFR §273.54(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(38) In 40 CFR §273.60(a), the reference to "§273.9" is changed to "§335.261(b)(16)(A) of this title (relating to Universal Waste Rule)" and the reference to "parts 264, 265, 266, 268, 270, and 124 of this chapter" is changed to " 30 Texas Administrative Code (relating to Environmental Quality)."

(39) In 40 CFR §273.60(b), the reference to "40 CFR §261.6(c)(2)" is changed to "§335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)."

(40) In 40 CFR §273.80(a), the reference to "40 CFR §260.20 and §260.23" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules) and §335.261(c) of this title (relating to Universal Waste Rule)."

(41) In 40 CFR §273.80(b), the reference to "40 CFR §260.20(b)" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules)."

(42) In 40 CFR §273.81(a), the reference to "40 CFR §260.10" is changed to "§335.1 of this title (relating to Definitions) and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(c) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste rule may file a petition for rulemaking under this section, §20.15 of this title, and 40 CFR Part 273, Subpart G as adopted by reference in this section.

(1) To be successful, the petitioner must demonstrate to the satisfaction of the commission that regulation under the universal waste rule: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by §20.15 of this title. The petition should also address as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

(2) The commission will grant or deny a petition using the factors listed in 40 CFR §273.81. The decision will be based on the commission's determinations that regulation under the universal waste rule is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(3) The commission may request additional information needed to evaluate the merits of the petition.

(d) Any waste not qualifying for management under this section must be managed in accordance with applicable state regulations.

(e) Crushing lamps is permissible only in a crushing system for which the following control conditions are met:

(1) an exposure limit of no more than 0.05 milligrams of mercury per cubic meter is demonstrated through sampling and analysis using Occupational Safety and Health Administration (OSHA) Method ID-140 or National Institute for Occupational Safety and Health Method Number 6009, based on an eight-hour time-weighted average of samples taken at the breathing zone height near the crushing system operating at the maximum expected level of activity;

(2) compliance with the notification requirements of §106.262 of this title (relating to Facilities (Emission and Distance Limitations) (Previously SE 118)) is demonstrated;

(3) documentation of the demonstrations under paragraphs (1) and (2) of this subsection is provided in a written report to the executive director; and

(4) the executive director approves the crushing system in writing.

SUBCHAPTER O: LAND DISPOSAL RESTRICTIONS

§335.431

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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.

§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 (July 14, 2006 (71 FR 40254)) [February 24, 2005 (70 FR 9138)] 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) [November 20, 2001 (66 FR 58258)].

(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 proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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.

§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 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 January 2, 2008 (73 FR 57) [February 24, 2005 (70 FR 9138)].

(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 Code of Federal Regulations (CFR) Part 261, Subpart D, as amended through June 4, 2008 (73 FR 31756) [February 24, 2005 (70 FR 9138)].

(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 July 14, 2006 (71 FR 40254) [March 13, 2002 (67 FR 11251)].

SUBCHAPTER T: PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF COMMERCIAL INDUSTRIAL NONHAZARDOUS WASTE LANDFILL FACILITIES

§§335.582 - 335.584, 335.590 - 335.593

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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.

§335.582. Prohibited Wastes.

The following wastes shall not be disposed:

(1) municipal solid waste, as defined in §330.3 [§330.2] of this title (relating to Definitions), but only in amounts such that the total volume of municipal solid waste accepted does not

exceed 20%, unless specifically authorized by the facility permit, of the total amount of waste (not including municipal solid waste) accepted during the current or previous year. The amount of waste may be determined by volume or weight, but the same unit of measure shall be used for each year, unless a variance is authorized by the executive director;

(2) hazardous waste, as defined in §335.1 of this title (relating to Definitions), except as provided in §335.590(25) of this title (relating to Operational and Design Standards);

(3) polychlorinated biphenyl compounds (PCBs), as defined by the United States Environmental Protection Agency (EPA) in regulations issued pursuant to the Toxic Substance Control Act under Title 40 Code of Federal Regulations (CFR) Part 761 unless authorized by the EPA;

(4) putrescible waste, as defined in §330.3 [§330.2] of this title, unless the requirements of §330.151 [§330.126] of this title (relating to Disease Vector Control) and §330.545 [§330.300] of this title (relating to Airport Safety), and this subchapter are met;

(5) explosive material, as defined by the Department of Transportation in 49 CFR Part 173;

(6) radioactive or nuclear materials regulated under Texas Health and Safety Code, Chapter 401, or rules of the commission, the Texas Department of State Health Services, the Texas Railroad Commission, or any other applicable rules of state or federal authorities;

(7) medical waste, as defined in §330.3 [§330.2] of this title;

(8) liquid waste, as defined in §330.3 [§330.2] of this title;

(9) wastes identified in §330.15(e)(1) - (5) [§330.5(e)(1) - (5)] of this title (relating to General Prohibitions), except as allowed under that section; and

(10) wastes identified in §330.171(c)(3) and (4) [§330.136(b)(3) and (4)] of this title (relating to Disposal of Special Wastes), except as allowed under that section.

§335.583. Permit Procedures.

(a) The following requirements applicable to municipal solid waste facilities apply to permit applications for facilities subject to this subchapter:

(1) §330.53 [§330.50] of this title (relating to Pre-application Review);

(2) §330.57 [§330.51] of this title (relating to Permit and Registration Applications [Application] for Municipal Solid Waste Facilities [Facility]), except that the references and requirements relating to a land-use only public hearing do not apply;

(3) §330.59 [§330.52] of this title (relating to Contents [Technical Requirements] of Part I of the Application) except §330.63(j) [§330.52(b)(11)] of this title, concerning cost estimate for closure and post-closure care [financial assurance] shall not apply;

(4) §330.61 [§330.53] of this title (relating to Contents [Technical Requirements] of Part II of the Application);

(5) §330.63 [§330.54] of this title (relating to Contents [Technical Requirements] of Part III of the Application), except that the requirement in §330.61(b)(1)(A) [§330.54(3)] of this title, concerning an estimate of the population or population equivalent served at the site does not apply;

[(6) §330.55 of this title (relating to Site Development Plan), except that the reference to "§330.137 of this title (relating to Disposal of Industrial Wastes)" in §330.55(b)(10)(I) of this title does not apply and "§335.590(22) of this title (relating to Operational Standards)" applies instead;]

[(7) §330.56 of this title (relating to Attachments to the Site Development Plan), except that the requirements relating to Attachment 14 - landfill gas management plan under §330.56(n) of this title will not apply if an applicant provides a demonstration, approved in writing by the executive director, that such a plan is not necessary;]

(6) [(8)] §330.65 [§330.57] of this title (relating to Contents [Technical Requirements] of Part IV of the Application);

(7) §330.219(a) of this title (relating to Recordkeeping and Reporting Requirements); [(9) §330.58 of this title (relating to Technical Requirements of Part V of the Application);]

(8) [(10)] §330.67 [§330.62] of this title (relating to Property Rights); and

(9) [(11)] §330.73 [§330.64] of this title (relating to Additional Standard Permit and Registration Conditions for Municipal Solid Waste Facilities), except that the reference to "§305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications)" does not apply and "§305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee)" applies instead.

(b) In addition to the requirements in subsection (a) of this section, the permit application must include information to demonstrate compliance with the following requirements:

(1) §335.584(b) of this title (relating to Location Restrictions);

(2) §335.585 of this title (relating to General Inspection Requirements);

(3) §335.586 of this title (relating to Personnel Training);

(4) §335.587 of this title (relating to Waste Analysis);

(5) §335.588 of this title (relating to General Requirements for Ignitable, Reactive, or Incompatible Wastes); and

(6) §335.589 of this title (relating to Contingency Plan).

§335.584. Location Restrictions.

(a) The following location restrictions applicable to municipal solid waste facilities apply to facilities subject to this subchapter:

(1) §330.547 [§330.301] of this title (relating to Floodplains);

(2) §330.553 [§330.302] of this title (relating to Wetlands);

(3) §330.555 [§330.303] of this title (relating to Fault Areas);

(4) §330.557 [§330.304] of this title (relating to Seismic Impact Zones); and

(5) §330.559 [§330.305] of this title (relating to Unstable Areas).

(b) In addition to the location restrictions in subsection (a) of this section, a new commercial industrial nonhazardous waste landfill facility, or an areal or capacity expansion of an existing commercial industrial nonhazardous waste landfill unit, may not be located:

(1) in areas where underlying soil unit(s) within five feet of the base of the containment structure, which includes the sides and bottom of the containment structure, have a Unified Soil Classification of GW (well-graded gravel), GP (poorly-graded gravel), GM (silty gravel), GC (clayey gravel), SW (well-graded sand), SP (poorly-graded sand), or SM (silty sand), or a hydraulic conductivity greater than 1×10^{-5} cm/sec, unless:

(A) it is in an area where the average annual evaporation exceeds average annual rainfall by more than 40 inches; or

(B) the soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration;

(2) in areas overlying a regional aquifer unless the regional aquifer is separated from the base of the containment structure, which includes the sides and bottom of the containment structure, by a minimum of ten feet of material with a hydraulic conductivity towards the aquifer not greater than 10^{-7} centimeters per second (cm/sec), or a thicker interval of more permeable material that provides equivalent or greater retardation to pollutant migration;

(3) on a barrier island or peninsula; or

(4) within 1,000 feet of an area subject to active coastal shoreline erosion, if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the

facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines that are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

§335.590. Operational and Design Standards.

The following requirements, including those applicable to municipal solid waste facilities, apply to owners and operators of facilities subject to this subchapter:

(1) §330.121 [§330.111] of this title (relating to General);

(2) §330.123 [§330.112] of this title (relating to Pre-operation Notice [Notices]);

(3) §330.125 [§330.113] of this title (relating to Recordkeeping Requirements), except that the requirements under §330.125(b)(3) [§330.113(b)(3)] of this title concerning recordkeeping for gas monitoring and remediation plans relating to explosive and other gases do not apply, except as determined necessary by the executive director;

(4) §330.127 [§330.114] of this title (relating to Site Operating Plan);

(5) §330.129 [§330.115] of this title (relating to Fire Protection);

(6) §330.131 [§330.116] of this title (relating to Access Control);

(7) §330.133(a) - (c) [§330.117(a) - (c)] of this title (relating to Unloading of Waste [Wastes]);

(8) §330.137 [§330.119] of this title (relating to Site Sign);

(9) §330.139 [§330.120] of this title (relating to Control of Windblown Waste and Litter);

(10) §330.141 [§330.121] of this title (relating to Easements [Easement] and Buffer Zones);

(11) §330.143(a) [§330.122] of this title (relating to Landfill Markers and Benchmark [Benchmarks]);

(12) §330.149 [§330.125] of this title (relating to Odor Management Plan [Air Criteria]);

(13) §330.153 [§330.127] of this title (relating to Site Access Roads);

(14) §330.155 [§330.128] of this title (relating to Salvaging and Scavenging);

(15) §330.157 [§330.129] of this title (relating to Endangered Species Protection);

(16) §330.159 [§330.130] of this title (relating to Landfill Gas Control) as determined necessary by the executive director;

(17) §330.161 [§330.131] of this title (relating to Oil, Gas, and Water Wells [Abandoned Oil and Water Wells]);

(18) §330.163 [§330.132] of this title (relating to Compaction);

(19) §330.165 [§330.133] of this title (relating to Landfill Cover);

(20) §330.167 [§330.134] of this title (relating to Ponded Water);

(21) §330.175 [§330.138] of this title (relating to Visual Screening of Deposited Waste [Wastes]);

(22) §330.207 [§330.139] of this title (relating to Contaminated Water Management [Discharge]);

(23) the owner or operator shall have and follow procedures for the suppression and control of dust; and

(24) the owner or operator shall ensure that each commercial industrial nonhazardous waste landfill unit meets the requirements of subparagraphs (A) - (F) of this paragraph.

(A) Design criteria.

(i) Landfill cells shall be designed and constructed in accordance with subclause (I) or (II) of this clause, and shall also be constructed in accordance with subclause (III) of this clause.

(I) a design that ensures that the concentration values for constituents listed in §330.419(a) [Table 1 of §330.241] of this title (relating to Constituents for Detection Monitoring) will not be exceeded in the uppermost aquifer at the [relevant] point of compliance, as specified by the executive director under clause (iv) of this subparagraph; or

(II) a composite liner, as defined in clause (ii) of this subparagraph, and a leachate collection system that is designed and constructed in accordance with subparagraph (B) of this paragraph; and

(III) unless the executive director approves an engineered design that the applicant has demonstrated will provide equal or greater protection to human health and the environment, a landfill cell must be constructed where the base of the containment structure, which includes the sides and bottom of the containment structure, is at least five feet above the uppermost saturated soil unit having a Unified Soil Classification of GW (well-graded gravel), GP (poorly-graded

gravel), GM (silty gravel), GC (clayey gravel), SW (well-graded sand), SP (poorly-graded sand), or SM (silty sand), or a hydraulic conductivity greater than 1×10^{-5} cm/sec, unless such saturated soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(ii) For purposes of this section, "composite liner" means a system consisting of two components. The upper component shall consist of a minimum 30-mil (0.75 mm) flexible membrane liner and the lower component shall consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec flexible membrane liner components consisting of high density polyethylene shall be at least 60-mil thick. The flexible membrane liner component must be installed in direct and uniform contact with the compacted soil component.

(iii) When approving a design that complies with clause (i)(I) of this subparagraph, the executive director may consider at least the following factors:

(I) the hydrogeologic characteristics of the facility and surrounding land;

(II) the climatic factors of the area; and

(III) the volume and physical and chemical characteristics of the leachate.

(iv) For purposes of this paragraph, the [relevant] point of compliance is defined in §330.3 [§330.2] of this title (relating to Definitions). In determining the [relevant] point of compliance, the executive director may consider at least the following factors:

(I) the hydrogeologic characteristics of the facility and surrounding land;

(II) the volume and physical and chemical characteristics of the leachate;

(III) the quantity, quality, and direction of flow of groundwater;

(IV) the proximity and withdrawal rate of the groundwater users;

(V) the availability of alternative drinking water supplies;

(VI) the existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater and whether groundwater is currently used or reasonably expected to be used for drinking water;

(VII) public health, safety, and welfare effects; and

(VIII) practicable capability of the owner or operator.

(B) Landfill cells shall have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The leachate-collection and leachate-removal system shall be:

(i) constructed of materials that are chemically resistant to the leachate expected to be generated;

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and

(iii) designed and operated to function through the scheduled closure and post-closure period of the landfill.

(C) Storm water run-on/run-off facilities such as berms and ditches shall be provided in accordance with §330.63 [§330.54] of this title (relating to Contents [Technical Requirements] of Part III of the Application).

(D) The site shall have a groundwater monitoring system installed that is capable of detecting the migration of pollutants from the landfill and is sampled semiannually for the parameters specified in Chapter 330, Subchapter J [I] of this title (relating to Groundwater Monitoring and Corrective Action).

(E) The final cover placed over the commercial industrial nonhazardous waste landfill unit shall consist of a minimum of 18 inches of uncontaminated topsoil overlying four feet of compacted clay-rich soil material meeting the requirements of §330.457 [§330.253] of this title (relating to Closure Requirements for Municipal Solid Waste Landfill [MSWLF] Units That Receive Waste on or after October 9, 1993 [and MSW Sites]). The final cover over the aerial fill shall meet the requirements of §330.457 [§330.253] of this title and shall include a flexible membrane component.

(F) Nonhazardous waste may be placed above natural grade in commercial industrial nonhazardous waste landfill units provided the conditions in clauses (i) - (vi) of this subparagraph are met, except as provided in clause (vii) of this subparagraph:

(i) waste placed above grade shall be laterally contained by dikes that are constructed to:

(I) prevent washout, release, or exposure of waste;

(II) be physically stable against slope failure, with a minimum safety factor of 1.5;

(III) prevent washout from hydrostatic and hydrodynamic forces from storms and floods;

(IV) prevent storm water from reaching the waste;

(V) minimize release of leachate; and

(VI) minimize long-term maintenance;

(ii) the liner required in paragraph (22) of this section shall extend to the crest of the dike;

(iii) waste placed against the dike is placed no higher that three feet below the crest of the dike;

(iv) the slope of the wastes placed in the commercial industrial nonhazardous waste landfill units does not exceed 3% to the center of the unit;

(v) no waste is placed higher than the lowest elevation of the dike crest; and

(vi) a dike certification report is submitted with Attachment 10 of Part III of the permit application. The certification shall be in the following form:

Figure: 30 TAC §335.590(24)(F)(vi)

[Figure: 30 TAC §335.590(24)(F)(vi)]

"I (Texas Licensed Professional Engineer) [qualified professional engineer], Texas P.E. Registration Number _____, certify under penalty of law that I have personally examined and am familiar with the design and construction of the dikes that are a portion of (unit name) .

I further certify that I have evaluated the dike design and materials of construction using accepted engineering procedures, and have determined that the dike has structural integrity, and:

(I) Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the unit; and

(II) Will not fail due to scouring or piping, without dependence on any liner system included in the unit construction.

(Signature)_____Date: _____

(SEAL)"

(vii) a commercial industrial nonhazardous waste landfill is not subject to the requirements of clauses (ii) - (v) of this subparagraph provided that the owner or operator submits a demonstration that the standards of clause (i) of this subparagraph can be met without meeting the

requirements of clauses (ii) - (v) of this subparagraph, the demonstration is approved in writing by the executive director, and the owner or operator enters the approval into the facility operating record.

(25) Hazardous waste from a conditionally exempt small quantity generator as defined in §335.78(a) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may be accepted for disposal in any commercial industrial nonhazardous waste landfill facility provided the amount of hazardous waste accepted from each conditionally exempt small quantity generator does not exceed 220 pounds (100 kilograms) a calendar month, and provided the landfill owner or operator is willing to accept the hazardous waste.

§335.591. Groundwater Protection Design and Operation.

The following requirements applicable to municipal solid waste facilities apply to owners and operators of facilities subject to this subchapter:

(1) §330.333 [§330.201] of this title (relating to Leachate Collection System);

(2) §330.335 [§330.202] of this title (relating to Alternative Liner [Alternate] Design);

(3) §330.337 [§330.203] of this title (relating to Special Liner Design Constraints [Special Conditions (Liner Design Constraints)]);

(4) §330.555 [§330.204] of this title (relating to Fault Areas [Geological Faults]);

(5) §330.339 [§330.205] of this title (relating to [Soils and] Liner Quality Control Plan); and

(6) §330.341 [§330.206] of this title (relating to Soil Liner Evaluation Report and Geomembrane Liner Evaluation Report [Soils and Liner Evaluation Report (SLER) and Flexible Membrane Liner Evaluation Report (FMLER)]).

§335.592. Groundwater Monitoring and Corrective Action.

The following requirements applicable to municipal solid waste and hazardous waste facilities apply to owners and operators of facilities subject to this subchapter:

(1) §330.401 [§330.230] of this title (relating to Applicability);

(2) §330.403 [§330.231] of this title (relating to Groundwater Monitoring Systems);

(3) §330.405 [§330.233] of this title (relating to Groundwater Sampling and Analysis Requirements);

(4) §330.407 [§330.234] of this title (relating to Detection Monitoring Program for Type I Landfills);

(5) §330.409 [§330.235] of this title (relating to Assessment Monitoring Program);

(6) §330.411 [§330.236] of this title (relating to Assessment of Corrective Measures);

(7) §330.413 [§330.237] of this title (relating to Selection of Remedy);

(8) §330.415 [§330.238] of this title (relating to Implementation of the Corrective Action Program);

(9) §330.419 [§330.241] of this title (relating to Constituents for Detection Monitoring); and

(10) §330.421 [§330.242] of this title (relating to Monitor Well Construction Specifications).

§335.593. Closure and Post-Closure Care Requirements.

The owner or operator of a facility subject to this subchapter shall close the facility or any part of it in accordance with the requirements of §335.8 of this title (relating to Closure and Remediation). In

addition to these requirements, the owner or operator shall meet the requirements for closure and post-closure of municipal solid waste facilities in §330.457 [§330.253] of this title (relating to Closure Requirements for MSWLF Units That Receive Waste on or after October 9, 1993 [and MSW Sites]).

SUBCHAPTER U: STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARD PERMIT

§335.601, §335.602

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code (TWC), §5.103 (relating to Rules) and §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) and §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 sections implement THSC, Chapter 361.

§335.601. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is to establish minimum standards which define the acceptable management of hazardous waste under a standard permit.

(b) This subchapter applies to owners and operators of facilities who treat or store hazardous waste under a Subchapter U of this chapter standard permit, except as provided otherwise in 40 Code of Federal Regulations (CFR) Part 261, Subpart A.

(c) A facility owner or operator who has fully complied with the requirements for interim status - as defined in Resource Conservation Recovery Act (RCRA), §3005(e) and regulations under 40 CFR §270.70 - must also comply with the regulations specified in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) instead of the regulations in 40 CFR Part 270, until final administrative disposition of the standard permit application is made, except as provided under §335.152(a)(14) of this title (relating to Standards).

(d) Notwithstanding any other provisions of this subchapter, imminent hazard enforcement actions may be brought pursuant to RCRA, §7003.

§335.602. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 267 (including all appendices to 40 CFR Part 267) are adopted by reference as amended and adopted in the CFR through September 8, 2005 (70 Federal Register 53420) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) 40 CFR Part 267, Subpart B--General Facility Standards;

(2) 40 CFR Part 267, Subpart C--Preparedness and Prevention:

(3) 40 CFR Part 267, Subpart D--Contingency Plan and Emergency Procedures;

(4) 40 CFR Part 267, Subpart E--Recordkeeping, Reporting, and Notifying;

(5) 40 CFR Part 267, Subpart F--Releases from Solid Waste Management Units;

(6) 40 CFR Part 267, Subpart G--Closure;

(7) 40 CFR Part 267, Subpart I--Use and Management of Containers;

(8) 40 CFR Part 267, Subpart J--Tank Systems;

(9) 40 CFR Part 267, Subpart DD--Containment buildings; and

(10) 40 CFR §267.142, concerning Cost estimate for closure.

(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) Reference to:

(A) 40 CFR Part 261 is changed to §335.504 of this title (relating to Hazardous Waste Determination);

(B) 40 CFR Part 262 is changed to Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste):

(C) 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);

(D) 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);

(E) 40 CFR Part 264, Subpart S is changed to §335.152(a)(14) of this title;

(F) 40 CFR Part 265 is changed to Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities);

(G) 40 CFR Part 268 is changed to Subchapter O of this chapter (relating to Land Disposal Restrictions);

(H) 40 CFR Part 270, Subpart J is changed to Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units);

(I) 40 CFR §262.34 is changed to §335.69 of this title (relating to Accumulation Time); and

(J) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units); and

(K) Reference to "standardized permit" is changed to "standard permit".

(3) 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, respectively), as applicable.

(c) An owner or operator of a unit that treats, stores, or disposes of hazardous waste in tanks, containers, and containment buildings authorized by a standard permit as specified in this section shall establish and maintain financial assurance in accordance with Chapter 335, Subchapter P of this title (relating to Warning Signs and Contaminated Areas).