

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§335.1, 335.2, 335.9, 335.15, 335.22, 335.23, 335.24, 335.29, 335.30, 335.76, 335.112, 335.125, 335.152, 335.175, and 335.221, and new §335.31, concerning industrial solid waste and municipal hazardous waste.

The primary purpose of the proposed amendments and the proposed new section is to ensure that Texas' state rules are equivalent to the federal regulations after which they are patterned, either by incorporating the federal regulations into the state rules by reference or by introducing language into the state rules that is intended to be equivalent to the corresponding federal regulations. Another purpose of the proposed rules is to reinstate an inadvertently deleted subsection in the rules requiring reports for certain wastes received without the required manifests or shipping papers. The proposed rules also include typographical and administrative revisions designed to clarify certain rule language, to correct references to the Code of Federal Regulations and to delete a series of cross-references that were inadvertently repeated in the rules.

The proposed language for Chapter 335 specifically addresses changes to the federal hazardous waste regulations that became effective between July 1, 1993, and June 30, 1994, under the authority of the federal Resource Conservation and Recovery Act (RCRA). By establishing equivalency with these federal regulations, the State of Texas will maintain equivalency with the federal hazardous waste program, thus enabling the state to retain authorization to operate aspects of the federal program in lieu of the United States Environmental Protection Agency. The resultant benefit will be a reduced cost to

participants in the hazardous waste regulatory program because state hazardous waste requirements will not be duplicated by the requirements of the federal hazardous waste program.

The proposed amendment to §335.1 adds a definition for “Qualified Groundwater Scientist,” in accordance with federal changes in a previous RCRA rules package.

The proposed amendment to §335.2(g) incorporates by reference 40 Code of Federal Regulations (CFR) §261.4(e) and (f), as amended through February 18, 1994, which sets out the requirements for samples exempted from hazardous waste permit requirements when used in treatability studies. The proposed language also deletes §335.2(k), which is reincorporated as proposed new §335.31.

The proposed amendment to §335.9(b) revises a cross-reference to another section within Chapter 335 by correcting the name of the section as it is cited in the cross-reference.

The proposed amendments to §335.15 reinstate rule language, inadvertently deleted in a previous rulemaking, which requires the submission of reports to the commission on hazardous waste or Class 1 waste received without the required manifests or shipping papers.

The proposed amendment to §335.22 revises an incorrect cross-reference that resulted from the previous deletion of a subsection within §335.24.

The proposed amendment to §335.23 revises an incorrect cross-reference that resulted from the previous deletion of a subsection within §335.24. Other proposed amendments to §335.23 are intended to incorporate administrative revisions to the rule and to correct a series of cross-references to procedural rules chapters that have since been reorganized.

The proposed amendments to §335.24 include a number of administrative revisions to the rule language designed to correct grammatical errors and cross-references throughout the section, to update a cite to a civil statute that has been codified, to correct a series of references to procedural rules that have since been reorganized, and to delete a series of cross-references that were inadvertently repeated in the rule.

The proposed amendments to §335.29 update the adoption by reference of certain appendices to 40 CFR Part 261 as follows: Appendices II and III, as amended through August 31, 1993, to refer to test methods in EPA Publication SW-846; Appendix VIII, as amended through June 20, 1994, to correct the list of hazardous constituents for beryllium powder; and Appendix X, to delete this appendix from the list of appendices adopted by reference.

The proposed amendment to §335.30 corrects a reference to Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General).

Proposed new §335.31, relating to Incorporation of References, incorporates 40 CFR §260.11 by reference and makes it applicable for use throughout Chapter 335.

The proposed amendment to §335.76(e) deletes an incorrect cross-reference and replaces it with the appropriate reference to §335.9 (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators). Other amendments to §335.76 correct references to the Code of Federal Regulations and to a civil statute that has been codified.

The proposed amendments to §335.112 revise certain hazardous waste interim status standards as follows: §335.112(a)(9), adopting by reference 40 CFR Part 265, Subpart J, relating to tank system requirements, as amended through August 31, 1993, to update references to EPA Publication SW-846; §335.112(a)(13), correcting a cross-reference to a federal rule that has been renumbered; and §335.112(a)(22), adopting by reference certain appendices from 40 CFR Part 265 relating to recordkeeping instructions, interim drinking water standards, tests for significance, and potentially incompatible wastes. Other proposed amendments throughout §335.112 incorporate administrative revisions to clarify rule language and correct references to the Code of Federal Regulations.

The proposed amendment to §335.125(d) revises interim status requirements relating to bulk and containerized waste to update references to EPA Publication SW-846.

The proposed amendments to §335.152 revise certain hazardous waste permitting standards as follows: §335.152(a)(6), adopting by reference 40 CFR Part 264, Subpart H, relating to financial assurance requirements as amended through June 10, 1994, to incorporate minor amendments to the wording of the letter of credit instrument; §335.152(a)(8), adopting by reference 40 CFR Part 264, Subpart J, relating to tank system requirements as amended through August 31, 1993, to update references to

EPA Publication SW-846; and §335.152(a)(20), adopting by reference certain appendices from 40 CFR Part 264 relating to recordkeeping instructions, the Behrens-Fisher Students' T-Test, potentially incompatible waste, political jurisdictions in which compliance with §264.18(a) must be demonstrated, and a groundwater monitoring list. Other proposed amendments throughout §335.152 incorporate administrative revisions to clarify rule language and correct references to the Code of Federal Regulations.

The proposed amendments to §335.175(c) update references to EPA Publication SW-846, which relates to standardized sampling and testing methods. Other proposed amendments in §335.175(e) incorporate administrative revisions to correct references to the Code of Federal Regulations.

The proposed amendments to §335.221(a) revise the standards applicable to burning hazardous waste in boilers and industrial furnaces as follows: adopting 40 CFR Part 266 as amended through July 20, 1993, to remove Appendix X, Part 266, and substitute references to Appendix X with references to Appendix W, Part 51; and adopting 40 CFR Part 266 as amended through November 9, 1993, to incorporate restrictions relating to the administrative stay for levels specified in Appendix VII, Part 266. Other proposed amendments in §335.221(b) incorporate administrative revisions to correct references to the Code of Federal Regulations.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the sections.

Mr. Minick has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be simplification of existing regulations, enhanced consistency between federal and state waste regulatory requirements, more cost-effective regulation of waste management activities, and improvements in the management of hazardous waste and hazardous waste facilities. The proposed amendments generally incorporate existing federal regulations and certain procedural and administrative provisions and correct typographical and wording errors. There are no economic costs anticipated to any person, including any small business, required to comply with the sections as proposed.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the proposed rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The proposed rules also include typographical and administrative revisions designed to clarify certain rule language, to correct references to the Code of Federal Regulations, and to correct other technical errors within the rules. The proposed rules will substantially advance this stated purpose by adopting the aforementioned federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations. The proposed rules will also make administrative corrections within the rules. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the proposed language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence

with more recent federal regulations, and the subject regulations do not affect a landowners rights in private real property. Also, the following exception to the application of Texas Government Code Chapter 2007 applies to these rules: Section 2007.003(b)(4)--an action that is reasonably taken to fulfill an obligation mandated by federal law.

Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received within 30 days following the date of this publication and should reference Rule Log No. 96115-335-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Jace Houston at (512) 239-4641, or Ray Henry Austin at (512) 239-6814.

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

The proposed amendments and new language implement Texas Health and Safety Code Chapter 361.

**Subchapter A : Industrial Solid Waste and
Municipal Hazardous Waste in General**

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

The proposed amendments and new language implement Texas Health and Safety Code Chapter 361.

§335.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly requires otherwise.

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.

§335.2. Permit Required.

(a) - (f) (No change.)

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste which is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements set out at 40 Code of Federal Regulations §261.4(e) and (f), as amended and adopted in the Code of Federal Regulations through February 18, 1994, at 59 FedReg 8362, [which are in effect as of July 19, 1988 and] which are adopted herein by reference.

(h) - (i) (No change.)

[(k) When used in this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste) the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference.]

§335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators.

(a) (No change.)

(b) A generator who ships his hazardous waste off-site must also include the information specified in §335.71 of this title (relating to Biennial [Annual] Reporting). Any generator who stores, processes, or disposes of hazardous waste on-site shall also submit an annual report in accordance with the requirements of §335.114 of this title (relating to Reporting Requirements).

§335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.

This section applies to owners and operators that receive hazardous waste or Class 1 waste from off-site sources or have notified that they intend to receive hazardous waste or Class 1 waste from off-site sources.

(1) (No change.)

(2) Except as provided in paragraph (6) [(5)] of this section, the owner or operator shall prepare a complete and correct monthly waste receipt summary for all hazardous waste or Class 1 waste shipments received. The monthly waste receipt summary shall be prepared in a form provided or approved by the executive director and submitted to the Texas Natural Resource Conservation Commission on or before the 25th of each month for wastes or manifests received during the previous month. (The appropriate abbreviations for method of storage, processing, and disposal of waste and for units of measure may be found on the form or accompanying instructions.) An owner or operator

of a storage, processing, or disposal facility required to comply with this subsection shall prepare and submit a monthly waste receipt summary in each month even if no waste was received.

(3) The owner or operator shall submit a report on forms provided or approved by the executive director summarizing the types and volumes of any hazardous waste or Class 1 waste received without manifests, or, in the case of shipments by rail or water (bulk shipments), without shipping papers. This report shall be submitted within 15 days of receiving the waste, regardless of quantity, and shall include the following information:

_____ (A) the EPA identification number (applicable to hazardous waste only), name, and address of the facility;

_____ (B) the date the facility received the waste;

_____ (C) the EPA identification number (applicable to hazardous waste only), name, and address of the generator and the transporter, if available;

_____ (D) a description and the quantity of each hazardous waste or Class 1 waste the facility received which was not accompanied by a manifest;

_____ (E) the method of storage, processing, or disposal for each hazardous waste or Class 1 waste;

_____ (F) the certification signed by the owner or operator of the facility or his authorized representative; and

_____ (G) a brief explanation of why the waste was unaccompanied by a manifest, if known.

(4) [(3)] The owner or operator shall retain a copy of each summary required by paragraphs [paragraph] (2) and (3) of this subsection for a minimum of three years from the date of each summary.

(5) [(4)] The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(6) [(5)] An owner or operator reclaiming hazardous wastes received from conditionally exempt small quantity generators is subject to the requirements of this section requiring completion of a monthly waste receipt summary, from his copy of all manifests received during the month, unless he has requested in writing a modification in the reporting requirements. A modification relieving the owner or operator of having to report each manifested shipment on the monthly waste receipt summary may be granted at the discretion of the executive director on a case-by-case basis.

§335.22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-By-Case Basis.

The commission may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §335.24(b)(3)[(4)] of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) should be regulated under §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or [of] their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. The procedures for this decision are set forth in §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities). In making this decision, the commission will consider the following factors:

(1) - (5) (No change.)

§335.23. Procedures for Case-By-Case Regulation of Hazardous Waste Recycling Activities.

The commission will use the following procedures when determining whether to regulate hazardous waste recycling activities described in §335.24(b)(3)[(4)] of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) under the provisions of §§335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable

Materials), rather than under the provisions governing Recyclable Materials Utilized for Precious Metal Recovery [recyclable materials utilized for precious metal recovery] under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) If a generator is accumulating the waste, the commission will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management [-]General Provisions; and Standards Applicable to Generators of Hazardous Waste)[, respectively]. The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the commission will hold a public hearing. The commission will provide notice of the hearing to the public and allow public participation at the hearing. The commission will issue a final order after the hearing stating whether or not compliance with Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management [-]General Provisions; and Standards Applicable to Generators of Hazardous Waste)[, respectively,] is required. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 80 [273] of this title (relating to Contested Case Hearings [Procedures After Final Decision]) and the Texas Administrative Procedure [and Texas Register] Act, Texas Government Code Chapter 2001 [Article 6252-13a].

(2) If the person is accumulating the recyclable material at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Chapter 305 of this title (relating to Consolidated Permits) and Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings) [261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision)]. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the commission's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The proposal for decision accompanying the permit will include the reasons for the commission's determination. The question of whether the commission's decision was proper will remain open for consideration during the public comment period and in any subsequent hearing.

§335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials.

(a) (No change.)

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits) and Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings) [261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision)]:

(1) - (4) (No change.)

(c) The following recyclable materials are not subject to regulation under Subchapters B-I and O of this chapter (relating to Hazardous Waste Management [---]General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions)[,respectively,] or Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 80 of this title (relating to Contested Case Hearings); and Chapter 305 of this title (relating to Consolidated Permits) [Chapters 261, 263, 265, 267, 269, 271, 273, and 305 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearing Before an Examiner; Procedures After Public Hearing Before the Full Commission; Procedures After Final Decision; and Consolidated Permits)], except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986:

(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 CFR [Code of Federal Regulations] §§262.53, 262.56(a)(1)-(4) and (6) and (b), and 262.57, which are in effect as of November 8, 1986, export such materials only upon such consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in the regulations contained in 40 CFR [Code of Federal Regulations,] Part 262, Subpart E, which are in effect as of November 8, 1986, and provide a copy of the EPA acknowledgment of consent to the transporter transporting the shipment for export;

(B) (No change.)

(2) - (5) (No change.)

(6) the following hazardous waste fuels:

(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR [Code of Federal Regulations] §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR [Code of Federal Regulations] §279.11;

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR [Code of Federal Regulations] §279.11; and

(7) petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 CFR [Code of Federal Regulations] Part 261, Subpart C.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators [Generator] of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to

Consolidated Permits) and Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings) [261 of this title (relating to Introductory Provisions); Chapter 263 of this title (relating to General Rules); Chapter 265 of this title (relating to Procedures Before Public Hearing); Chapter 267 of this title (relating to Procedures During Public Hearing); Chapter 269 of this title (relating to Procedures After Public Hearing Before an Examiner); Chapter 271 of this title (relating to Procedures After Public Hearing Before the Full Commission); and Chapter 273 of this title (relating to Procedures After Final Decision)], and the notification requirements under §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section. The recycling process itself is exempt from regulation.

(f) (No change.)

(g) Except as provided in subsection (h) of this section, recyclable materials (excluding those listed in subsection (c)(1) and (3) - (7) of this section)[,] remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 [I]

Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 [I] Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 [I] Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities)[, respectively], as applicable.

(h) Industrial solid wastes that are nonhazardous recyclable materials; and recyclable materials listed in subsection (b)(4) and subsection (c)(2) and (3) of this section remain subject to the requirements of §335.4 of this title (relating to General Prohibitions) and §335.6 of this title (relating to Notification Requirements). Such wastes may also be subject to the requirements of §§335.10 - 335.15 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 [I] Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping [Record Keeping] and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste; Recordkeeping [Record Keeping] Requirements Applicable to Transporters of Hazardous Waste or Class 1 [I] Waste; and Recordkeeping [Record Keeping] and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities)[, respectively], as applicable, if the executive director determines that such requirements are necessary to protect human health [§335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste), §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing or Disposal Facilities),

§335.13 of this title (relating to Record Keeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste), §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste), and §335.15 of this title (relating to Record Keeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable, if the executive director determines that such requirements are necessary to protect human health] and the environment. In making the determination, the executive director shall consider the following criteria:

(1) - (9) (No change.)

(i) Except as provided in the Solid Waste Disposal Act, Health and Safety Code §361.090 [Texas Civil Statutes, Article 4477-7, §4(f)(1)], facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) - (12) (No change.)

§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) (No change.)
- (2) Appendix II--Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) (as amended through August 31, 1993 at 58 FedReg 46040 [February 2, 1993, at 58 FedReg 6854]);
- (3) Appendix III--Chemical Analysis Test Methods (as amended through August 31, 1993 at 58 FedReg 46040 [March 9, 1990, at 55 FedReg 8948]);
- (4) (No change.)
- (5) Appendix VIII--Hazardous Constituents (as amended through June 20, 1994 at 59 FedReg 31551); and
- (6) Appendix IX--Wastes Excluded Under §260.20 and §260.22_[]; and]

[(7) Appendix X--Method of Analysis for Chlorinated Dibenzo-p-dioxins and
Dibenzofurans.]

§335.30. Appendix I.

The following appendix will be used for the purposes of Subchapter A of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste in General) [which relate to municipal hazardous waste and industrial solid waste]. **Figure 1: 30 TAC §335.30.**

Figure 1: 30 TAC §335.30.

Table 1

Types of Containers

DM = Metal drums, barrels, kegs

DW = Wooden drums, barrels, kegs

DF = Fiberboard or plastic drums, barrels, kegs

TP = Tanks portable

TT = Cargo tanks (tank trucks)

TC = Tank cars

DT = Dump truck

CY = Cylinders

CM = Metal boxes, cartons, cases (including roll-offs)

CW = Wooden boxes, cartons, cases

CF = Fiber or plastic boxes, cartons, cases

BA = Burlap, cloth, paper or plastic bag.

§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 §260.11(a) are incorporated by reference.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

**Subchapter C : Standards Applicable to Generators
of Hazardous Waste**

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

The proposed amendments implement Texas Health and Safety Code Chapter 361.

§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, which are in effect as of November 8, 1986, provide otherwise, 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 I Waste) and §335.14 of this title (relating to

Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). [Title] 40 CFR [Code of Federal Regulations,] §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 (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste of Class I 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 [Code of Federal Regulations,] §262.53, which are in effect as of November 8, 1986, has been provided;

(2) - (4) (No change.)

(5) the primary exporter complies with the manifest requirements of §335.10(a)-(d) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste) except that:

(A) - (C) (No change.)

(D) the following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form, as set out in §335.10(b)(23) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste): “and conforms to the terms of the attached EPA acknowledgment of consent”;

(E) (No change.)

(F) in lieu of the requirements of §335.10(a) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste), where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(i) renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with the regulations contained in 40 CFR [Code of Federal Regulations,] §262.53(c), which are in effect as of November 8, 1986, and obtain an EPA acknowledgment of consent prior to delivery; or

(ii) - (iii) (No change.)

(G) - (H) (No change.)

(c) (No change.)

(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 (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste) for the manifest except that:

(1) - (3) (No change.)

(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 [§335.71(a)] of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators [Annual Report]) 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 [Code of Federal Regulations,] §262.58 (International Agreements), which are in effect as of November 8, 1986.

(g) Except to the extent that they are clearly inconsistent with the Solid Waste Disposal Act, Texas Health and Safety Code Chapter 361 [Texas Civil Statutes, Article 4477-7], or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR [Code of Federal Regulations,] §262.57, which are in effect as of November 8, 1986.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

**Subchapter E : Interim Standards for Owners and Operators
of Hazardous Waste Storage, Processing, or Disposal Facilities**

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

The proposed amendments implement Texas Health and Safety Code 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, at 55 FedReg 22685 and as further amended as indicated in each paragraph of this section:

(1) - (2) (No change.)

(3) Subpart D--Contingency Plan and Emergency Procedures, except 40 CFR [Code of Federal Regulations] §265.56(d);

(4) - (8) (No change.)

(9) Subpart J--Tank Systems (as amended through August 31, 1993, at 58 FedReg 46040 [December 6, 1990, at 55 FedReg 50486]);

(10) - (11) (No change.)

(12) Subpart M--Land Treatment, except 40 CFR [Code of Federal Regulations] §§265.272, 265.279, and 265.280;

(13) Subpart N--Landfills (as amended through July 10, 1992, at 57 FedReg 30658), except 40 CFR §§265.301(f) - 265.301(i) [§265.302], §265.314, and §265.315;

(14) (No change.)

(15) Subpart P--Thermal Treatment (as amended through July 17, 1991, at 56 FedReg 32692); [and]

(16) - (19) (No change.)

(20) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through April 26, 1991, at 56 FedReg 19290); [and]

(21) Subpart DD--Containment Buildings (as amended through August 18, 1992, at 57 FedReg 37194); and [.]

(22) The following appendices contained in 40 CFR Part 265:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24, 1994, at 59 FedReg 13891);

(B) Appendix III--EPA Interim Primary Drinking Water Standards;

(C) Appendix IV--Tests for Significance; and

(D) Appendix V--Examples of Potentially Incompatible Waste.

(b) (No change.)

§335.125. Special Requirements for Bulk and Containerized Waste.

(a) - (c) (No change.)

(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 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste [Wastes], Physical/Chemical Methods₂[" [(EPA Publication SW-846, as incorporated by reference in 40 Code of Federal Regulations §260.11 and in §335.31 of this title (relating to Incorporation of References) [Second Edition, 1982, as amended by Update I (April 1984) and Update II (April 1985)]].

(e) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

**Subchapter F : Permitting Standards for Owners and Operators of
Hazardous Waste Storage, Processing, or Disposal Facilities**

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

The proposed amendments implement Texas Health and Safety Code 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 Code of Federal Regulations through June 1, 1990, at 55 FedReg 22685 and as further amended and adopted as indicated in each paragraph of this section:

(1) Subpart B--General Facility Standards (as amended through November 18, 1992, at 57 FedReg 54452); in addition, the facilities which are subject to 40 CFR [Code of Federal Regulations,]

Part 264, Subpart X, are subject to regulation under 40 CFR [Code of Federal Regulations]

§§264.15(b)(4) and 264.18(b)(1)(ii);

(2) (No change.)

(3) Subpart D--Contingency Plan and Emergency Procedures, except 40 CFR [Code of Federal Regulations] §264.56(d);

(4) Subpart E--Manifest System, Recordkeeping, and Reporting (as amended through January 29, 1992, at 57 FedReg 3462), except 40 CFR [Code of Federal Regulations] §§264.71, [§]264.72, [§]274.75, [§]264.76 and [§]264.77; facilities which are subject to 40 CFR [Code of Federal Regulations] Part 264, Subpart X, are subject to 40 CFR [Code of Federal Regulations] §264.73(b)(6);

(5) Subpart G--Closure and Post-Closure (as amended through August 18, 1992, at 57 FedReg 37194); facilities which are subject to 40 CFR [Code of Federal Regulations,] Part 264, Subpart X, are subject to 40 CFR [Code of Federal Regulations] §§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 June 10, 1994, in 59 FedReg 29958 [September 16, 1992, in 57 FedReg 42832]); except 40 CFR [Code of Federal Regulations] §264.142(a)(2); and subject to the limitations set forth in this section:

(A) Facilities which are subject to 40 CFR [Code of Federal Regulations] Part 264, Subpart X, are subject to 40 CFR [Code of Federal Regulations] §§264.142(a), [§]264.144(a) and [§]264.147(b);

(B) Facilities which qualify for the corporate guarantee for liability are additionally subject to 40 CFR §264.147(g)(2) and §264.151(h)(2); and

(C) (No change.)

(7) (No change.)

(8) Subpart J--Tank Systems (as amended through August 31, 1993, at 58 FedReg 46040 [December 6, 1990, at 55 FedReg 50484]);

(9) Subpart K--Surface Impoundments (as amended and adopted through January 29, 1992, at 57 FedReg 3462), except 40 CFR [Code of Federal Regulations] §264.221 and §264.228:

(A) - (B) (No change.)

(10) (No change.)

(11) Subpart M--Land Treatment, except 40 CFR [Code of Federal Regulations] §264.273 and §264.280;

(12) Subpart N--Landfills (as amended through November 18, 1992, at 57 FedReg 54452), except 40 CFR [Code of Federal Regulations] §§264.301, [§]264.310, [§]264.314 and [§]264.315;

(13) - (18) (No change.)

(19) Subpart DD--Containment Buildings (as amended through August 18, 1992, at 57 FedReg 37194); and [.]

(20) The following appendices contained in 40 CFR Part 264:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24, 1994, at 59 FedReg 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.

(b) - (d) (No change.)

§335.175. Special Requirements for Bulk and Containerized Waste.

(a) - (b) (No change.)

(c) To demonstrate the absence or presence of free liquids in either a containerized or bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in “Test Methods for Evaluating Solid Waste [Wastes], Physical/Chemical Methods,”[.] [(EPA Publication SW-846, as incorporated by reference in 40 Code of Federal Regulations (CFR) §260.11 and in §335.30 of this title (relating to Incorporation of References) [Second Edition, 1982, as amended by Update I (April 1984) and Update II (April 1985)]].

(d) (No change.)

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

(1) - (2) (No change.)

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on

**Subchapter H : Standards for the Management of
Specific Wastes and Specific Types of Facilities**

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

The proposed amendments implement Texas Health and Safety Code Chapter 361.

Hazardous Waste Burned for Energy Recovery

§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 Code of Federal Regulations through June 1, 1990 (see FedReg 22685) and as published and adopted in the February 21, 1991, July 17, 1991, August 27, 1991, September 5, 1991, June 22, 1992, August 25, 1992, September 30, 1992, July 20, 1993, November 9, 1993, and September 19, 1994, issues of the Federal Register (see 56 FedReg 7239, [and] 56 FedReg 32688, 56 FedReg 42504, 56 FedReg 43874,

57 FedReg 27880, 57 FedReg 28558, 57 FedReg 44999, 58 FedReg 38816, 58 FedReg 59598, and
59 FedReg 48042-48043):

(1) - (23) (No change.)

(b) The following hazardous wastes and facilities are not regulated under §§335.221-335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces):

(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 [Code of Federal Regulations] Part 261, Subpart C, from use versus mixing. Such used oil is subject to regulation by the United States Environmental Protection Agency under 40 CFR [Code of Federal Regulations] Part 279 and Chapter 324 of this title (relating to Used Oil). 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 CESQG or household generator;

(2) hazardous wastes that are exempt from regulation under the provisions of 40 CFR [Code of Federal Regulations] §261.4 and §335.24(c)(4)-(7) 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) - (4) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on July 29, 1996.