

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §335.261 and new §335.262, concerning industrial solid waste and municipal hazardous waste with changes to the proposed text as published in the April 16, 1999 issue of the *Texas Register* (24 TexReg 3036).

EXPLANATION OF ADOPTED RULES

In response to the Association of Electric Companies of Texas' petition for rulemaking previously granted by the commission, the amendments and new section are adopted in order to revise the state rules to add paint and paint-related waste to the list of universal wastes and provide for management standards for the new universal waste. The adoption also contains cross-reference corrections and a technical correction to the definition of "small quantity handler of universal waste."

Section 335.261 is amended to correct several references to 40 Title Code of Federal Regulations (CFR) §273.6, relating to the definitions of "destination facility," "large quantity handler of universal waste," "small quantity handler of universal waste," "thermostat," and "universal waste." In addition, the definition of "small quantity handler of universal waste" is amended to conform to the technical correction made at 63 FedReg 71225, and the definition of "universal waste" is amended to add to the list of universal wastes "paint and paint-related waste as described in §335.262(b)." In a change from the proposal, the following proposed provision is not adopted under §335.261(b)(13)(F)(iv), because the State of Texas has been authorized for its original or "base" universal waste rule, which makes the provision unnecessary: "This clause is contingent upon the United States Environmental Protection Agency's authorization of §335.261 of this title (relating to Universal Waste Rule), effective October 19, 1998, as amended."

New §335.262 relates to standards for management of paint and paint-related waste. Adopted §335.262(a) sets out the applicability of the standards for managing paint and paint-related waste and states that this section provides an alternative set of management standards in lieu of regulation under other portions of Chapter 335 not otherwise referenced under this section. Adopted §335.262(b) is the description, or definition, of paint and paint-related waste. Section §335.262(b) describes “paint and paint-related waste” as “used or unused paint and paint-related material which is ‘hazardous waste’ as defined under §335.1(56) of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination), and which is any mixture of pigment and a suitable liquid which forms a closely adherent coating when spread on a surface or any material which results from painting activities.” Under adopted §335.262(c), certain definitions and requirements apply to persons managing paint and paint-related wastes, except as otherwise provided in §335.262. Under §335.262(c)(1), these would include those requirements which apply to universal wastes in general and the definitions under the following regulations, as adopted by reference under §335.261: Title 40 CFR §§273.5, 273.6, 273.10 - 273.12, 273.15 - 273.20, 273.30 - 273.32, 273.35 - 273.40, 273.50 - 273.56, 273.60 - 273.62, and 273.70. In a change from the proposal, §335.262(c)(2) states that small quantity and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4 of this title (relating to General Prohibitions), and provides the requirements relating to containment. The change from proposal is the substitution of the adopted phrase “in accordance with §335.4 of this title (relating to General Prohibitions)” for the proposed phrase “in a way that prevents releases of any universal waste or component of a universal waste to the environment.” Under §335.262(c)(3), ignitable, reactive, or incompatible paint and paint-related waste must meet the

applicable requirements of 40 CFR §§265.17, 265.176, and 265.177. Under §335.262(d), hazardous waste determinations made under §335.262(b) must be documented at the time of the determination and maintained for at least three years. Finally, proposed §335.262(e) is not adopted, because the State of Texas has been authorized for its original or “base” universal waste rule, which makes this provision unnecessary, as follows: “This section is contingent upon the United States Environmental Protection Agency’s authorization of §335.261 of this title (relating to Universal Waste Rule), effective October 19, 1998, as amended.”

FINAL REGULATORY IMPACT ASSESSMENT

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and has 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 the act.

Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is adopted to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does 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. The rule will not adversely affect in a material way the aforementioned aspects of the state because the rule provides for streamlined waste management standards for certain paint and paint-related wastes, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state. More simply stated, the amendments revise the commission’s hazardous waste rules in a manner which could provide

a benefit to the economy while enhancing the protection of the environment and public health and safety, as explained below. The overall benefit from streamlining waste management standards for certain paint and paint-related wastes is due to the fact that the new standards would reduce the regulatory burden on persons generating or collecting these wastes. The streamlined waste management standards for certain paint and paint-related wastes would provide a benefit to the economy, sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. The rule also provides benefit, as opposed to an adverse effect in a material way, to the environment and the public health and safety of the state and affected sectors of the state by facilitating environmentally sound collection and increasing the proper recycling or processing of paint and paint-related wastes. The reason 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 is because these rules are designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. In other words, the adopted standards are anticipated to reduce regulatory requirements while facilitating an alternative for the collection of paint and paint-related waste and increasing the proper recycling or processing of these wastes. Furthermore, this rule does not meet any of the four applicability requirements listed in §2001.0225(a). The rule does not exceed a standard set by federal law because the purpose of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in this rule are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because there is no express requirement in state law concerning universal wastes. This rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule fits

the framework of the corresponding federal universal waste regulations. See 40 CFR §271.21, relating to procedures for revision of state programs and 40 CFR Part 273, relating to standards for universal waste management. The rulemaking adopts a rule under specific state law (i.e., Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024). Finally, this rulemaking is not being adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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 these rules is to provide an alternative for the collection of paint and paint-related waste, facilitating environmentally sound collection and increasing the proper recycling or processing of paint and paint-related wastes. The rules would substantially advance this stated purpose by adopting environmentally protective streamlined standards relating to universal wastes meeting the definition of paint and paint-related wastes. Promulgation and enforcement of these rules would not affect private real property which is the subject of the rules because the rule language provides an alternative set of management standards for paint and paint-related waste in lieu of other more stringent hazardous waste regulations, representing a streamlined approach to the regulation of certain types of management of paint and paint-related wastes. The adopted standards are not considered to be more stringent than existing standards. In addition, this reduction of regulatory requirements may be taken only at the initiative of certain persons managing paint and paint-related waste. For these reasons, this action is not considered a burden to private real property and does not constitute a taking under Government

Code, Chapter 2007. The subject regulations do not affect a landowner's rights in private real property.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that the adoption is a rulemaking subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for the adopted rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). CMP policies focus on construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §6901 et seq.

Promulgation and enforcement of this rule would be consistent with the applicable CMP goals and policies because the rule would facilitate the environmentally sound collection and increase the proper recycling or processing of paint and paint-related wastes, and facilitate programs developed to reduce the quantity of these wastes going to municipal solid waste landfills or combustors. The rule would also assure that the wastes will go to appropriate processing or recycling facilities under full hazardous

waste regulatory controls. Thus, the rule would serve to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also serve to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. The commission has determined that the specific actions detailed in this section and earlier in this preamble under the sections concerning explanation of adopted rules, final regulatory impact assessment, and takings impact assessment will comply with the goals and policies of the CMP. In addition, the rule does not violate any applicable provisions of the CMP's stated goals and policies.

HEARING AND COMMENTERS

The commission did not hold a public meeting on the proposed rule changes. The comment period for the proposed rules closed at 5:00 p.m., May 17, 1999. Written comments were submitted by the Association of Electric Companies of Texas, Inc. (AECT); Texas Eastman Division, Eastman Chemical Company (Eastman); and TXU Business Services, on behalf of TXU Electric & Gas, TXU SESCO & Gas, TXU Fuel Company, TXU Mining Company, TXU Pipeline Services, and TXU Lone Star Pipeline.

ANALYSIS OF COMMENTS

AECT and TXU Business Services expressed strong support for adoption of the proposed rules.

The commission acknowledges these comments from AECT and TXU Business Services.

Eastman commented on proposed §335.262(c)(2) concerning the wording "... small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in a way that prevents releases of any universal waste or component of a universal waste to the environment." The commenter pointed out that the words "must" and "any" infer that there must be no release of any type (e.g., air emission, spillage, etc.) from the management/storage of the waste to the environment. For example, vaporizing emissions would not be allowed. The commenter pointed out that even the activity of adding waste to or removing waste from a container will create emissions in apparent conflict with the proposed rule. Also, the commenter noted that a person with a venting container would not be operating within the proposed regulation. Thus, the commenter suggested the following wording for this portion of §335.262(c)(2): "small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4."

The commission agrees with this comment. The commission believes that the requirements of §335.4, relating to General Prohibitions, provide in a reasonable fashion, the level of protection that was intended by the proposal. The requirements of §335.4 are that, in addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner as to cause: (1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the commission; (2)

the creation and maintenance of a nuisance; or (3) the endangerment of the public health and welfare.

Eastman also commented that a careful reading of §335.262 would lead one to believe that the 40 CFR Part 265, Subparts AA, BB, and CC standards would apply, and suggested that these regulations, which deal with certain air emission standards, not be applied to container management in the proposed rule.

The commission disagrees with this comment, in that the proposal does not make the Part 265, Subparts AA, BB, and CC standards applicable to container management by small quantity handlers, large quantity handlers, or transporters of paint and paint-related waste. The referenced requirements under §335.262(c)(1), however, do make certain Part 265, Subparts AA, BB, and CC standards applicable to destination facilities, through the application of 40 CFR §273.60. If an owner or operator is operating within the requirements of this adopted rule, then there can be no interpretation that Part 265, Subpart AA, BB, or CC applies to paint and paint-related waste managed in containers, except for destination facilities. The commission considers it appropriate for the full range of applicable hazardous waste regulations, as referenced under 40 CFR §273.60, apply to destination facilities. Therefore, no change to the proposal has been made, in this regard.

STATUTORY AUTHORITY

The amendments are adopted 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.

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

§335.261, §335.262

DIVISION 5 : UNIVERSAL WASTE RULE

§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 Title 30 Texas Administrative Code. Except as provided in subsection (b) of this section, Title 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as amended and adopted through April 12, 1996, at 61 FedReg 16290.

(b) Title 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 Natural Resource Conservation Commission," "the agency," or "the commission" consistent with the organization of the commission as set out in the 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) 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)."

(5) 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)."

(6) 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.

(7) 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)."

(8) 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)."

(9) 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)."

(10) In 40 CFR §273.4(a), the reference to "40 CFR 273.6" is changed to "§335.261(b)(13)(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)."

(11) In 40 CFR §273.5(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 "40 CFR 273.6" is changed to "§335.261(b)(13)(F) of this title (relating to Universal Waste Rule)."

(12) In 40 CFR §273.5(a)(2), the reference to "40 CFR 261.5" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)" and the reference to "40 CFR 273.6" is changed to "§335.261(b)(13)(F) of this title (relating to Universal Waste Rule)."

(13) In 40 CFR §273.6, the following definitions are changed to the meanings described in this paragraph:

(A) "Destination Facility" means 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" means 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" means 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" means 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” means 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; and

(F) “Universal Waste” means 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) thermostats as described in 40 CFR §273.4; and

(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);

(14) In 40 CFR §273.10, the reference to “40 CFR 273.6” is changed to “§335.261(b)(13)(D) of this title (relating to Universal Waste Rule).”

(15) 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)."

(16) 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)."

(17) In 40 CFR §273.13(c)(3)(ii), 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)."

(18) 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)."

(19) 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)."

(20) 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."

(21) In 40 CFR §273.30, the reference to "40 CFR 273.6" is changed to "§335.261(b)(13)(C) of this title (relating to Universal Waste Rule)."

(22) 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)."

(23) 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)."

(24) In 40 CFR §273.33(c)(3)(ii), 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)."

(25) 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)."

(26) 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)."

(27) 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."

(28) 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)."

(29) 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)."

(30) 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)."

(31) In 40 CFR §273.60(a), the reference to "40 CFR 273.6" is changed to "§335.261(b)(13)(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 "Title 30 Texas Administrative Code (relating to Environmental Quality)."

(32) 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)."

(33) 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)."

(34) In 40 CFR §273.80(b), the reference to "40 CFR 260.20(b)" is changed to "§20.15 of this title."

(35) In 40 CFR §273.81(a), the reference to "40 CFR 260.10" is changed to "§335.1 of this title (relating to Definitions)."

(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 subpart G of 40 CFR part 273 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.

§335.262. Standards for Management of Paint and Paint-Related Waste.

(a) This section establishes requirements for managing paint and paint-related waste as described in subsection (b) of this section, and provides an alternative set of management standards in lieu of regulation under other portions of this chapter not otherwise referenced under this section.

(b) Paint and paint-related waste is used or unused paint and paint-related material which is “hazardous waste” as defined under §335.1(56) of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination), and which is any mixture of pigment and a suitable liquid which forms a closely adherent coating when spread on a surface or any material which results from painting activities.

(c) Except as otherwise provided in this section, the following definitions and requirements apply to persons managing paint and paint-related wastes:

(1) Those requirements which apply to universal wastes in general and the definitions under the following regulations, as adopted by reference under §335.261 of this title (relating to Universal Waste Rule): Title 40 Code of Federal Regulations (CFR) §§273.5, 273.6, 273.10 - 273.12, 273.15 - 273.20, 273.30 - 273.32, 273.35 - 273.40, 273.50 - 273.56, 273.60 - 273.62, and 273.70;

(2) In addition to the requirements referenced under paragraph (1) of this subsection, small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4 of this title (relating to General Prohibitions). The paint and paint-related waste must be contained in one or more of the following:

(A) a container that remains closed, except when necessary to add or remove waste;

(B) a container that is structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(C) a container that does not meet the requirements of subparagraphs (A) and (B) of this paragraph, provided that the unacceptable container is overpacked in a container that does meet the requirements of subparagraphs (A) and (B) of this paragraph; or

(D) a tank that meets the requirements of 40 CFR Part 265, Subpart J, except for 40 CFR §§265.197(c), 265.200, and 265.201; or

(E) a transport vehicle or vessel that is closed, structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; and

(F) a container, multiple container package unit, tank, transport vehicle or vessel that is labeled or marked clearly with the words “Universal Waste - Paint and Paint-Related Wastes;” and

(3) For paint and paint-related waste that is ignitable, reactive, or incompatible waste, the applicable requirements under 40 CFR §§265.17, 265.176, and 265.177.

(d) Hazardous waste determinations under subsection (b) of this section shall be documented at the time of the determination and maintained for at least three years.