

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §335.261 and new §335.262, concerning industrial solid waste and municipal hazardous waste.

EXPLANATION OF PROPOSED 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 proposed 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 proposed universal waste. The proposal also contains cross-reference corrections and a technical correction to the definition of "small quantity handler of universal waste."

Section 335.261 is proposed to be amended to correct several references to 40 Title Code of Federal Regulations (CFR) §273.6, relating to definitions. Under proposed §335.261(b)(10), the adoption by reference of 40 CFR §273.4(a) is proposed to be changed to correct the reference to 40 CFR §273.6 by changing it to §335.261(b)(13)(E), which is the correct reference for the definition of "thermostat."

Under proposed §335.261(b)(11), the adoption by reference of 40 CFR §273.5(a)(1) is proposed to be changed to correct the reference to 40 CFR §273.6 by changing it to §335.261(b)(13)(F), which is the correct reference for the definition of "universal waste." Under proposed §335.261(b)(12), the adoption by reference of 40 CFR §273.5(a)(2) is proposed to be changed to correct the reference to 40 CFR §273.6 by changing it to §335.261(b)(13)(F), which is the correct reference for the definition of "universal waste." The definition of small quantity handler of universal waste is proposed to be amended to conform to the technical correction made at 63 FedReg 71225. The existing definition under §335.261(b)(13)(D) is proposed to be amended to include as small quantity handlers of universal

waste those who do not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. The definition of universal waste in §335.261(b)(13)(F) is proposed to be amended under clause (iv) to add to the list of universal wastes “paint and paint-related waste as described in §335.262(b).” Also, the following sentence is proposed to be added because a state such as Texas that is not yet authorized for its original or “base” universal waste rule is not allowed to add new wastes to its list of universal wastes on its own accord: “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.” Section 335.261(b) is proposed to be amended by adding a new paragraph (14), wherein the adoption by reference of 40 CFR §273.10 is proposed to be changed to correct the reference to 40 CFR §273.6 by changing it to §335.261(b)(13)(D), which is the correct reference for the definition of “small quantity handler of universal waste.” Then, because new paragraph (14) is proposed to be added, paragraphs (14) through (19) are proposed to be amended by renumbering them as paragraphs (15) through (20). Section 335.261(b) is also proposed to be amended by adding a new paragraph (21), wherein the adoption by reference of 40 CFR §273.30 is proposed to be changed to correct the reference to 40 CFR §273.6 by changing it to §335.261(b)(13)(C), which is the correct reference for the definition of “large quantity handler of universal waste.” Then, because new paragraph (21) is proposed to be added, paragraphs (20) through (33) are proposed to be amended by renumbering them as paragraphs (22) through (35). Under proposed §335.261(b)(31), the adoption by reference of 40 CFR §273.60(a) is proposed to be changed to correct the reference to 40 CFR §273.6 by changing it to §335.261(b)(13)(A), which is the correct reference for the definition of “destination facility.”

Proposed new §335.262 relates to standards for management of paint and paint-related waste. Proposed §335.262(a) sets out the applicability of the management standards by stating that §335.262 establishes requirements for managing paint and paint-related waste as described in §335.262(b) and 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. By proposing that this section provides an alternative set of standards, the commission intends for persons to be able to subject themselves to full regulation as hazardous waste under all the applicable regulations of 30 TAC, rather than necessarily managing them as hazardous universal wastes under this section and §335.261. Proposed §335.262(b) is the description, or definition, of paint and paint-related waste. First, it is proposed that, like all universal wastes, the material must be “hazardous waste.” Proposed §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.” The commission intends that this would include hazardous waste paint, as well as hazardous wastes resulting from painting activities such as certain solvents. Under §335.262(c), it is proposed that certain definitions and requirements apply to persons managing paint and paint-related wastes, except as otherwise provided in §335.262. Under proposed §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. Section 273.5 is applicability of the standards for household and conditionally exempt small

quantity generator waste. Section 273.6 relates to definitions. Sections 273.10 - 273.12 are applicability, prohibitions, and notification requirements applicable to small quantity handlers of universal waste. Sections 273.15 - 273.20 are requirements concerning accumulation time limits, employee training, response to releases, off-site shipments, tracking universal waste shipments, and exports, applicable to small quantity handlers of universal waste. Sections 273.30 - 273.32 are applicability, prohibitions, and notification requirements applicable to large quantity handlers of universal waste. Sections 273.35 - 273.40 are requirements concerning accumulation time limits, employee training, response to releases, off-site shipments, tracking universal waste shipments, and exports, applicable to large quantity handlers of universal waste. Sections 273.50 - 273.56 are requirements concerning applicability, prohibitions, waste management, storage time limits, response to releases, off-site shipments, and exports, applicable to universal waste transporters. Sections 273.60 - 273.62 are requirements concerning applicability, off-site shipments, and tracking universal waste shipments, applicable to destination facilities. Section 273.70 are import requirements. Under proposed §335.262(c)(2), the following additional requirements would apply: small quantity 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 thereof to the environment; the paint and paint-related waste must be contained in a container that remains closed, except when necessary to add or remove waste and that is structurally sound, compatible with the waste, and that lacks leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions, or if the container does not meet these requirements, it must be overpacked in a container that does meet these requirements; or the paint and paint-related waste must be contained in a tank that meets certain hazardous waste interim status standards; or the paint and paint-related waste

must be contained in 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. In addition, paint and paint-related waste must be contained in 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.” Under proposed §335.262(c)(3), ignitable, reactive, or incompatible paint and paint-related waste must meet the applicable requirements of 40 CFR §§265.17, relating to general requirements for ignitable, reactive, or incompatible wastes, 265.176, relating to special container requirements for ignitable or reactive wastes, and 265.177, relating to special container requirements for incompatible wastes. Under §335.262(d), it is proposed that 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, under §335.262(e), the following sentence is proposed to be added because, according to the United States Environmental Protection Agency, a state such as Texas that is not yet authorized for its original or “base” universal waste rule is not allowed to add new wastes to its state list of universal wastes on its own accord: “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.”

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 335, concerning industrial solid waste and municipal hazardous waste are in effect, there will be no significant fiscal implications for state government or units of local

governments as a result of administration or enforcement of the proposed amendment. The purpose of the proposed change is to revise state rules to add paint and paint-related waste to the list of universal wastes and provide for management standards for the new proposed universal wastes. Universal waste is a term used for certain widely generated hazardous wastes such as certain batteries, pesticides, and mercury-containing thermostats that can be recycled. The proposed amendments would offer another alternative for the collection of waste and increase the recycling or processing of paint and paint-related wastes. The rule also contains cross-reference corrections and a technical correction to the definition of “small quantity handler of universal waste.” At the option of certain persons managing paint and paint-related waste which is hazardous waste, these amendments provide an alternative set of waste management standards specifically for paint and paint-related wastes in lieu of other more stringent hazardous waste regulations. The proposed amendments may have a minor positive fiscal impact on state agencies and units of local government who manage paint and paint-related waste. The cost savings are anticipated to be in the areas of employee training, contingency plan maintenance, reporting, record keeping, land disposal restriction notifications, shipping and current disposal costs. It is also anticipated that there could be a minor positive impact on small business as well. Reductions in costs to individuals including small business are addressed below in the Small Business Analysis.

SMALL BUSINESS ANALYSIS

Compliance with the proposed amendments is optional on the part of individual waste generators. The intent of the proposed amendments is to provide an alternative streamlined set of management standards for hazardous wastes that meet the definition of paint and paint-related wastes. Businesses that choose to comply with the proposed alternative set of management standards may do so in lieu of other more

stringent hazardous waste regulations. It is anticipated that small businesses will find economic benefit in the areas of employee training, contingency plan maintenance costs, filing of hazardous waste biennial reports, completion of shipping manifests and record keeping, land disposal restriction notifications, and shipping and disposal costs.

PUBLIC BENEFIT

Mr. Orozco 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 the streamlining of certain hazardous waste management requirements; more cost-effective regulation of certain waste management activities; continuation of environmentally sound collection of paint and paint-related wastes; increasing the proper recycling or processing of paint and paint-related waste; facilitation of programs developed to reduce quantities of paint and paint-related wastes going to municipal solid waste landfills or combustors; and improvements in the management of certain hazardous waste and hazardous waste facilities. There are no significant economic costs anticipated to any person, including any small business, required to comply with the sections as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code (the 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 Code. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a).

Although this rule is proposed 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 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 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 proposed amendments are intended to 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 proposed 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 proposed 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 proposed rule does not exceed a standard set by federal law because the purpose of this proposal 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 proposal 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 proposal 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 proposed or 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 proposed rules pursuant to the Code, Annotated §2007.043. The following is a summary of that assessment. The specific purpose of these proposed 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 proposed 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 proposed rules would not affect private real property which is the subject of the rules because the proposed 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 proposed 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 the Code, Chapter 2007. The subject proposed regulations do not affect a landowner's rights in private real property.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking for consistency with Coastal Management Program (CMP) goals and policies in accordance with the rules of the Coastal Coordination Council. The commission has found that the proposal is a rulemaking which relates to an action or actions subject to the CMP, in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code §33.201 et seq.), and the commission's rules at 30 TAC Chapter 281, Subchapter B, relating to consistency with the Texas CMP. Therefore, as required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, this proposal must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency

determination for this proposed 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 the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this proposed rule would be consistent with the applicable CMP goals and policies because the proposed 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 proposed rule would also assure that the wastes will go to appropriate processing or recycling facilities under full hazardous waste regulatory controls. Thus, the proposed 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 proposed rules, public benefit, small business analysis, draft regulatory impact analysis, and takings impact analysis

will comply with the goals and policies of the CMP. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposal with the CMP.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Bettie Bell, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808.

All comments must be received by May 17, 1999, and should reference Rule Log No. 97183-335-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 Ray Henry Austin at (512) 239-6814.

STATUTORY AUTHORITY

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 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) (No change.)

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

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

(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) - (C) (No change.)

(D) "Small Quantity Handler of Universal Waste" means a universal waste handler (as defined in this section) who does not accumulate at any time [more than] 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively;

(E) (No change.)

(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; [and]

(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). 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;

(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) [(14)] 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) [(15)] 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) [(16)] 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) [(17)] 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) [(18)] 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) [(19)] 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) [(20)] 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) [(21)] 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) [(22)] 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) [(23)] 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) [(24)] 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) [(25)] 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) [(26)] 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) [(27)] 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) [(28)] 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) [(29)] 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) [(30)] 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) [(31)] 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) [(32)] In 40 CFR §273.80(b), the reference to "40 CFR 260.20(b)" is changed to "§20.15 of this title."

(35) [(33)] 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) - (d) (No change.)

§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 Chapter 335 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 a way that prevents releases of any universal waste or component of a universal waste to the environment. 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.

(e) 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.