

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§335.1, 335.2, 335.6, 335.11, 335.12, 335.13, 335.17, 335.18, 335.19, 335.21, 335.23, 335.24, 335.29, 335.31, 335.41, 335.61, 335.62, 335.76, 335.78, 335.91, 335.112, 335.114, 335.152, 335.154, 335.156, 335.211, 335.213, 335.214, 335.221, 335.241, 335.251, 335.261, and 335.431 concerning industrial solid waste and municipal hazardous waste.

#### EXPLANATION OF PROPOSED RULES

The primary purpose of the proposed amendments is to revise the state rules to conform to certain federal regulations, either by incorporating the federal regulations by reference or by introducing language into the state rules which corresponds to the federal regulations. Establishing equivalency with federal regulations will enable the State of Texas to retain authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA). Another purpose of the proposed rules is to reform certain state rules for purposes of streamlining, clarification, and correction. The proposed rules also include administrative revisions, such as changing “Texas Water Commission” to “Texas Natural Resource Conservation Commission,” correcting internal cross references, and changing “his” and “he” to gender-neutral language.

Most of the federal regulations to which the proposed rules are being conformed were promulgated by the EPA between July 1, 1994 and June 30, 1996 under the authority of the federal Resource Conservation and Recovery Act (RCRA). Some of the federal regulations promulgated prior to July 1994 are proposed to be adopted where state rules need to be changed to appropriately adopt or reflect the requirements of the federal regulations. For instance, amendment to the state rules at §335.24(j) is

proposed in order to appropriately reflect federal regulations concerning the applicability of the used oil standards promulgated on September 10, 1992 at 57 FedReg 41612. Also, proposed §335.24(k) is a conforming change to reflect federal regulations concerning the applicability of 40 Code of Federal Regulations (CFR) Parts 264 and 265, Subparts AA and BB promulgated at 55 FedReg 25493 on June 21, 1990. Some of the federal regulations promulgated after June 1996 are proposed to be adopted in order that the state rules will have more up-to-date requirements. For instance, some of the referenced test methods have been updated, notably those within EPA Publication SW-846, and this proposal contains updates to adopt these test methods. Also, some of the federal regulations promulgated after June 1996 are proposed to be adopted to benefit stakeholders by providing certain streamlined requirements. For instance, the Land Disposal Restrictions (LDR) - Phase IV rule promulgated by the EPA on May 12, 1997 at 62 FedReg 25998, which is proposed to be adopted, contains streamlined LDR paperwork requirements and exclusions from the definition of “solid waste” for certain scrap metal and shredded circuit boards. Proposed §335.1 relates to definitions. In accordance with new requirements of the Texas Register, the definitions are proposed to be assigned numbers, in this case §335.1(1)-(149). A set of the definitions relating to the universal waste rule, as promulgated by the EPA at 60 FedReg 25492 on May 11, 1995, is proposed to be reformatted by providing the following as each of the definitions: “Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).” In this way, any future changes to these definitions will necessitate that §335.261 be “opened” in the rulemaking process, as opposed to §335.1. This will minimize conflicts with other rulemaking efforts which involve §335.1. The following terms are proposed to be changed in such a way: “Battery” at §335.1(10); “Destination Facility” at §335.1(33); “Pesticide” at §335.1(98); “Thermostat” at §335.1(128); “Universal Waste Handler” at §335.1(141); and “Universal

Waste Transporter” at §335.1(142). The meanings of these terms are described in the portion of this proposal addressing §335.261. The definition of “Universal Waste” is proposed to be amended to reflect the definition found under 40 CFR §260.10, with the resulting definition, if adopted, to be as follows: “Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) that are managed under the universal waste requirements of §335.261 of this title (relating to Universal Waste Rule).”

Section 335.1 is also proposed to be amended at the definition of “solid waste.” There are three proposed new exclusions from the definition: certain recovered oil, scrap metal, and shredded circuit boards, which are proposed at §335.1(119)(A)(iv) by including the federal exclusions found under 40 CFR §261.4(a)(12)-(14). The recovered oil exclusion was published by the EPA at 59 FedReg 38536 on July 28, 1994. The scrap metal and shredded circuit board exclusions were published under the Land Disposal Restrictions - Phase IV promulgation at 62 FedReg 25998 on May 12, 1997. Another proposed amendment to the definition of “solid waste” to conform the state definition with changes to its federal counterpart is within Table 1, adding “other than excluded scrap metal (see §335.17(9))” in the scrap metal entries, and referring to excluded scrap metal in the note at the bottom of the table. Since Table 1 indicates materials that are solid wastes when recycled, this proposed amendment is for the purpose of clarity, so that it is shown that excluded scrap metal is clearly outside the scope of Table 1. Finally, the definition of “solid waste” is proposed to be amended at §335.1(119)(J) with a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.2 relates to permit required. Proposed §335.2(d)(6) is a nonsubstantive change from the word “section” to its symbol “§.” Proposed §335.2(h)(7) is a correction to “Texas Natural Resource Conservation Commission.” Proposed §335.2(k) is a reference correction, adding the phrase “(relating to Notification Requirements)” after the reference to §335.6. Proposed §335.2(l) is a conforming change to reflect the federal hazardous waste permit exemption at 40 CFR §270.1(c)(2)(viii) for universal waste handlers and transporters managing universal wastes, as promulgated by the EPA at 60 FedReg 25492 on May 11, 1995.

Proposed §335.6 relates to notification requirements, and is proposed to be amended at §335.6(j) to correct the reference to Chapter 324 by adding the phrase “of this title,” and at §335.6(k) with a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.11 relates to shipping requirements for transporters of hazardous waste or Class I waste. Proposed §335.11(a)(4) has a conforming change to reflect changes in the federal requirements concerning shipments for hazardous waste imports and exports, implementing an Organization for Economic Cooperation and Development (OECD) Council decision. This proposed change is to require transporters to know, in the case of hazardous waste exports, that the shipment conforms to the requirements set forth under 40 CFR §263.20(a), as amended and adopted through April 12, 1996 at 61 FedReg 16290, which added the requirement that a transporter may not accept hazardous waste subject to the requirements of 40 CFR Part 262, Subpart H without a tracking document that includes all information required by 40 CFR §262.84.

Proposed §335.12 relates to shipping requirements applicable to owners or operators of storage, processing, or disposal facilities. Proposed §335.12(c)(2) contains the added “(CFR),” and §335.12(d) is a conforming change to reflect changes in the federal requirements at 40 CFR §264.71(d) and §265.71(d) concerning transfrontier shipments of hazardous waste for recovery within the OECD, as promulgated by the EPA at 61 FedReg 16290 on April 12, 1996. This proposed conforming change is to require the owner or operator of a facility receiving a shipment subject to 40 CFR Part 262, Subpart H to provide a copy of the tracking document to a specified EPA address and to certain other authorities within three working days of receipt of the shipment, and to maintain the original copy of the tracking document at the facility for at least three years from the date of signature.

Proposed §335.13 relates to recordkeeping and reporting procedures applicable to generators shipping hazardous waste or Class I waste and primary exporters of hazardous waste. Proposed §335.13(n) has a conforming amendment to reflect a change under 40 CFR §262.56(b) in the mailing address at the EPA to which annual reports should be sent by primary exporters of hazardous waste, as promulgated by the EPA at 61 FedReg 16290 on April 12, 1996.

Proposed §335.17 relates to special definitions for recyclable materials and nonhazardous recyclable materials. Proposed §335.17(a)(9)-(12) spells out the definitions for “excluded scrap metal,” “processed scrap metal,” “home scrap metal,” and “prompt scrap metal,” which match the corresponding federal definitions under 40 CFR §261.1(c)(9)-(12), as published by the EPA in the land disposal restrictions Phase IV promulgation at 62 FedReg 25998 on May 12, 1997. Section 335.17 is

also proposed to be amended at §335.17(b) with a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.18 relates to variances from classification as a solid waste, and is proposed to be amended at §335.18(b) with a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.19 relates to standards and criteria for variances from classification as a solid waste. Proposed §335.19(a) has a conforming amendment to reflect a change in 40 CFR §260.31(a), as published by the EPA in the land disposal restrictions Phase II promulgation at 59 FedReg 47980 on September 19, 1994, deleting the words “standards and.” In addition, §335.19(d) contains a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.21 relates to procedures for variances from classification as a solid waste or variances to be classified as a boiler. To conform to the federal regulations at 40 CFR §260.33(a) published by the EPA in the land disposal restrictions Phase II promulgation at 59 FedReg 47980 on September 19, 1994, proposed §335.21(1) has the added sentence “The applicant must apply to the executive director for the variance.” It also contains a correction of the conjunction in the second sentence of §335.21(1) from “and” to “or.” Proposed §335.21(2) has the same conjunctive correction and also a correction to refer to filing with the chief clerk a motion for reconsideration of a final decision of the executive director, subject to §50.39.

Proposed §335.23 relates to procedures for case-by-case regulation of hazardous waste recycling activities, and contains corrections in the form of additional references to appropriate applicable chapters, under §335.23(2).

Proposed §335.24 relates to requirements for recyclable materials and nonhazardous recyclable materials, and contains conjunctive corrections, deletions of superfluous conjunctions, and under subsections (b), (c), and (e), corrections in the form of additional references to appropriate chapters. Section 335.24(c)(2) is proposed to be deleted to conform to the corresponding federal regulation. Under the Universal Waste Rule at 60 FedReg 25492 promulgated on May 11, 1995, EPA removed the exclusion for used batteries that are to be regenerated, under 40 CFR §261.6(a)(3)(ii), and added a provision in the Universal Waste Rules that facilities regenerating used batteries are subject to the 40 CFR Part 273 standards. This change by EPA was undertaken to eliminate confusion which could come from having multiple special provisions for batteries. The aforementioned deletion of paragraph (c)(2) conforms the state rule to this federal rule change. Section 335.24(c)(3) is proposed to be changed to paragraph (c)(2), and is also proposed to be modified to add after “scrap metal” the phrase “that is not already excluded under 40 Code of Federal Regulations §261.4(a)(13).” This would conform to the federal regulation at 40 CFR §261.6(a)(3)(ii) published by the EPA under the Land Disposal Restrictions - Phase IV promulgation at 62 FedReg 25998 on May 12, 1997. This proposed change is necessary because the excluded scrap metal would no longer be a solid waste under this proposal (see discussion under proposed changes to §335.1), and thus would not meet the definition of hazardous waste or a recyclable material. Consequently, the exclusion from the requirement for recyclable material is neither needed nor appropriate for scrap metal that is already excluded from the

definition of “solid waste.” Section 335.24(c)(4) is proposed to be renumbered to paragraph (c)(3) because of the aforementioned deletion of paragraph (c)(2), and is also proposed to be modified to conform to the federal regulations by adding “(this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 Code of Federal Regulations §261.4(a)(12)),” as published by the EPA at 59 FedReg 38536 under the recovered oil exclusion promulgation on July 28, 1994. This proposed parenthetical phrase is a clarification that, since certain recovered oil would already be excluded from the definition of “solid waste” under this proposal, the exemption for fuels produced from such recovered oil is not needed. Also, §335.24(c)(5) is proposed to be deleted in order to conform to the federal regulations. Under the aforementioned recovered oil exclusion, EPA removed the exclusion for certain recovered used oils, under 40 CFR §261.6(a)(3)(v), because the recovered oil exclusion was rewritten as an exclusion from the definition of solid waste. In other words, since the recovered oil would no longer be a solid waste, it would not meet the definition of a hazardous waste or a recyclable material. Consequently, the exclusion from the requirements for recyclable materials is not needed, nor would it be appropriate. Section 335.24(c)(6) is proposed to be renumbered to paragraph (c)(4), and (c)(7) renumbered to (c)(5), because of the aforementioned deletions of paragraphs (c)(2) and (c)(5).

Proposed §335.24(g) contains reference corrections and a streamlining technical correction relating to spent lead-acid batteries being reclaimed. First, the phrase “except as provided in subsection (h) of this section,” is proposed to be deleted and substituted with a sentence at the end of subsection (g) which has the same meaning, but is more straightforward, as follows: “Recyclable materials listed in subsections (b)(4) and (c)(2) remain subject to the requirements of subsection (h) of this section.”

Next, the proposed reference to (b)(4), which is a reference to spent lead-acid batteries being reclaimed, is added to the parenthetical phrase excluding certain recyclable materials from the requirements of subsection (g) to clarify what the commission believes is the intent of the existing rule. The current wording indicates that, except as provided in subsection (h), recyclable materials remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15. Then, existing subsection (h) provides that recyclable materials listed in subsection (b)(4) and subsection (c)(2) and (3) remain subject to the requirements of §§335.4 and 335.6. Without the proposed addition of (b)(4) to the parenthetical phrase excluding certain recyclable materials from subsection (g), it could be interpreted that subsection (g), as well as subsection (h) applies to spent lead-acid batteries being reclaimed. The intent of the existing rule is that the requirements of subsection (h), and not subsection (g), should apply to spent lead-acid batteries being reclaimed. Finally, §335.24(g) is proposed to be corrected by replacing the reference to subsection (c)(3) - (7) with (c)(2) - (5) to properly reflect the proposed deletions of subsections (c)(2) and (5). Proposed §335.24(h) contains a reference correction and a streamlining technical amendment relating to spent lead-acid batteries being reclaimed. First, the reference to recyclable materials listed in subsection (c)(2) and (3) is proposed to be changed to refer to only subsection (c)(2), because the existing subsection (c)(2) is proposed for deletion, and the “new” (i.e., proposed) subsection (c)(2) was the “old” (i.e., existing) subsection (c)(3). Next, the commission proposes changes to subsection (h) to limit the referenced requirements of this subsection to §335.4 (relating to General Prohibitions), for spent lead-acid batteries being reclaimed, by proposing to delete the requirement for notification under §335.6. This proposed change would align the state rules more closely with the corresponding federal regulation at 40 CFR §266.80(a) and its state analog under §335.251, which do not require such notification, except for owners and operators who store

certain lead-acid batteries before reclaiming them. Proposed §335.24(j) is a conforming change to reflect the federal regulation at 40 CFR §261.6(a)(4), concerning the applicability of requirements for used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic, originally promulgated at 57 FedReg 41612 on September 10, 1992. In a similar vein of updating state rules to appropriately address federal requirements, proposed §335.24(k) is a conforming change to reflect the federal regulation at 40 CFR §261.6(d), concerning the applicability of 40 CFR Parts 264 and 265, Subparts AA and BB to facilities subject to hazardous waste permitting requirements with hazardous waste recycling units, originally promulgated at 55 FedReg 25493 on June 21, 1990. Proposed §335.24(l) is a conforming change to reflect the federal requirements at 40 CFR §261.6(a)(5) concerning hazardous waste exports to or imports from designated member countries of the Organization for Economic Cooperation and Development, as promulgated by the EPA at 61 FedReg 16290 on April 12, 1996. Finally, §335.24 is proposed to be amended at §335.24(m) with a reference to other portions of Chapter 335 that relate to solid wastes that are recycled.

Proposed §335.29 relates to adoption of appendices by reference, and contains updates to the adoptions of 40 CFR Part 261 Appendices VII and VIII, under §335.29(4) and (5), as promulgated by the EPA in the regulations concerning carbamate production identification and listing of hazardous waste at 60 FedReg 7824 on February 9, 1995 and 60 FedReg 19165 on April 17, 1995, respectively.

Proposed §335.31 relates to incorporation of references, and contains updates to references contained in 40 CFR §260.11, as amended and adopted in the Code of Federal Regulations through June 13, 1997, at 62 FedReg 32452. This proposed amendment would incorporate by reference the addition of

new and revised methods as updates to “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, Third Edition, and several deletions of obsolete methods.

Proposed §335.41(j) relates to applicability of hazardous waste rules to universal wastes, universal waste handlers, and universal waste transporters, and is a conforming change to reflect 40 CFR §§261.9, 264.1(g)(11), and 265.1(c)(14), promulgated by the EPA at 60 FedReg 25492 on May 11, 1995. This proposed subsection basically states that Subchapters B-F and O of Chapter 335, and Chapter 305 do not apply to universal wastes, universal waste handlers, or universal waste transporters, except as provided by §335.261 of this title (relating to Universal Waste Rule).

Proposed §335.61 in Subchapter C (relating to Standards Applicable to Generators of Hazardous Waste) provides rules concerning quantity determinations that must be used to determine the applicability of provisions of Subchapter C that are dependent on calculations of the quantity of hazardous waste generated per month, and is a conforming change to reflect 40 CFR §262.10(b), promulgated by the EPA at 60 FedReg 25492 on May 11, 1995.

Proposed §335.62 contains an added sentence which states that generators of hazardous waste must refer to Chapter 335 and to 40 CFR Parts 261, 264, 265, 266, 268, and 273 for possible exclusions or restrictions which may be applicable to management of the specific waste, which is a conforming change to reflect 40 CFR §262.11(d), promulgated by the EPA at 60 FedReg 25492 on May 11, 1995.

Proposed §335.76 relates to additional requirements applicable to international shipments, and is proposed to be amended in several subsections to account for changes in the corresponding federal regulations, as published by the EPA in the OECD promulgation of April 12, 1996.

Proposed §335.76(a) updates the reference to 40 CFR §262.58, as amended and adopted through April 12, 1996, at 61 FedReg 16289. Proposed §335.76(b)(1) updates the reference to 40 CFR §262.53, as amended and adopted through April 12, 1996, at 61 FedReg 16289. Proposed §335.76(f) updates the reference to 40 CFR §262.58, as amended and adopted through April 12, 1996, at 61 FedReg 16289. Proposed §335.76(h) states that transfrontier shipments of hazardous waste for recovery within the OECD are subject to 40 CFR Part 262, Subpart H, which is proposed to be adopted by reference as amended and adopted through April 12, 1996, at 61 FedReg 16289.

Proposed §335.78 relates to special requirements for hazardous waste generated by conditionally exempt small quantity generators. Proposed §335.78(b) contains corrections to refer to the appropriate chapters and correction of the conjunction from “and” to “or.” Proposed §335.78(c) and §335.78(c)(1)-(6) contain changes conforming to the corresponding federal regulation, §261.5(c), as published by the EPA in the universal waste rule promulgation at 60 FedReg 25492 on May 11, 1995. Also, proposed §335.78(c)(1) has the added parenthetical abbreviation “CFR” for “Code of Federal Regulations,” and “CFR” is proposed throughout the rest of §335.78 to replace the longer term, for the sake of brevity. Proposed §335.78(e) and §335.78(f)(2) contain corrections to refer to the appropriate chapters. Proposed §335.78(f)(3)(D) and (E) contain revisions to conform to the federal regulations concerning disposal options under Subtitle D for conditionally exempt small quantity generators of acute hazardous waste, promulgated by the EPA at 61 FedReg 34252 on July 1, 1996.

These proposed changes would reflect changes to 40 CFR §261.5 which add requirements that, in order to be excluded from full regulation under this section, acute hazardous wastes generated in quantities equal to or less than one kilogram per month, or residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill in quantities equal to or less than 100 kilograms per month, or hazardous waste generated in quantities of less than 100 kilograms per month, the generator must ensure delivery of the wastes to a municipal solid waste landfill that is subject to 40 CFR Part 258 or equivalent or more stringent rules under 30 TAC Chapter 330, concerning municipal solid waste; or to a non-municipal or industrial non-hazardous solid waste landfill that is subject to the requirements of §257.5 through §257.30 of 40 CFR Part 257 or equivalent or more stringent counterpart regulations that may be adopted by the commission concerning additional requirements for industrial non-hazardous waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators. Proposed §335.78(f)(3)(F) is the newly designated subparagraph for existing subparagraph (E). Proposed §335.78(f)(3)(G) is a revision to conform to the federal regulations requiring conditionally exempt small quantity generators, who generate acute hazardous waste that is universal waste managed under the universal waste rules, to ensure that the waste is managed by or delivered to a universal waste handler or destination facility subject to the requirements of the universal waste rule. Proposed §335.78(g)(2) contains corrections to refer to the appropriate chapters. Proposed §335.78(g)(3)(D) and (E) contain revisions to conform to the federal regulations concerning disposal options under Subtitle D for conditionally exempt small quantity generators of hazardous waste, promulgated by the EPA at 61 FedReg 34252 on July 1, 1996. Proposed §335.78(g)(3)(G) is a revision to conform to the federal regulations requiring conditionally exempt small quantity generators, who generate hazardous waste that is universal waste managed under the universal waste rules, to

ensure that the waste is managed by or delivered to a universal waste handler or destination facility subject to the requirements of the universal waste rule.

Proposed §335.91(e) relates to the scope of standards applicable to transporters of hazardous waste, and contains language reflecting the federal regulations requiring compliance with 40 CFR Part 262, Subpart H for certain transporters of hazardous waste that is being imported from or exported to any of the member countries of the OECD for purposes of recovery, reflecting 40 CFR §263.10(d) as promulgated by the EPA at 61 FedReg 16290 on April 12, 1996.

Proposed §335.112 relates to interim standards for owners and operators of hazardous waste storage, processing, or disposal facilities. The proposed revision to §335.112(a)(1) concerns the OECD rules promulgated by the EPA, and is proposed to be updated to include adoption by reference of the 40 CFR Part 265, Subpart B general facility standards, as amended through April 12, 1996, at 61 FedReg 16290. This proposed revision incorporates changes at 40 CFR §265.12(a) concerning required notices. Proposed §335.112(a)(19) contains an update to the adoption by reference of the 40 CFR Part 265, Subpart AA air emission standards for process vents, as amended through June 13, 1997, at 62 FedReg 32452. This proposed revision incorporates changes at 40 CFR §265.1034 concerning test methods and procedures, replacing references to Method 8240 with references to Method 8260 of “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846. Proposed §335.112(a)(20) contains an update to the adoption by reference of the 40 CFR Part 265, Subpart BB air emission standards for equipment leaks, as amended through June 13, 1997, at 62 FedReg 32452. This proposed revision incorporates changes at 40 CFR §265.1063 concerning test

methods and procedures, replacing the reference to Method 8240 with reference to Method 8260 of “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846.

Proposed §335.114 relates to reporting requirements. Proposed §335.114(a)(3) contains a correction of the name of the agency from “TWC” to “TNRCC.” Proposed §335.114(a)(6) contains the added “(CFR)” and corrections to update the reference to 40 CFR §265.142, as amended and adopted through August 18, 1992, at 57 FedReg 37194, concerning closure cost estimates. In addition, §335.114(a)(6) contains a revised and more precise reference to the Federal Register promulgation of regulations under 40 CFR §265.144 concerning post-closure cost estimates.

Proposed §335.152 relates to permitting standards for owners and operators of hazardous waste management facilities. The proposed revision to §335.152(a)(1) concerns the OECD rules promulgated by the EPA, and is proposed to be updated to include adoption by reference of the 40 CFR Part 264, Subpart B general facility standards, as amended through April 12, 1996, at 61 FedReg 16290. This proposed revision incorporates changes at 40 CFR §265.12(a) concerning required notices. Proposed §335.152(a)(17) contains an update to the adoption by reference of the 40 CFR Part 264, Subpart AA air emission standards for process vents, as amended through June 13, 1997, at 62 FedReg 32452. This proposed revision incorporates changes at 40 CFR §264.1034 concerning test methods and procedures, replacing references to Method 8240 with references to Method 8260 of “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846. Proposed §335.152(a)(18) contains an update to the adoption by reference of the 40 CFR Part 264, Subpart BB air emission standards for equipment leaks, as amended through June 13, 1997, at 62

FedReg 32452. This proposed revision incorporates changes at 40 CFR §264.1063 concerning test methods and procedures, replacing the reference to Method 8240 with reference to Method 8260 of “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846. Section 335.152(a)(20) is a proposed amendment to the adoption by reference of 40 CFR Part 264, Appendix IX, incorporating revisions to Footnote No. 5, as amended through June 13, 1997, at 62 FedReg 32452.

Proposed §335.154 relates to reporting requirements for owners and operators. Proposed §335.154(a)(5) contains the added “(CFR)” and corrections to update the reference to 40 CFR §264.142, as amended and adopted through August 18, 1992, at 57 FedReg 37194, concerning closure cost estimates, and the reference to 40 CFR §264.144, as amended and adopted through December 10, 1987, at 52 FedReg 46946, concerning post-closure cost estimates.

Proposed §335.156 relates to applicability of groundwater monitoring and response. Proposed §335.156(a)(2) contains a correction to reinstate the following language previously inadvertently stricken: “for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The financial responsibility requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).” This proposed change would reflect the federal regulations under 40 CFR §264.90(a)(2).

Proposed §335.211 relates to applicability of standards for the management of recyclable materials used in a manner constituting disposal. Proposed §335.211(c) contains an exception to the exemption

under §335.211(b), stating that the following uses remain subject to regulation: “Anti-skid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal.” This proposed amendment reflects the removal of the conditional exemption for certain slag residues under 40 CFR §266.20(c), as promulgated by the EPA at 59 FedReg 43496 on August 24, 1994.

Proposed §335.213 and §335.214(a) contain corrections to refer to the appropriate chapters.

Proposed §335.221 relates to applicability and standards concerning hazardous waste burned for energy recovery. Proposed §335.221(a) contains an update to the adoption by reference of 40 CFR Part 266, as amended and adopted in the CFR through June 13, 1997, at 62 FedReg 32452. This proposed update reflects certain federal regulations published at 59 FedReg 47980 on September 19, 1994; 60 FedReg 33912 on June 29, 1995; and 62 FedReg 32451 on June 13, 1997. The changes proposed to be incorporated from the September 19, 1994 promulgation conform to the land disposal restrictions Phase II in 40 CFR §266.100(c) and 40 CFR Part 266, Appendix XIII. The changes proposed to be incorporated from the June 29, 1995 promulgation relate to the removal of certain legally obsolete rules. Legally obsolete rule at 40 CFR §266.104(f) were removed, relating to alternative hydrocarbon limit for furnaces with organic matter in raw material. On February 21, 1991, EPA issued standards for boilers and industrial furnaces (BIFs) burning hazardous wastes. Among other things, these standards required BIFs to meet one of three alternative emission standards for carbon monoxide. One of these alternative standards, set forth in 40 CFR §266.104(f), was designed to address situations where organic matter in the non-waste feed to an industrial furnace made it

difficult for the facility to meet one of the other two alternatives. On February 22, 1994, in Horsehead Resource Development Co. v. Browner, 16 F.3d 1246 (D.C. Cir. 1994), cert. denied sub nom.

Cement Kiln Recycling Coalition v. Browner, 115 U.S. 72 (1994), a Federal appeals court ruled that EPA had failed to follow proper rulemaking procedures in issuing this standard and vacated.

Accordingly, EPA has removed this standard and all references to this standard from the Code of Federal Regulations. This proposal reflects that removal. The proposed change at §335.221(a)(15) reflects the removal of 40 CFR §266.104(f), insofar as the existing reference to §266.104(i) is proposed to be corrected to §266.104(h). The changes proposed to be incorporated from the July 13, 1997 promulgation relate to testing and monitoring regulations at 40 CFR §§266.104(e), 266.106(g), 266.107(f), and Part 266 Appendix IX. Proposed §335.221(b)(2) contains a reference correction from §335.24(c)(4)-(7) to §335.24(c)(3)-(5) for the following reasons. Under the recovered oil exclusion at 59 FedReg 38536 (July 28, 1994), EPA removed the exclusion from the requirements for recyclable materials for certain recovered used oils (i.e., 40 CFR §261.6(a)(3)(v)), because the recovered oil exclusion was rewritten as an exclusion from the definition of solid waste. In other words, since the recovered oil is no longer a solid waste, it does not meet the definition of a hazardous waste or a recyclable material. Consequently, the exclusion from the requirements for recyclable materials is not needed. Then, under the universal waste rule at 60 FedReg 25492 (May 11, 1995), EPA removed the exclusion for used batteries that are to be regenerated (i.e., 40 CFR §261.6(a)(3)(ii)), and added a provision in the universal waste rules that facilities regenerating used batteries are subject to the part 273 standards. The impact of these changes on the state rules is that, since the recovered oil exclusion necessitated the removal of §335.24(c)(5) and the universal waste rules necessitated the removal of §335.24(c)(2), what was §335.24(c)(4)-(7) is now §335.24(c)(3)-(5) under this proposal.

Proposed §335.241 relates to applicability and requirements concerning recyclable materials utilized for precious metal recovery. Proposed §335.241(b)(4) contains referenced requirements for precious metals that are exported or imported for recovery, and reflects the federal regulation at 40 CFR §266.70(b)(3) as published by the EPA at 61 FedReg 16290 on April 12, 1996. Proposed §335.241(d) contains corrections to refer to the appropriate chapters.

Proposed §335.251 relates to applicability and requirements concerning spent lead-acid batteries being reclaimed. Proposed §335.251(a) contains corrections to refer to the appropriate chapters, and contains conforming changes to reflect the federal universal waste rule promulgation at 60 FedReg 25492 on May 11, 1995 concerning the 40 CFR §266.80(a) exemption for persons who regenerate spent batteries or who store spent batteries that are to be regenerated. Proposed §335.251(b) shows a similar exemption, reflecting 40 CFR §266.80(b), for persons who store spent batteries that are to be regenerated. Proposed §335.251(b)(2) contains corrections to refer to the appropriate chapters.

Proposed §335.261 relates to the Universal Waste Rule. Certain proposed amendments to §335.261 are conforming changes necessary to reflect the federal regulations as promulgated at 60 FedReg 25492 on May 11, 1995. One such conforming change is the proposed amended language within §335.261(a) which state that “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.” This conforming change is necessary to appropriately reflect 40 CFR §273.1, relating to scope. Proposed §335.261(a) also contains an update to the adoption by reference of 40 CFR Part

273, as amended and adopted through April 12, 1996, at 61 FedReg 16289, which would adopt changes in the universal waste rule concerning exports and imports of hazardous waste to or from designated member countries of the OECD. Specifically, this proposed update would incorporate changes to 40 CFR §273.20, §273.40, §273.56, and §273.70. Under 40 CFR §273.20 and §273.40, the phrase “other than to those OECD countries specified in 40 CFR §262.58(a)(1) (in which case the handler is subject to the requirements of 40 CFR part 262, subpart H)” is inserted after “sends universal waste to a foreign destination.” Under 40 CFR §273.56, the phrase “other than to those OECD countries specified in 40 CFR §262.58(a)(1) (in which case the transporter is subject to the requirements of 40 CFR Part 262, subpart H)” is inserted after “transporting a shipment of universal waste to a foreign destination.” Under 40 CFR §273.70, the phrase “as indicated in paragraphs (a) through (c) of this section” is added to the introductory text, and a new subsection (d) is added, which states “Persons managing universal waste that is imported from an OECD country as specified in 40 CFR §262.58(a)(1) are subject to paragraphs (a) through (c) of this section, in addition to the requirements of 40 CFR Part 262, subpart H.”

Proposed §335.261(b) contains an exception from the adoption by reference of §273.1, because the requirements of this section relating to scope have been proposed in §335.261(a), written in language to accommodate or “fit” the state rules. Proposed §335.261(b)(13) contains amendments to incorporate the following definitions, which are essentially equivalent to the corresponding federal regulations under 40 CFR §273.6, but which need to be proposed with changes to the wording of the corresponding federal definitions to in order to properly “fit” the state rules: “Destination Facility;” “Generator;” “Large Quantity Handler of Universal Waste;” “Small Quantity Handler of Universal

Waste;” “Thermostat;” and “Universal Waste.” Under the proposed definition of “Destination Facility,” compared to the federal definition, the phrase “as adopted by reference in this section” has been added immediately following “40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c).” The proposed definition of “Generator” is essentially the same as the federal definition, except that “40 CFR Part 261” is substituted for “part 261 of this chapter.” Under “Large Quantity Handler of Universal Waste,” compared to the federal definition, the proposed definition has minor editorial changes to make the definition more understandable and substitutes the phrase “as defined in this section” for the phrase “batteries, pesticides, or thermostats” after the term “universal waste.” Under “Small Quantity Handler of Universal Waste,” compared to the federal definition, the proposed definition has minor editorial changes to make the definition more understandable and substitutes the phrase “as defined in this section” for the phrase “batteries, pesticides, or thermostats” after the term “universal waste.” Under “Thermostat,” compared to the federal definition, the phrase “as adopted by reference in this section” has been added in the proposed definition immediately following “40 CFR §273.13(c)(2) or 40 CFR §273.33(c)(2).” Under “Universal Waste,” compared to the federal definition, the phrase “of this section” is substituted in the proposed definition for the phrase “40 CFR part 273.” Note that the federal definitions for “Battery;” “FIFRA;” “On-site;” “Pesticide;” “Universal Waste Transfer Facility;” “Universal Waste Handler;” and “Universal Waste Transporter” do not need revision to accommodate state rules, and thus are proposed to be adopted by reference under §335.261(a) with no changes spelled out under proposed §335.261(b) concerning adoption with changes.

Proposed §335.261(d) contains a change of the phrase “40 CFR part 273, as adopted by reference in this section” to “this section” to be more concise and accurate.

Proposed §335.431 relates to purpose, scope, and applicability of land disposal restrictions. Section 335.431(b)(3) is proposed as a conforming change to reflect 40 CFR §268.1(f), as promulgated in the universal waste rule 60 FedReg 25492 on May 11, 1995, and is an exemption from the requirements of 40 CFR §268.7 and §268.50 for universal waste handlers and universal waste transporters. Proposed §335.431(c)(1) and (3) are conforming changes to adopt the federal land disposal restrictions by reference, except as provided in proposed §335.431(c)(2) and subject to the changes indicated in §335.431(d), as amended through May 12, 1997, in 62 FedReg 25998. Proposed §335.431(c)(2) exempts out 40 CFR §268.1(f) because it has been proposed as an exemption under §335.431(b)(3), and adoption by reference is neither needed nor appropriate. Proposed §335.431(c)(2) also contains the deletion of the exceptions for 40 CFR §§268.10-12 because these sections were deleted from the CFR at 61 FedReg 15566. The following are descriptions of the federal regulations which would be adopted by the aforementioned proposal to adopt the federal land disposal restrictions (LDRs) by reference, as amended through May 12, 1997. Phase III of the federal LDRs is included, and this phase as proposed for adoption was promulgated by the EPA on five different dates in the Federal Register. First, at 61 FedReg 15566, published on April 8, 1996, the following sections, tables, and appendix were revised or removed as follows: 40 CFR §§268.1(e), 268.2, 268.3, 268.7(a)(1)-(3), 268.7(b); removal of §§268.8, 268.10, 268.11, and 268.12; §§268.39, 268.40, 268.42 Table 1, 268.48(a) Table UTS, and Appendix XI. Second, at 61 FedReg 19117, published on April 30, 1996, 40 CFR §268.39 was revised. Third, at 61 FedReg 33680, published on June 28, 1996, the following sections were revised:

40 CFR §§268.1(c), 268.2, 268.3, 268.39, 268.40, and 268.48. Fourth, at 61 FedReg 36419, published on July 10, 1996, 40 CFR §268.40 was revised. Fifth, at 62 FedReg 7502, published February 19, 1997, 40 CFR §268.40 and §268.48 were revised. Phase IV of the federal LDRs is also included and this phase as proposed for adoption was published on May 12, 1997 in the Federal Register. The following sections and appendices were revised or removed at 62 FedReg 25998: 40 CFR §§268.1(e), 268.4, 268.7(a)(1)-(9), 268.7(b)-(c), 268.9, 268.30; removal of §§268.32-36; §268.40, Part 268 Appendices VI, VII, VIII, and removal of Part 268 Appendices I, II, III, and X.

#### FISCAL NOTE

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.

#### PUBLIC BENEFIT

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 streamlining and administrative provisions and correct typographical and cross-reference errors. There are no significant economic costs anticipated to any person, including any small business, required to comply with the sections as proposed because

the regulation is a promulgation under the Hazardous and Solid Waste Amendments of 1984 (HSWA) and, as such, the U.S. EPA is implementing the regulation. Therefore, there are no additional costs incurred by affected owners and operators because they are already having to comply with this rule, if applicable to them.

#### DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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).

#### 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 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; to provide streamlining and regulatory reform provisions; and to make 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, including reinstating rule language which was previously inadvertently deleted and correcting cross references. The proposed rules will substantially advance this stated purpose by adopting federal regulations by reference or by

introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations; by incorporating certain streamlining and regulatory reform elements such as the proposed changes to subsection §335.24(h) to limit the referenced requirements of this subsection to §335.4 (relating to General Prohibitions) for spent lead-acid batteries being reclaimed; by reforming the rules in several areas by adding references to portions of Chapter 335 that relate to solid wastes that are recycled; and by making administrative corrections, including reinstatement of rule language and cross-reference corrections. 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, as well as language which represents rule reform or streamlining of certain requirements. The subject regulations do not affect a landowners rights in private real property.

#### COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking subject to the 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 proposed rule pursuant to 31 TAC §505.22 and has found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal 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 rule is consistent with the applicable CMP goals and policies because the proposed rule amendments will comply with the standards under the Solid Waste Disposal Act. The commission invites public comment on the consistency of the proposed rule.

#### SUBMITTAL OF COMMENTS

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 by July 20, 1998 and should reference Rule Log No. 98008-335-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 A : INDUSTRIAL SOLID WASTE AND  
MUNICIPAL HAZARDOUS WASTE IN GENERAL**

**§335.1. Definitions.**

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

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

(10) **Battery** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).[A device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.]

(11) - (32) (No change.)

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

(34) - (97) (No change.)

(98) **Pesticide** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).[Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:]

[(A) is a new animal drug under Federal Food, Drug, and Cosmetic Act (FFDCA), §201(w), or]

[(B) is an animal drug that has been determined by regulation of the United States Secretary of Health and Human Services not to be a new animal drug, or]

[(C) is an animal feed under FFDCA, §201(x) that bears or contains any substances described by subparagraph (A) or (B) of this paragraph.]

(99) - (118) (No change.)

(119) **Solid Waste** -

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold,

leased, or otherwise conveyed prior to the completion of construction of the surface improvement.

Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended; or

(iv) a material excluded by 40 Code of Federal Regulations §261.4(a)(1)-[(11)] (14), as amended through May 12, 1997, at 62 FedReg 25998, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste).

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph; or

(iii) considered inherently waste-like, as explained in subparagraph (E)

of this paragraph.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 Code of Federal Regulations §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 Code of Federal Regulations §261.33, not listed in §261.33 but that exhibit one or more of the hazardous waste characteristics, or would be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

Figure 1: 30 TAC §335.1(D)(iv)

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 Code of Federal Regulations §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products; or

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for

feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land.

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the Environmental Protection Agency, as described in 40 Code of Federal Regulations §261.2(d)(1) - §261.2(d)(2).

(H) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(I) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 Code of Federal Regulations §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(J) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

(120) - (127) (No change.)

(128) **Thermostat** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).[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 §335.261 of this title.]

(129) - (139) (No change.)

(140) **Universal waste** - Any of the [following] hazardous wastes defined as universal waste under §335.261(b)(13)(F) that are managed under the universal waste requirements of [40 CFR Part 273, the Universal Waste Rule, as adopted by reference in] §335.261 of this title (relating to Universal Waste Rule). [The following wastes are exempt from regulation under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) except as otherwise specified in §335.261 of this title:]

[(A) Batteries as described in 40 CFR 273.2;]

[(B) Pesticides as described in 40 CFR 273.3; and]

[(C) Thermostats as described in 40 CFR 273.4.]

(141) **Universal waste handler** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule). [A generator of universal waste; or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination. Universal waste handler does not mean a person who treats (except under the provisions of 40 CFR 273.13(a) or (c), or 273.33(a) or (c), as adopted by reference in §335.261 of this title), disposes, or recycles universal waste; or a person engaged in the

off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.]

(142) **Universal waste transporter** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).[A person engaged in the off-site transportation of universal waste by air, rail, highway, or water.]

(143) - (149) (No change.)

**§335.2. Permit Required.**

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

(d) No permit shall be required for:

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

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the Clean Water Act, [Section] §402, as amended through October 4, 1996, if the owner or operator has a

National Pollutant Discharge Elimination System permit and complies with the conditions of that permit.

(e) - (g) (No change.)

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill which has qualified for interim status pursuant to 40 Code of Federal Regulations, Part 270, Subpart G, and which has complied with the standards set forth in Subpart E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), by complying with the notification and information requirements as set forth in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of Title 40, Code of Federal Regulations, §265.301(a). In accordance with §335.6 of this title (relating to Notification Requirement), such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) - (6) (No change.)

(7) radioactive or nuclear waste materials, receipt of which would require a license from the Texas Department of Health or Texas Natural Resource Conservation [Water] Commission or any other successor agency; and

(8) (No change.)

(i) - (j) (No change.)

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title (relating to Notification Requirements).

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the definitions and requirements of §335.261 of this title (relating to Universal Waste Rule).

**§335.6. Notification Requirements.**

(a) - (i) (No change.)

(j) Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), CESQG hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil).

(k) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of “Solid Waste,” §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

**§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class I Waste.**

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary exporters of hazardous waste) to an off-site storage, processing, or disposal facility, unless the transporter:

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

(4) in the case of hazardous waste exports, knows that the shipment conforms to the requirements set forth in the regulations contained in 40 Code of Federal Regulations §263.20(a), as amended and adopted through April 12, 1996, at 61 FedReg 16290[which are in effect as of November 8, 1986].

(b) - (i) (No change.)

**§335.12. Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.**

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

(c) If a facility receives hazardous waste or Class I waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment), by a shipping paper, the owner or operator, or his agent, must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) (No change.)

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations (CFR) §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

(d) Within three working days of the receipt of a shipment subject to 40 CFR Part 262, Subpart H, concerning transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data

Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries, as defined under 40 CFR §262.81. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

**§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.**

(a) - (m) (No change.)

(n) Primary exporters of hazardous waste as defined in 40 Code of Federal Regulations (CFR)[,] §262.51 must submit an annual report in accordance with the requirements set out in the regulations contained in 40 CFR[, ] §262.56, as amended and adopted through April 12, 1996, at 61 FedReg 16290[which are in effect as of November 8, 1986].

**§335.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials.**

(a) For the purposes of the definition of solid waste in §335.1 of this title (relating to Definitions) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) a spent material is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing;

(2) sludge has the same meaning used in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2;

(3) a by-product is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form in which it is produced by the process;

(4) a material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents;

(5) a material is used or reused if it is either:

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct

components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(B) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment);

(6) scrap metal is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wires) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled;

(7) a material is recycled if it is used, reused, or reclaimed;

(8) a material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40

Code of Federal Regulations §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.)

Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) Excluded scrap metal is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (40 Code of Federal Regulations §261.4(a)(13)).

(11) Home scrap metal is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) Prompt scrap metal is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of “Solid Waste,” §335.6 of this title (relating to Notification Requirements), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

**§335.18. Variances from Classification as a Solid Waste.**

(a) In accordance with the standards and criteria in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler), the executive director may determine on a case-by-case basis that the following recyclable materials and nonhazardous recyclable materials are not solid wastes:

(1) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials));

(2) materials that are reclaimed and then reused within the original production process in which they were generated; or

(3) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of “Solid Waste,” §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

**§335.19. Standards and Criteria for Variances from Classification as a Solid Waste.**

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following [standards and] criteria:

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

(b) - (c) (No change.)

(d) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of “Solid Waste,” §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

**§335.21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler.**

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers:

(1) The applicant must apply to the executive director for the variance. The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) or[and] §335.20 of this title (relating to Variance to be Classified as a Boiler).

(2) The executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or[and] radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the hearing (if any). Any person affected by a final decision of the executive director may file with the chief clerk a motion for reconsideration, subject to §50.39(b)-(f) of this title (relating to Motion for Reconsideration) [petition the commission to review the decision. Any person affected by the 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 273 of

this title (relating to Procedures After Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a].

**§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) 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 under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) (No change.)

(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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); 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 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); and Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property). 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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); 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 70 of this title (relating to Enforcement); [and] Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); and Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property).

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

(c) The following recyclable materials are not subject to regulation under Subchapters B-I or [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); [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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); 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 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property) or [and] Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

(1) (No change.)

(2) used batteries (or used battery cells) returned to a battery manufacturer for regeneration;]

(2) [(3)] scrap metal that is not already excluded under 40 Code of Federal Regulations §261.4(a)(13);

(3) [(4)] fuels produced from the refining of oil-bearing hazardous waste[s] along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum

refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 Code of Federal Regulations §261.4(a)(12));

[(5) oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;]

(4) [(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 §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 §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 §279.11; and

(5) [(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 Part 261, Subpart C.

(d) (No change.)

(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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); 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 70 of this title (relating to Enforcement); [and] Chapter 80 of this title (relating to Contested Case Hearings), Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); 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) Recyclable [Except as provided in subsection (h) of this section, recyclable] materials (excluding those listed in subsections[subsection] (b)(4), (c)(1), and (2)-(5) [(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 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 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 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(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)]. In addition, recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6 of this title (relating to Notification Requirements). Industrial solid wastes that are nonhazardous recyclable materials; and recyclable materials listed in subsection (b)(4) and subsection (c)(2) of this section [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 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 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 Waste and Primary Exporters of Hazardous Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping 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) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

- (3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;
- (4) the potential for the objectionable constituent to degrade into nonharmful constituents;
- (5) the degree to which the objectionable constituent bioaccumulates in ecosystems;
- (6) the plausible types of improper management to which the waste could be subjected;
- (7) the nature and severity of potential damage to the public health and environment;
- (8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;
- (9) other relevant factors.
  - (i) (No change.)
  - (j) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A-I or O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; 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), but is regulated under Chapter 324 of this title (relating to Used Oil). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(k) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 Code of Federal Regulations Part 264 or Part 265, Subparts AA and BB, as adopted by reference under §335.152(a)(17)-(18) and §335.112(a)(19)-(20).

(l) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in 40 Code of Federal Regulations (CFR) §262.58(a)(1), for purpose of recovery is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996 at 61 FedReg 16290), if it is subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to §335.261 of this title (relating to Universal Waste Rule).

(m) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of “Solid Waste,” §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

**§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) - (3) (No change.)

(4) Appendix VII - Basis for Listing Hazardous Waste (as amended through February 9, 1995, at 60 FedReg 7824[October 15, 1992, at 57 FedReg 47376]);

(5) Appendix VIII--Hazardous Constituents (as amended through April 17, 1995, at 60 FedReg 19165[June 20, 1994, at 59 FedReg 31551]); and

(6) (No change.)

**§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 are incorporated by reference as amended and adopted in the Code of Federal Regulations through June 13, 1997, at 62 FedReg 32451 [2, 1994, at 59 FedReg 28484].

**SUBCHAPTER B : HAZARDOUS WASTE MANAGEMENT**

**GENERAL PROVISIONS**

**§335.41**

**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.

**§335.41. Purpose, Scope and Applicability.**

(a) - (i) (No change.)

(j) Except as specified in §335.261 of this title (relating to Universal Waste Rule), Subchapters B-F 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; and Land Disposal Restrictions) and Chapter 305 of this title (relating to Consolidated Permits) do not apply to universal wastes, universal waste handlers, or universal waste transporters as defined in §335.261 of this title (relating to Universal Waste Rule).

Universal wastes are not fully regulated hazardous wastes, but are subject to regulation under §335.261 of this title (relating to Universal Waste Rule).

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

**§§335.61, 335.62, 335.76, 335.78**

**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.

**§335.61. Purpose, Scope and Applicability.**

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

(g) Section 335.78(c) and (d) of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) must be used to determine the applicability of provisions of this subchapter that are dependent on calculations of the quantity of hazardous waste generated per month.

**§335.62. Hazardous Waste Determination and Waste Classification.**

A person who generates a solid waste must determine if that waste is hazardous pursuant to §335.504 of this title (relating to Hazardous Waste Determination) and must classify any nonhazardous waste under the provisions of Subchapter R of this chapter (relating to Waste Classification). If the waste is determined to be hazardous, the generator must refer to this chapter and to 40 Code of Federal Regulations Parts 261, 264, 265, 266, 268, and 273 for any possible applicable exclusions or restrictions pertaining to management of the specific waste.

**§335.76. Additional Requirements Applicable to International Shipments.**

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, as amended and adopted through April 12, 1996, at 61 FedReg 16290[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 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable

to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). Exports of hazardous waste are prohibited unless:

(1) notification in accordance with the regulations contained in 40 CFR §262.53, as amended and adopted through April 12, 1996, at 61 FedReg 16290[which are in effect as of November 8, 1986], has been provided;

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

(c) - (e) (No change.)

(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International Agreements), as amended and adopted through April 12, 1996, at 61 FedReg 16290[which are in effect as of November 8, 1986].

(g) (No change.)

(h) Transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development are subject to 40 CFR Part 262, Subpart H, which is adopted by reference as amended and adopted in the CFR through April 12, 1996, at 61 FedReg 16290.

**§335.78. Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators.**

(a) (No change.)

(b) Except for those wastes identified in subsections (e)-(g) and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting 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; and Land Disposal Restrictions); [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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); [Chapters 261, 263, 265, 267, 269, 271, 273, and 305 (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) and] or the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) When making the quantity determinations of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), the generator must

include all hazardous waste it generates, except hazardous waste that: [Hazardous waste that is not subject to regulation or that is subject only to §335.62, §335.63, §335.70 and §335.71 of this title (relating to Hazardous Waste Determination; EPA Identification Numbers; Recordkeeping; and Annual Reporting) is not included in the quantity determinations of this section and Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions) and Chapter 305 of this title (relating to Consolidated Permits) and is not subject to any of the requirements of such subchapters or chapter. Hazardous waste that is subject to the requirements of §§335.24(d)-(f), 335.211-335.214, §335.221-335.226 and 335.241 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials; Recyclable Materials Used in a Manner Constituting Disposal; Hazardous Waste Burned for Energy Recovery; and Applicability) is included in the quantity determination of this section and is subject to the requirements of Subchapters C-H of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapter 305 of this title (relating to Consolidated Permits).]

(1) is exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c)-(f), §335.24(c) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials), §335.41(f)(1) of this title (relating to Purpose, Scope and Applicability), or 40 CFR §261.8;

(2) is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in §335.1 of this title (relating to Definitions);

(3) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under §335.24(f) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials);

(4) is used oil managed under the requirements of §335.24(j) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials) and Chapter 324 of this title (relating to Used Oil);

(5) are spent lead-acid batteries managed under the requirements of §335.251 of this title (relating to Applicability and Requirements); or

(6) is universal waste managed under §335.41(j) of this title (relating to Purpose, Scope and Applicability) and §335.261 of this title (relating to Universal Waste Rule).

(d) (No change.)

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); [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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); 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)] and the notification requirements of the Resource Conservation and Recovery Act, §3010:

(1) a total of one kilogram of acute hazardous waste listed in 40 CFR [Code of Federal Regulations] §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR [Code of Federal Regulations,] §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) (No change.)

(2) The generator may accumulate acute hazardous waste on-site. If the generator [he] accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C-H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste;

Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting 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; and Land Disposal Restrictions); [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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); 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)] and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of its [his] acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency under 40 CFR [Code of Federal Regulations] Part 270;

(B) in interim status under 40 CFR [Code of Federal Regulations] Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR [Code of Federal Regulations] Part 271;

(D) permitted, licensed, or registered by a state to manage municipal [or industrial] solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258; [or]

(E) permitted, licensed, or registered by a state to manage non-municipal non-hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5-257.30;

(F) [(E)] a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under §335.261 of this title (relating to Universal Waste Rule), a universal waste handler or destination facility subject to the requirements of §335.261 of this title (relating to Universal Waste Rule).

(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) (No change.)

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If such generator [he] accumulates at any time more than a total of 1000 kilograms of its [his] hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D-H and O of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste; Interim Standards for

Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting 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; and Land Disposal Restrictions); [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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); 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)] and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;

(3) A conditionally exempt small quantity generator may either process or dispose of its [his] hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency under 40 CFR [Code of Federal Regulations] Part 270;

(B) in interim status under 40 CFR [Code of Federal Regulations] Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR [Code of Federal Regulations] Part 271;

(D) permitted, licensed, or registered by a state to manage municipal [or industrial] solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258 or equivalent or more stringent rules under Chapter 330 of this title (relating to Municipal Solid Waste); [or]

(E) permitted, licensed, or registered by a state to manage non-municipal or industrial non-hazardous waste and, if managed in a non-municipal or industrial non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5-257.30 or equivalent or more stringent counterpart rules that may be adopted by the commission relating to

additional requirements for industrial non-hazardous waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators;

(F) [(E)] a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under §335.261 of this title (relating to Universal Waste Rule), a universal waste handler or destination facility subject to the requirements of §335.261 of this title (relating to Universal Waste Rule).

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with non-hazardous waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR [Code of Federal Regulations] Part 261, Subpart C.

(i) (No change.)

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil and the mixture is going to recycling, the mixture is subject to Chapter 324 of this title (relating to Used Oil ) and 40 CFR [Code of Federal Regulations] Part 279.

**SUBCHAPTER D : STANDARDS APPLICABLE TO TRANSPORTERS  
OF HAZARDOUS WASTE**

**§335.91**

**STATUTORY AUTHORITY**

The amendment is 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.

**§335.91. Scope.**

(a) - (d) (No change.)

(e) A transporter of hazardous waste subject to the federal manifesting requirements of 40 Code of Federal Regulations (CFR) Part 262, or subject to state hazardous waste manifesting requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste), or subject to the universal waste management standards of 40 CFR Part 273,

or subject to §335.261 of this title (relating to Universal Waste Rule), that is being imported from or exported to any of the countries listed in 40 CFR §262.58(a)(1) for purposes of recovery is subject to this subchapter and to all other relevant requirements of 40 CFR Part 262, Subpart H, including, but not limited to, 40 CFR §262.84 for tracking documents.

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

**§335.112, §335.114**

**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.

**§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) Subpart B -- General Facility Standards (as amended through April 12, 1996, at 61 FedReg 16290[November 18, 1992, at 57 FedReg 54452]);

(2) - (18) (No change.)

(19) Subpart AA -- Air Emission Standards for Process Vents (as amended through June 13, 1997, at 62 FedReg 32451[April 26, 1991, at 56 FedReg 19290]);

(20) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through June 13, 1997, at 62 FedReg 32451[April 26, 1991, at 56 FedReg 19290]);

(21) - (22) (No change.)

(b) - (c) (No change.)

**§335.114. Reporting Requirements.**

(a) The owner or operator must prepare and submit to the executive director by January 25 of each year a single copy of an annual report which covers facility activities during the previous year and contains the following information:

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

(3) the TNRCC[TWC] hazardous waste code and a description and the quantity of each hazardous waste the facility received during the year;

(4) - (5) (No change.)

(6) the most recent closure cost estimate under the regulations contained in 40 Code of Federal Regulations (CFR) §265.142, as amended and adopted through August 18, 1992, at 57 FedReg 37194[which are in effect as of May 2, 1986], and §335.127 of this title (relating to Cost Estimate for Closure), and, for disposal facilities, the most recent post-closure cost estimate under the regulations contained in 40 CFR [Code of Federal Regulations] §265.144, as amended and adopted through[which are in effect as of] May 2, 1986, at 51 FedReg 16422;

(7) - (9) (No change.)

(b) (No change.)

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

**§§335.152, 335.154, 335.156**

**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.

**§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 April 12, 1996, at 61 FedReg 16290[November 18, 1992, at 57 FedReg 54452]); in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §§264.15(b)(4) and 264.18(b)(1)(ii);

(2) - (16) (No change.)

(17) Subpart AA -- Air Emission Standards for Process Vents (as amended through June 13, 1997, at 62 FedReg 32451[April 26, 1991 at 56 FedReg 19290]);

(18) Subpart BB -- Air Emission Standards for Equipment Leaks (as amended through June 13, 1997, at 62 FedReg 32451[April 26, 1991, at 56 FedReg 19290]);

(19) (No change.)

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

(A) - (D) (No change.)

(E) Appendix IX--Ground-Water Monitoring List (as amended through June 13, 1997, at 62 FedReg 32451).

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

**§335.154. Reporting Requirements for Owners and Operators.**

(a) The owner or operator must prepare and submit to the executive director by January 25 of each year an annual report which covers facility activities during the previous calendar year and which contains the following information:

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

(5) the most recent closure cost estimate under the regulations contained in 40 Code of Federal Regulations (CFR) §264.142, as amended and adopted through August 18, 1992, at 57 FedReg 37194[which are in effect as of May 2, 1986], and §335.178 of this title (relating to Cost Estimate For Closure) and, for disposal facilities, the most recent post-closure cost estimate under the regulations contained in 40 CFR [Code of Federal Regulations] §264.144, as amended and adopted through December 10, 1987, at 52 FedReg 46946[which are in effect as of May 2, 1986];

(6) - (8) (No change.)

(b) (No change.)

**§335.156. Applicability of Groundwater Monitoring and Response.**

(a) Except as provided in subsection (b) of this section, the rules pertaining to groundwater monitoring and response apply to owners and operators of facilities that process, store, or dispose of hazardous waste.

(1) (No change.)

(2) All solid waste management units must comply with the requirements in §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). A surface impoundment, waste pile, land treatment unit or landfill that receives hazardous waste after July 26, 1982 (hereinafter referred to as a regulated unit) must comply with the requirements of §§335.157-335.166 of this title (relating to Required Program; Groundwater Protection Standard; Hazardous Constituents; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program)[;] in lieu of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) for purposes of detecting, characterizing, and responding to releases to the uppermost aquifer. The financial responsibility requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) apply to regulated units.

(b) - (c) (No change.)

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

**§§335.211, 335.213, 214, 335.221, 335.241, 335.251, 335.261**

**DIVISION 1 : RECYCLABLE MATERIALS USED IN  
A MANNER CONSTITUTING DISPOSAL**

**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.

**§335.211. Applicability.**

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

(c) Anti-skid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in subsection (b) of this section and remain subject to regulation.

**§335.213. Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users.**

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), 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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of

this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits), [Chapter 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), Chapter 273 of this title (relating to Procedures After Final Decision),] and the notification requirement under §335.6 of this title (relating to Notification Requirements).

**§335.214. Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal.**

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and

Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter O of this chapter (relating to Land Disposal Restrictions), 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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits), [Chapter 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), Chapter 273 of this title (relating to Procedures After Final Decision),] and the notification requirement under §335.6 of this title (relating to Notification Requirements). These requirements do not apply to products which contain these recyclable materials under the provisions of §335.211(b) of this title (relating to Applicability).

(b) (No change.)

**DIVISION 2 : 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 13, 1997, at 62 FedReg 32451 [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, 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) - (14) (No change.)

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

(16) - (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) (No change.)

(2) hazardous wastes that are exempt from regulation under the provisions of 40 CFR §261.4 and §335.24(c)~~(3)-(5)~~ [(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.)

**DIVISION 3 : RECYCLABLE MATERIALS UTILIZED**  
**FOR PRECIOUS METAL RECOVERY**

**§335.241. Applicability and Requirements.**

(a) (No change.)

(b) Persons who generate, transport, or store recyclable materials that are regulated under this section are subject to the following requirements:

(1) (No change.)

(2) Section 335.6 of this title (relating to Notification Requirements); [and]

(3) Sections 335.9-335.12 of this title (relating to Shipping and Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class I Industrial Solid Waste; Shipping Requirements for Transporters of Municipal Hazardous Waste or Class I Industrial Solid Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), for generators, transporters, or persons who store, as applicable; and

(4) For precious metals exported to or imported from designated OECD member countries for recovery, 40 Code of Federal Regulations (CFR) Part 262, Subpart H and §265.12(a).  
For precious metals exported to or imported from non-OECD countries for recovery, §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)).

(c) (No change.)

(d) Recyclable materials that are regulated under this section that are accumulated speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), are subject to all applicable provisions of this chapter (excluding this subchapter), 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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and Chapter 305 of this title (relating to Consolidated

Permits)], Chapter 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)].

**DIVISION 4 : SPENT LEAD-ACID BATTERIES**  
**BEING RECLAIMED**

**§335.251. Applicability and Requirements.**

(a) The regulations of this section apply to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, who store spent batteries that are to be regenerated, or who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated), are not subject to regulation under this chapter, except that §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) applies; and are not subject to regulation under 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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for

Tax Exemption for Pollution Control Property); or Chapter 305 of this title (relating to Consolidated Permits)], Chapter 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), or Chapter 273 of this title (relating to Procedures After Final Decision)]. Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.

(b) Owners or operators of facilities that store spent lead-acid batteries before reclaiming them (other than spent batteries that are to be regenerated) are subject to the following requirements:

(1) (No change.)

(2) All applicable provisions in 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 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this

title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and Chapter 305 of this title (relating to Consolidated Permits)[, Chapter 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)].

## 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[adopted and effective on May 11, 1995, at 60 FedReg 25492].

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

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

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

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(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 more than 5,000 kilograms 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; and

(iii) Thermostats as described in 40 CFR §273.4;

[In 40 CFR §273.6, the definitions of "Generator" and "On-site" are replaced with the corresponding definitions found in §335.1 of this title (relating to Definitions). Also, the definition of "Small Quantity Handler of Universal Waste" is changed to read "Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates less than 5,000 kilograms total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time."]

(14) - (33) (No change.)

(c) (No change.)

(d) Any waste not qualifying for management under this section [40 CFR part 273, as adopted by reference in this section,] must be managed in accordance with applicable state regulations.

**SUBCHAPTER O : LAND DISPOSAL RESTRICTIONS**

**§335.431**

**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.

**§335.431. Purpose, Scope, and Applicability.**

(a) (No change.)

(b) Scope and Applicability.

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

(3) Universal waste handlers and universal waste transporters, as defined in and subject to regulation under §335.261 of this title (relating to Universal Waste Rule) are exempt from 40 Code of Federal Regulations §§268.7 and 268.50.

(c) Adoption by Reference.

(1) Except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR, Part 268, as amended through May 12, 1997, in 62 FedReg 25998[January 3, 1995, in 60 FedReg 242] are adopted by reference.

(2) The following sections of 40 CFR, Part 268 are excluded from the sections adopted in paragraph (1) of this subsection: §§ 268.1(f), 268.5, 268.6, 268.7(a)(10), 268.[10-]13, 268.42(b), and 268.44.

(3) Appendices IV, VI-IX, and XI[I-X]of 40 CFR, Part 268 are adopted by reference as amended through May 12, 1997, in 62 FedReg 25998[January 3, 1995, in 60 FedReg 242].

(d) (No change.)