

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§335.1, 335.17, 335.24, 335.29, 335.221, and 335.431, concerning industrial solid waste and municipal hazardous waste. The amendments are adopted without changes to the proposed text as published in the November 27, 1998, issue of the *Texas Register* (23 TexReg 11903) and will not be republished.

EXPLANATION OF ADOPTED RULES

The primary purpose of the adopted 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. Under Title 40 Code of Federal Regulations (CFR) §271.21(e), states having final Resource Conservation and Recovery Act (RCRA) authorization, such as the State of Texas, must modify their programs to reflect federal program changes and submit the modifications to the United States Environmental Protection Agency (EPA) for approval. Establishing equivalency with federal regulations will enable the commission to retain authorization to operate aspects of the hazardous waste program in lieu of EPA. The federal regulations to which these amended rules are being conformed include those promulgated by the EPA on June 17, 1997 at 62 FedReg 32974, July 14, 1997 at 62 FedReg 37694, August 28, 1997 at 62 FedReg 45568, May 4, 1998 at 63 FedReg 24596, May 26, 1998 at 63 FedReg 28556, June 8, 1998 at 63 FedReg 31266, June 29, 1998 at 63 FedReg 35147, August 6, 1998 at 63 FedReg 42110, August 10, 1998 at 63 FedReg 42580, and August 31, 1998 at 63 FedReg 46332 under the authority of RCRA.

The June 17, 1997, federal promulgation included revisions, to 40 CFR Part 261 relating to the identification and listing of certain carbamate industry production wastes, and revisions to the land disposal restrictions under 40 CFR Part 268 concerning these wastes, to conform with the federal appeals court ruling in *Dithiocarbamate Task Force v. EPA*, 98 F.3d 1394 (D.C.Cir. 1996). The July 14, 1997, federal promulgation provided an emergency extension of the K088 national capacity variance. The August 28, 1997, promulgation was an emergency revision of the carbamate land disposal restrictions. The May 4, 1998, federal promulgation included revisions to 40 CFR Part 261 relating to the identification and listing of certain organobromine production wastes, and revisions to the land disposal restrictions under 40 CFR Part 268 concerning these wastes. The May 26, 1998, federal promulgation set forth phase IV land disposal restrictions for metal-bearing wastes, including toxicity characteristic metal wastes, land disposal restrictions for hazardous wastes from mineral processing, identification of which mineral processing secondary materials are considered to be wastes, treatment standards for soil contaminated with hazardous waste, a clarification concerning the shredded circuit board and scrap metal exemptions with regard to certain whole used circuit boards, and an exclusion from the definition of solid waste for certain materials reused in wood preserving operations. The June 8, 1998, federal promulgation included a correction to the May 26, 1998 promulgation. The June 29, 1998, federal promulgation included technical amendments to the land disposal restrictions relating to organobromine production hazardous wastes. The August 6, 1998, federal promulgation included revisions to 40 CFR Parts 261, 266, and 268 related to petroleum refining process wastes. The August 10, 1998, federal promulgation included corrections and technical amendments to the previous promulgations of May 4, May 26, and June 29, 1998. The August 31, 1998, federal promulgation

included a stay of the Phase IV rule as it applied to treatment standards for hazardous constituent metals in certain zinc-containing fertilizers.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act.

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

Although this rule is adopted to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the rule updates the state's hazardous waste regulations, which in turn provides an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state, as explained below. This overall benefit from updating the hazardous waste regulations is derived, for example, from adopting more recent federal land disposal restriction regulations, certain of which provide improved treatment standards for soil contaminated with hazardous waste and which contain revised and new exclusions from the definition of "solid waste." By using the improved treatment standards for soil contaminated with hazardous waste, the environment and public health and safety is beneficially affected because these improved standards are

designed to expedite cleanups. The revised and new exclusions from the definition of solid waste provide a benefit to the economy, sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. Furthermore, reducing costs in this area allows more funds to be expended to protect the environment, thus providing a benefit to the environment and public health and safety. The rule also provides benefit, as opposed to an adverse effect in a material way, to the environment and the public health and safety of the state and affected sectors of the state by providing for enhanced consistency between federal and state waste regulatory requirements, which leads to improvements in the management of hazardous waste and hazardous waste facilities. By the very nature of being an improvement, the environment and public health and safety are benefitted. Another way of explaining this environmental and public health benefit is that the more recent federal regulations are generally more protective of the environment and public health and safety than the older regulations they replaced. Furthermore, enhanced consistency between the federal and state programs tends to free up resources that would otherwise be spent on determining which requirement (i.e., state or federal) applies to particular aspects of a company's waste management operations. Thus, not only is there an economic benefit by not having to keep track of which requirements apply to what, but an environmental and public health benefit as well, because this allows more funds to be expended to protect the environment. The rule provides a benefit, as opposed to an adverse effect in a material way, to the economy, a sector of the economy, productivity, competition, and jobs, by providing for enhanced consistency between federal and state waste regulatory requirements, which leads to more cost-effective regulation of waste management activities, as discussed above. In addition, by advancing the rules to allow for further authorization by the EPA, the regulated community is faced with less dual regulation, which in turn frees up resources and fosters the

concomitant economic and environmental benefits discussed above. An analysis of the specific significant regulations under this adoption shows that the rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because either the regulation is less stringent than the regulation it is replacing, or the regulation is a promulgation under the Hazardous and Solid Waste Amendments of 1984 (HSWA) and, as such, the 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. The reason there is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state is because these rules are designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. In addition, this rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or to adopt a rule solely under the general powers of the agency. This rule does not exceed a standard set by federal law because the purpose of this adoption is to incorporate state rules which are equivalent to the corresponding federal regulations. This rule does not exceed an express requirement of state law because either there are no express requirements in state law under which these rules are adopted or because the express requirements of state law are being matched in this adoption (e.g., the definition of “solid waste” under §335.119(A)(iv)). This adoption does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the express purpose of this adoption is to help maintain RCRA authorization. The delegation agreement between the commission and the EPA expressly requires the commission to maintain RCRA authorization. This rulemaking does not adopt a rule solely under the general powers of the agency (e.g., Texas Water

Code §§5.103, and 5.105), but also under a specific state law (i.e., Texas Health and Safety Code, Solid Waste Disposal Act, §§361.017 and 361.024). No comments on the proposed regulatory impact analysis were received.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The rules 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. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the rule language consists of updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations. There is no burden on private real property because 42 United States Code (USC) 6926(g) immediately imposes on the regulated community any new requirements and prohibitions under the Hazardous and Solid Waste Amendments of 1984 that are more stringent than state rules, on the effective date of the federal regulation. In other words, under federal law, the regulated community must comply with such new requirements and prohibitions that are more stringent, beginning on the effective date of the federal regulation. Since these more stringent rules are the ones which could present a burden on private real property; since the significant rules in this adoption which are more stringent than existing rules are imposed by the Hazardous and Solid Waste

Amendments of 1984; and since the regulated community is already required to comply with these more stringent rules, there is no such burden imposed by the adoption of these rules. The subject regulations do not affect a landowner's rights in private real property. Also, the following exception to the application of Chapter 2007 of the Texas Government Code listed in Texas Government Code §2007.003(b) applies to these rules: this action is reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking and found that the adoption 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 this adoption pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC Annotated, §§6901 et seq. Promulgation and enforcement of this rule will be consistent with the applicable CMP goals and policies because the rule amendments update and enhance the commission's rules concerning hazardous and industrial solid waste, thereby serving to protect, preserve, restore, and enhance the diversity, quality,

quantity, functions, and values of CNRAs, and also thereby serving to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. In addition, the rule does not violate any applicable provisions of the CMP's stated goals and policies. No comments were received on the proposed CMP consistency determination.

HEARINGS AND COMMENTERS

The commission did not hold a public hearing on the proposed rule changes. The comment period for the proposed rules closed at 5:00 p.m., December 28, 1998. There were no timely comments submitted in response to the proposal. However, a comment was received after the deadline on the issue of the regulatory status of oil filters in the context of the exclusion for certain types of processed scrap metal from the definition of solid waste. Late filed comments are not required to receive an official response; however, it should be noted that the commission previously adopted, on September 23, 1998, the scrap metal exclusion to which the commenter refers (see 23 TexReg 10878). Title 30 Texas Administrative Code (TAC) §335.1(119), effective October 19, 1998, incorporates the exclusion from the definition of solid waste under 40 Code of Federal Regulations §261.4(a)(13) for excluded scrap metal being recycled. There were no interpretations or rules proposed to be adopted under this current rulemaking which addressed oil filters.

STATUTORY AUTHORITY

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

**SUBCHAPTER 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) - (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 (CFR) §261.4(a)(1) - (14), as amended through August 6, 1998, at 63 FedReg 42110, by 40 CFR §261.4(a)(16), as amended through May 26, 1998 at 63 FedReg 28556, by 40 CFR §261.4(a)(18) - (19), as amended through August 6, 1998, at 63 FedReg 42110, 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 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

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

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33 but that exhibit one or more of the hazardous waste characteristics, or 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 (except as provided under 40 CFR §261.4(a)(16)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(16)).

(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 CFR §261.2(d) are solid wastes when they are recycled in any manner.

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

being:

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

(ii) used or reused as effective substitutes for commercial products; 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. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(16) apply rather than this provision.

(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 CFR §§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 CFR §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) - (149) (No change.)

§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) - (9) (No change.)

(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)(14)).

(11) - (12) (No change.)

(b) (No change.)

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

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

(c) The following recyclable materials are not subject to regulation under Subchapters B-I or 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); 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 Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

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

(3) fuels produced from the refining of oil-bearing hazardous waste 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)); and

(4) 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.

(d) - (m) (No change.)

§335.29. Adoption of Appendices by Reference.

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

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

(4) Appendix VII - Basis for Listing Hazardous Waste (as amended through August 6, 1998, at 63 FedReg 42110);

(5) Appendix VIII--Hazardous Constituents (as amended through May 4, 1998, at 63 FedReg 24596); and

(6) (No change.)

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

DIVISION 2 : HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

§§335.211, 335.213-335.214, 335.221, 335.241, 335.251, 335.261

STATUTORY AUTHORITY

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

§335.221. Applicability and Standards.

(a) (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)-(4) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators);

(3) -(4) (No change.)

SUBCHAPTER O : LAND DISPOSAL RESTRICTIONS

§335.431

STATUTORY AUTHORITY

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

§335.431. Purpose, Scope, and Applicability.

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

(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 August 31, 1998, in 63 FedReg 46332 are adopted by reference.

(2) - (3) (No change.)

(d) (No change.)

Figure 1: 30 TAC §335.1(D)(iv)

TABLE 1

	Use Constituting Disposal	Energy Recovery/Fuel	Reclamation	Speculative Accumulation ²
	S.W. Def. (D)(i)	S.W. Def. (D)(ii)	S.W. Def. (D)(iii)	S.W. Def. (D)(iv)
	(1)	(2)	(3)	(4)
Spent materials (listed hazardous & not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous) ¹	*	*	*	*
Sludges (listed hazardous in 40 CFR §§261.31 or 261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous) ¹	*	*		*
By-products (listed hazardous in 40 CFR §§261.31 or 261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous) ¹	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		

Scrap metal other than excluded scrap metal (see

§335.17(9)) (hazardous) * * * *

Scrap metal other than excluded scrap metal (see

§335.17(9)) (nonhazardous)¹ * * * *

NOTE: The terms "spent materials", "sludges", "by-products", "scrap metal" and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

¹These materials are governed by the provisions of §335.24(h) only.

²Except as provided in 40 CFR §261.4(a)(16) for mineral processing secondary materials