

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Commissioners **Date:** July 21, 2006

Thru: LaDonna Castañuela, Chief Clerk
Glenn Shankle, Executive Director

From: Dan Eden, Deputy Director
Office of Permitting, Remediation and Registration

Docket No.: 2005-1480-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste
EPA Manifest Revision
Rule Project No. 2005-060-335-PR

Reasons for the rule package:

The purpose of the adopted rules is for the commission to implement the United States Environmental Protection Agency's (EPA) new uniform manifest form, continuation sheet, and instructions for completing the form as published in the March 4, 2005, issue of the *Federal Register* (70 FR 10776), and amended in the June 16, 2005, issue of the *Federal Register* (70 FR 35034). The adopted rules would also add three definitions, change when a container is empty, and modify placarding requirements. Manifesting requirements for Texas Class 1 wastes are adopted to conform to the new hazardous waste manifest requirements as in the past. The key component of this manifest system is the uniform hazardous waste manifest, which is a form prepared by all generators who transport, or offer for transport, hazardous waste for off-site treatment, recycling, storage, or disposal. Effective September 5, 2006, handlers will obtain new forms from any source that has registered with EPA to print and distribute the form.

- **Under what authority are we adopting these changes?**

Final rule *Federal Register*, March 4, 2005 (Volume 70, Number 42), Rules and Regulations, pages 10775 - 10825; and final rule correcting amendments, *Federal Register*, June 16, 2005 (Volume 70, Number 115), Rules and Regulations, pages 35034 - 35041.

Texas Water Code (TWC), §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 TWC or other laws of this state.

Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

- **Is this rulemaking required by federal rule or state statute? Federal rule. Which ones?**

The revised manifest form and procedures in 40 Code of Federal Regulations (CFR) §§260.10, 261.7, 262.20, 262.21, 262.27, 262.32 - 262.34, 262.54, 262.60, and the appendix to Part 262, shall not apply until September 5, 2006. The manifest form and procedures in 40 CFR §§260.10, 261.7, 262.20, 262.21, 262.32 - 262.34, 262.54, 262.60, and the appendix to Part 262, contained

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in 40 CFR, Parts 260 - 265, revised as of July 1, 2004, shall be applicable until September 5, 2006. Texas Class 1 wastes will be consistent with the EPA manifesting requirements and the Texas Waste Codes will continue to be provided to the agency.

- **Are there any legal deadlines by which these rules must be adopted or effective?**
Under both the Resource Conservation and Recovery Act (RCRA) and Department of Transportation (DOT) statutory authorities, the use of the standard (nationally uniform) RCRA manifest form, EPA Form 8700-22, and the continuation sheet, EPA Form 8700-22A, will be nationally mandatory as of September 5, 2006, and will be required in every state, tribal, and United States territorial jurisdiction. There is an 18-month transition period for the new form, measured from the date of publication in the *Federal Register*. During this 18-month period, handlers and states will only use the old form. They will continue to acquire the old form from the sources they use now. Once the 18 months pass, handlers must use the new form.
- **What issue(s) or problem(s) are we trying to solve?** Implementation of the RCRA and DOT mandatory uniform manifest form, EPA Form 8700-22, and continuation sheet, EPA Form 8700-22A, and ensuring consistency between Texas and EPA regulations.
- **Why is it important that we do this rule package?** To comply with federal mandate, update agency rules to reference the EPA form (not the commission form) and to remove detailed, item-by-item form instructions from the rules. Form instructions for hazardous waste will be put on the back of the manifest form as mandated. Regulatory specifications for manifesting Class 1 waste will be included in Chapter 335 rules as necessary.
- **Other important background or historical information.**
For more than 20 years, hazardous waste generators and transporters have been required to use the uniform hazardous waste manifest system. The manifest form provides a complete paper trail of a waste's progress from a generator through treatment, storage, and disposal. It identifies the type and quantity of the hazardous waste being shipped, and contains a generator's certification of waste minimization practices. Each waste handler must return a copy of the manifest to the generator. A missing form alerts a generator to investigate and find the waste. If the waste cannot be found, then the generator notifies either EPA or the state agency for appropriate action.

The regulations for hazardous waste generators and transporters in 40 CFR Parts 262 and 263 are affected by this adoption. Related requirements for owners and operators of treatment, storage, and disposal facilities in Parts 264 and 265 are also affected, along with state requirements in Part 271.

Scope of the rulemaking:

The adopted rule will amend existing 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, to update references from the Texas manifest form to the EPA Form 8700-22 contained in Subchapters A, B, C, E, and F. The form amendments standardize the content and appearance of the manifest form (EPA Form 8700-22), and continuation sheet (EPA Form 8700-22A); enhance reporting of international waste shipments (imports and exports); clarify processing

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procedures for rejected waste shipments and shipment container residues; and make the form and continuation sheet available from a greater number of sources.

- **Changes required by federal rule:**
Under both RCRA and DOT statutory authorities, the use of the standard (nationally uniform) RCRA manifest form, EPA Form 8700-22, and the continuation sheet, EPA Form 8700-22A, will be nationally mandatory as of September 5, 2006, and will be required in every state, tribal, and United States territorial jurisdiction.
- **Changes required by state statute:** N/A
- **Staff recommendations that are not expressly required by federal rule or state statute:**
The instructions that are to be on the back of the manifest form do not include Class 1 waste, which the commission does regulate. Therefore, the few specific requirements for manifesting Class 1 waste will be in the rule as necessary.

Impact on the regulated community:

- **Who will be affected?** According to EPA, more than 139,000 businesses in approximately 45 industries nationwide will receive regulatory relief from this rule. These businesses ship approximately 12 million tons of hazardous wastes annually, and use between two and five million hazardous waste manifests. With the new EPA manifest form printer registry, waste handlers with multi-state operations can register and use their own manifest forms everywhere they do business. EPA still has oversight of the registration process. Recordkeeping, reporting requirements, and other changes streamline and vastly improve hazardous waste tracking. The same manifest form will be used by every jurisdiction.
- **Does it create a group of affected persons who were not affected previously?** No. **How?** N/A
- **Will there be a fiscal impact? If so, estimate.** Standardizing the form streamlines the waste handling process, helps interstate commerce, and reduces regulatory paperwork. A streamlined process will save waste handlers and regulators time and money, while guaranteeing the continued, safe management of hazardous waste. EPA estimates the annual national burden reduction to be between \$12 and \$20 million. Per EPA, at least 34 state governments reportedly spend between \$6 and \$37 million a year to administer the hazardous waste manifest system. EPA estimates the annual change in paperwork burden resulting from this rule will save states and industry between \$12 and \$20 million.

Impact on the public: No impact on the general public. Private business may now register with the EPA to be printers of the uniform manifest waste form and continuation sheet, providing new business opportunities.

- **Who will be affected?** N/A
- **Does it create a group of affected persons who were not affected previously?** No. **How?** N/A
- **Will there be a fiscal impact? N/A If so, estimate.** N/A

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Impact on agency programs: None. The commission does not maintain or track individual manifests. The regulated community does enter the data into WebSTEERS; however, changes to that application are not anticipated. The data will continue to be used for generating the industrial and hazardous waste annual waste summary and monthly waste receipt summary by the regulated community.

Stakeholder meetings:

- **Have any stakeholder meetings been held?** No.
- **With whom?** N/A
- **What were the general sentiments?** N/A
- **Were any changes made in response to stakeholder concerns?** N/A

Policy issues:

- **What policy issues are affected?** Currently, the commission provides manifest forms to regulated entities at no cost to those that order less than 50 per year, and at minimum, costs for orders over 50 per year. The agency just recoups costs for printing and postage for the single side form. The new form is double-sided and will therefore cost more. Because any printer may now register with the EPA to print and sell the manifest form and the continuation sheet, the commission will only provide free forms to those entities that order 50 or less per year. This will be accomplished by the commission purchasing a minimal supply of the forms from a registered printer and tracking who receives forms from the commission.
- Class 1 waste is not regulated by the EPA, therefore, the agency's rules must identify how Texas will require the manifest to be completed for Texas-only regulated waste. It is adopted that Class 1 waste continue to be manifested with the hazardous waste on the new form. It has been confirmed by Rich LaShier, EPA, that facilities or transporters regulated by Texas and not by the EPA, do not have to obtain an EPA identification number and can use the state identification number on the uniform manifest form. Whether the manifested waste is hazardous and/or Class 1, the Texas Waste Code will be entered into "Block 13 Waste Codes" with the EPA codes.
- **Are any policies that are not currently based on rule being made into a rule?** No.
- **What are the consequences if this rulemaking is not approved to go forward?** The agency will not be in compliance with RCRA (the EPA) or DOT.
- **Are there alternatives?** No.

Potentially controversial matters: None.

Key points in rulemaking schedule:

- **Texas Register proposal publication date:** March 24, 2006
- **Anticipated effective date:** August 31, 2006
- **Six month Texas Register filing deadline:** September 25, 2006

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Public comment: The rules were published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2422). The comment period closed 5:00 p.m., April 24, 2006. The commission received one comment letter from Safety-Kleen Corporation (Safety-Kleen).

Significant change from proposal: No changes were required to the rulemaking as a result of comments received.

One error was detected by staff in review of requirements applicable to generators and the insertion referencing treatment, storage, and disposal facility is removed:

“§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

(a) Except as provided in subsection (g) and (h) of this section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste treatment, [process,] storage, or disposal facility within the United States ~~or a treatment, storage, and disposal facility that offers for transport a rejected hazardous waste load~~, or a primary exporter[s] of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:”

Agency contacts:

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Attachments

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