

The Texas Commission on Environmental Quality (commission) adopts amendments to §§335.471 - 335.480. Sections 335.471 - 335.478 and 335.480 are adopted *with changes* to the proposed text as published in the October 25, 2002 issue of the *Texas Register* (27 TexReg 9946). Section 335.479 is adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The primary purpose of the adopted amendments is to improve readability and update the rules. The commission adopts minor substantive changes and addendums to reflect current policy. The adopted amendments will also simplify the rules to make facility compliance, program administration, and pollution prevention more attainable. The current rules were adopted as required with the passage of Senate Bill (SB) 1099, 72nd Legislature, 1991. There is some confusion among conditionally exempt small-quantity generators (CESQGs) about whether Subchapter Q applies to their facilities and also, whether some requirements under the existing rule are applicable to small quantity generators (SQGs). To better address these areas and to update the requirements, the commission has adopted the rules to:

- 1) improve readability and clarity by editing the reporting requirements where appropriate;
- 2) revise the rules to make them more current; and
- 3) simplify, revise, and add rules to improve compliance and program administration.

Specifically, the adopted amendments will clarify that the subchapter applies to both SQGs and large quantity generators (LQGs) of hazardous waste; and those that are subject to Emergency Planning and Community Right-to-Know Act (EPCRA) (42 United States Code (USC), §110323). The adopted amendments clarify that this subchapter does not apply to CESQGs who are not subject to EPCRA (42 USC, §110323). The adopted amendments will also clarify requirements for SQGs who are not subject to EPCRA (42 USC, §110323), so that it is easier for this group to comply

with Subchapter Q. Last, the commission proposes to add an incentive to encourage the use of an environmental management system (EMS) by the regulated community. House Bill (HB) 2997 encourages facilities to develop an EMS and in return, the commission will provide certain incentives for those facilities. The commission proposes that facilities with an EMS (approved by the executive director) be exempt from having a pollution prevention plan and annual progress report.

SECTION BY SECTION DISCUSSION

Administrative changes have been made throughout the sections for clarity and to conform to *Texas Register* requirements. The acronym “PPP” has been deleted and replaced with “pollution prevention plan.”

Adopted §335.471, Definitions, adds a new paragraph (2) to define “Base year.” Texas Health and Safety Code (THSC), §361.506(2), gives the commission the authority to select a base year. Adopted new §335.471(5) adds the definition of “Environmental management system” as defined in 30 TAC §90.30(3). Adopted new renumbered §335.471(7) includes the definition of “Generator and generator of hazardous waste” as defined in THSC, §361.131. Adopted new renumbered §335.471(13) is amended to define “Source reduction” as defined in federal Pollution Prevention Act of 1990, Publication Law 101 - 508, §6603, 104 Stat. 1388, to assist the regulated community and public in determining what practices result in “source reduction.” Subsequent paragraphs have been renumbered to reflect the addition of new paragraphs (2) and (5).

Adopted §335.472, Pollutants and Contaminants, amends paragraph (1) to reflect “reportable” hazardous wastes. Current policy does not require that “all” hazardous waste be subject to Waste Reduction Policy Act (WRPA) reporting. For example, universal hazardous waste is not tracked by the commission and therefore, cannot be tracked by the program. Adopted §335.472(2) adds the Form R threshold of United States Environmental Protection Agency’s (EPA) toxic release inventory (TRI) reporting requirements as the trigger threshold for pollutants and contaminants. Current program policy does not require reporting for TRI Form A reporters, unless they are an SQG or LQG. This division of Form A and Form R went into effect in 1996 after the rules were promulgated. As policy, the program currently sets the threshold at Form R requirements. THSC, §361.503(b), provides the commission with authority to develop a list of pollutants or contaminants and the level of releases of those pollutants or contaminants subject to pollution prevention planning. Form A is only available for facilities that have a total release of less than 500 pounds for a specific TRI chemical, and “manufacture,” “process,” or “otherwise use” less than one million pounds of a specific TRI chemical. In addition to annually submitting Form A, the facility must maintain and make available upon request, records substantiating the claim.

Adopted §335.473, Applicability, paragraph (2) replaces ambiguous language with a more clearly and precisely worded rule by adding the term “small quantity generator” as already defined in this subchapter. Under the current language, many generators are unclear about whether they are subject to the reporting requirements of this subchapter. Adopted §335.473(3) adds “all” for continuity of this section. The Form R threshold is also adopted to be added.

Adopted §335.474, Source Reduction and Waste Minimization Plans, is amended to change the section title to “Pollution Prevention Plans” and also clarify that the pollution prevention plan is to be maintained on-site and made available to commission personnel for inspection as required by THSC, §361.508(a). The adopted rule also differentiates between the initial plan and succeeding plans. In 335.474, the phrase “and implement” has been deleted since proposal because the commission cannot require a pollution prevention plan to be implemented. The “or more” has been removed for program administrative purposes, providing a clear five-year duration of a pollution prevention plan. Adopted §335.474(1) clarifies that this section is applicable only to generators that are either LQGs of hazardous waste or TRI Form R reporters. The current language is confusing to the regulated community and public. Adopted §335.474(1)(A)(i) adds “all” activities that generate hazardous waste. This clarification will help the regulated community determine those activities to identify in their plan. Adopted §335.474(1)(A)(ii) adds “all” activities that result in the release of TRI chemicals and replaces pollutants or contaminants with TRI reportable chemicals, so that it will be consistent with the change in §335.472. Adopted §335.474(1)(F) adds the term “measurable.” THSC, §361.505(6), requires that a plan have “goals” for the entire facility, including incremental goals to aid in evaluating progress. THSC, §361.506(b)(1), requires that a facility report annually on its progress toward these goals. The language of THSC, §361.505(6) and §361.506(b)(1) indicates that in order to assess progress towards the goals developed by the facility, quantitative or measurable goals, not merely policy-related goals, must be submitted as part of the annual report. Adding the term “measurable” clarifies this and will result in the regulated community providing goals in quantitative values in either a percentage format or volume reduced. Without this term, the regulated community may provide policy-related goals that are not measurable, reportable, or incremental and do not aid in evaluating progress toward the facility’s

source reduction and waste minimization goals. Adopted §335.474(1)(H) is moved for ease of reading. If both an executive summary and a certification of completeness are to be submitted to the commission, it is logical they appear in sequential order. This section is to be switched with the existing §335.474(1)(I). Adopted §335.474(1)(I) and (J) respectively, require that a copy of the certification and executive summary be submitted to the commission. These requirements are later noted in “Reports and Recordkeeping,” but the program has determined that it will be clearer if they were also stated in the requirements of the summary. Adopted §335.474(1)(J)(i)(II) clarifies what types of addresses should be submitted to the commission. This is to assist the program in administration and to make it easier to provide assistance to the regulated community. Adopted §335.474(1)(J)(i)(III) clarifies what a “contact” is and to request the submission of phone numbers and email addresses, if available. This is also to assist the program in administration and to make it easier to provide assistance to the regulated community. Adopted §335.474(1)(J)(i)(V) clarifies what identification numbers are necessary to administer the program. Adopted §335.474(1)(J)(i)(VI) is added to include the primary standard industrial classification (SIC) code and, if applicable, the North American Industry Classification System (NAICS). The commission has the discretion to decide what is required in the executive summary. Adopted §335.474(1)(J)(i)(VII) is added to include the specific time period that the five-year plan is in effect. This will assist the program in tracking compliance. Adopted §335.474(1)(J)(iii) adds “and transfers.” Facilities that are subject to EPCRA (42 USC, §110323) must report TRI releases and transfers to the EPA and the commission; therefore, this program should also collect the same data. Adopted §335.474(1)(J)(v) includes the aforementioned “measurable” for reduction goal progress accountability. Adopted §335.474(1)(J)(vii) replaces the original language with language requiring a list of projects. This list of projects was added to be consistent with the intent of

pollution prevention planning. Section 335.474(1)(K) has been changed since proposal by deleting the phrase “pollution prevention executive summary”; deleting the words “pollution prevention”; and adding the phrase “of the plan” to be consistent with the subchapter.

Adopted §335.474(2) makes a clear distinction between the requirements of an SQG plan and LQG plan and/or TRI Form R reporter. This language specifically excludes TRI Form R reporters from doing an abbreviated plan. THSC, §361.505(c), tasks the commission to adopt rules for the development of a simplified pollution prevention plan and reports for SQGs, as appropriate. Adopted §335.474(2)(A)(iii) is amended to be consistent with the executive summary requirements of the LQG plan, asking for point-of-contact information, including phone number and email address, if available. Adopted §335.474(2)(A)(v) clarifies what identification numbers are necessary to administer the program. Adopted new §335.474(2)(C) adds a requirement that a prioritized list of pollutants and contaminants to be reduced be added to the executive summary. TRI releases are not applicable to SQGs that are not TRI reporters. TRI reporters are not allowed to use the abbreviated plan. Adopted §335.474(2)(D) adds the term “measurable” for facility reduction goals. THSC, §361.505(6), requires that a plan have “goals” for the entire facility, including incremental goals to aid in evaluating progress. THSC, §361.506(b)(1), requires that a facility report annually on its progress toward these goals. The language of THSC, §361.505(6) and §361.506(b)(1) indicates that in order to assess progress towards the goals developed by the facility, quantitative goals, not merely policy-related goals, must be submitted. Adding the term “measurable” clarifies this and will result in the regulated community providing goals in quantitative values, in either a percentage format or volume reduced. Without this term, the regulated community may provide policy-related goals that are not measurable, reportable, or

incremental and do not aid in evaluating progress towards the facility's source reduction and waste minimization goals. This is especially important for SQGs as their annual waste summary is accepted as their annual progress report. Adopted new §335.474(2)(E) - (G) requires the executive summary include information on environmental and human health risks considered in determining reduction goals; a list of source reduction and waste minimization projects with a schedule of implementation; and an implementation schedule for future reduction goals. Adopted new §335.474(2)(H) adds a certification by the owner of the facility and requires that a copy of the certification be submitted to the commission. The requirement to submit the certification to the commission is also noted in "Reports and Recordkeeping," but the program has determined that it will be clearer if it was also stated in the requirements of the summary. Section 335.474(2)(H) has been changed since proposal by deleting " , that the plan is complete and correct" because the statute does not give the commission the authority to require companies to implement their plan." Adopted new §335.474(2)(I) adds what shall be included in the executive summary of the plan for SQGs/non-TRI Form R reporters. THSC, §361.505(c), tasks the commission to adopt rules for the development of simplified pollution prevention plans and reports for SQGs where appropriate. Section 335.474(2)(I) has been targeted for appropriate simplification. Adopted §335.474(2)(I)(i)(III) clarifies what a "contact" is and requires that the description of the facility also include a phone number and an email address, if available. This is to assist the program in administration and to make it easier to provide assistance to the regulated community. Adopted §335.474(2)(I)(i)(IV) clarifies what EPA and TCEQ registration numbers are required. Adopted §335.474(2)(I)(i)(V) is added to include the primary SIC code and, if applicable, the NAICS. Adopted §335.474(2)(I)(i)(VI) is added to include the specific time period that the five-year plan is in effect. This will assist the program in tracking compliance. Adopted §335.474(2)(I)(iv) amends the reference

from subparagraph (D) to (C) to reflect sequential change and to add “and contaminants” to be consistent with other language in this subchapter. Section 335.474(2)(J) has been changed since proposal by deleting “pollution prevention executive summary” and adding “of the plan” to be consistent with the subchapter. Adopted §335.474(2)(J)(iii) makes subject/verb agreement between “effect” and “events” by adding an ‘s.’ Adopted new §335.474(2)(J)(iv) adds the term “and.” Adopted new §335.474(2)(J)(v) adds a requirement that the executive summary identify and describe cases where the implementation of a source reduction and waste minimization activity may result in the release of a different pollutant or contaminate, or may shift the release to another medium.

Adopted §335.475, Implementation Dates, paragraphs (1) - (6) are amended to remove the implementation schedule because it is out of date and no longer necessary. THSC, §361.504(b), required the commission to establish one or more schedules for the inclusion of all facilities that are subject to this subchapter. The phasing-in process is complete and the schedule is no longer needed. Instead, the section is adopted to be renamed “Implementation” and will apply to all facilities that are currently required to do source reduction and waste minimization reporting and planning; and those facilities that become subject to this subchapter under “Applicability” in the future.

Adopted §335.476, Reports and Recordkeeping, is amended to reflect reference changes that will be required if the aforementioned adopted amendments are adopted. The word “and” is replaced by “or” to clarify to the regulated community that LQGs or TRI reporters must submit an annual progress report. The current rules suggest that a facility must be subject to both §335.473(1) and (3) before an annual progress report is required. The word “progress” was added between the words “annual report”

to provide better clarity in distinguishing between the annual progress report and executive summary that are both submitted to the agency, but not necessarily concurrently. Adopted §335.476(1) adds the words “annual progress” to describe the adopted change to the “annual progress report.” This amendment provides the regulated community better clarity in distinguishing between the annual progress report and executive summary. Adopted §335.476(1)(A) is amended to pluralize “goal” to “goals” as the references are to multiple goals in previous sections. Adopted §335.476(1)(B) adds “any releases and transfers” in place of “release” and to apply proper references that have changed since the publishing of this rule. The word “the” is deleted at adoption because it was inadvertently left in at proposal. Adopted §335.476(2) adds “annual progress” to “report” to provide better clarity in distinguishing between the annual progress report and executive summary that are both submitted to the agency, but not necessarily concurrently. Adopted §335.476(2)(C) makes subject/verb agreement between “effect” and “events” by adding an ‘s.’ Adopted §335.476(3) adds “annual progress” to “report” again to provide better clarity in distinguishing between the annual progress report and the executive summary. Adopted §335.476(4) modifies the schedule that the regulated community follows. The words “calendar” and “due date” were added to clarify what year to reference when looking for past hazardous waste and TRI records. THSC, §361.504(b), requires the commission to establish one or more schedules for the inclusion of all facilities that are subject to this subchapter. Adopted §335.476(4)(A) - (E) are removed because they are no longer relevant and the submission schedule is addressed in amended §335.476(4). Adopted §335.476(5) provides a dynamic base year that is practical. The current base year of 1987 is irrelevant to a business that has not been in operation for two decades. Adopted §335.476(6) adds “annual progress” to “report” to provide better clarity in distinguishing between the annual progress report and executive summary.

Section 335.477, Exemptions, is adopted to delete paragraph (1) because the current exemption as written is unclear, since some CESQGs can also be TRI reporters and will be subject to this subchapter under §335.473(3). Based on the statute, CESQGs that are not TRI reporters will not be subject to this subchapter. The current exemption can be interpreted as exempting those CESQGs who are TRI reporters, thus being in conflict with WRPA. Adopted §335.477(3) is added to reflect what was approved by the 77th Legislature, 2001, under HB 2997 (Environmental Management System (EMS) Incentives Program). This bill encourages facilities to develop an EMS and in return, the commission will provide certain incentives for those facilities, such as replacing a pollution prevention plan with a results-oriented EMS. An EMS is broader in scope than what is required by this subchapter; therefore, a facility that has a comprehensive EMS plan not only complies with what is required by this subchapter, but also takes into account all activities at the facility that impact the environment. THSC, §361.509(c), states that the commission shall develop incentives to promote source reduction and waste minimization, including an opportunity by joint rules of the commission for a facility to be exempted from the requirements of this subchapter. As long as the facility is meeting the EMS program requirements in 30 TAC §§90.30 - 90.44, the commission may grant the facility an exemption from this subchapter.

Adopted §335.478, Administrative Completeness, adds “progress” to “annual report” to provide better clarity in distinguishing between the annual progress report and the executive summary.

Adopted §335.479, Enforcement, adds “annual progress” to “report” to provide better clarity in distinguishing between the annual progress report and the executive summary.

Adopted §335.480, Confidentiality, adds “progress” to “annual report” to subsections (b) - (d) to provide better clarity in distinguishing between the annual progress report and the executive summary.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules do not meet the definition of a "major environmental rule" as defined in that statute. A major environmental rule is one whose specific intent is to protect the environment or reduce risks to human health from environmental exposure and that may 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. This proposal does not adversely affect, in a material way, the economy, a section 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 intent of the rules is to enhance compliance by clarifying and updating the rules without imposing new requirements not already applied.

According to Texas Government Code, §2001.0225, a major environmental rule is one that: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law. The adopted rules do not meet any of these standards.

First, these rules do not exceed any standard set by federal law for source reduction and waste minimization and were written to implement the federal Pollution Prevention Act of 1990. Second, the requirements of the adopted rules seek to carry out the commission's specific statutory authority to protect public health and safety under THSC, §§361.501 - 361.510 and thus do not exceed an express requirement of state law. Third, the commission is not a party to a delegation agreement with the federal government concerning a state and federal program that will be applicable to requirements set forth in these rules. Therefore, there are no delegation agreement requirements that could be exceeded by these rules. Fourth, the commission proposes these rules to protect public health and safety in the state in accordance with and in furtherance of its authority under state law in THSC, Chapter 361, and specifically §§361.501 - 361.510, as well as under the express authority of THSC, §361.024.

Therefore, the commission does not propose these rules solely under the commission's general powers. The commission concludes that a regulatory analysis is not required in this instance because the adopted rules do not trigger the definition of major environmental rule in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for the adopted amendments in accordance with Texas Government Code, §2007.043. The purpose of the rule amendments is to clarify and update applicable requirements under THSC, §§361.501 - 361.510. Promulgation and enforcement of the adopted amendments will not affect private real property. The adopted amendments simply clarify and update how the requirements of this subchapter apply to CESQGs, both those who are not subject to the EPCRA (42 USC, §11023), and to SQGs and LQGs. These requirements already exist in the rules, but

are being clarified and will closely model the requirements and recommendations of the WRPA of 1991 (SB 1099).

The commission evaluated these adopted rules and performed a preliminary assessment of whether these adopted rules constitute a taking under Texas Government Code, Chapter 2007. The primary purpose of these adopted rules is to enhance compliance with Chapter 335, Subchapter Q. The adopted rules will substantially advance this purpose by: 1) improving clarity and readability by editing reporting requirements where appropriate; 2) revise the rules to make them current; and 3) simplify, revise, and add rules to improve compliance and program administration.

Promulgation and enforcement of these rules will be neither a statutory nor a constitutional taking of private real property. Specifically, the adopted amendments will not burden private real property, nor restrict or limit the owner's right to property, nor reduce its value by 25% or more beyond what will otherwise exist in the absence of these regulations. The adopted amendments clarify who is subject to the requirements of these rules and edit reporting requirements where appropriate. The facilities affected by this rulemaking are already required to follow the existing rules governing source reduction and waste minimization. Therefore, these adopted rules will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the adopted rules and found that the rules are identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject

to the Texas Coastal Management Program (CMP), or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission has prepared a consistency determination for the adopted rules in accordance with 31 TAC §505.22, and has found that the adopted rules are consistent with the applicable CMP goals and policies. The adopted rules are subject to the CMP and must be consistent with applicable goals and policies that are found in 31 TAC §501.12 and §501.14. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values in Coastal Natural Resource Areas.

PUBLIC COMMENT

No public hearing was held on this rulemaking, and no public comments were submitted during the comment period.

**SUBCHAPTER Q: POLLUTION PREVENTION:
SOURCE REDUCTION AND WASTE MINIMIZATION**

§§335.471 - 335.480

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and §26.011, which requires the commission to control the quality of water by rule. The amendments are also adopted under Solid Waste Disposal Act (the Act), THSC, §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 purpose of the Act. Also, under THSC, §361.505(c), the commission is required to adopt rules for the development of simplified, as appropriate, pollution prevention plans and reports for persons identified under THSC, §361.504(a)(2), SQGs.

§335.471. Definitions.

The words and terms used in this subchapter have the meanings given in the Waste Reduction Policy Act of 1991, or the regulations promulgated thereunder. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Further, the following words and terms, as defined herein, shall only have application to this subchapter.

(1) **Acute hazardous waste** - Hazardous waste listed by the administrator of the EPA under the federal Solid Waste Disposal Act, as amended by RCRA, because the waste meets the criteria for listing hazardous waste identified in 40 Code of Federal Regulations §261.11(a)(2).

(2) **Base year** - The year preceding the first year of the plan.

(3) **Conditionally exempt small quantity generator** - A generator that does not accumulate more than 1,000 kilograms of hazardous waste at any one time at his facility and who generates less than 100 kilograms of hazardous waste in any given month.

(4) **Environment** - Water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(5) **Environmental management system** - As defined in §90.30(3) of this title (relating to Definitions). A documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

(6) **Facility** - All buildings, equipment, structures, and other stationary items located on a single site or on contiguous or adjacent sites that are owned or operated by a person who is subject

to this subchapter or by a person who controls, is controlled by, or is under common control with a person subject to this subchapter.

(7) **Generator and generator of hazardous waste** - Has the meaning assigned by Texas Health and Safety Code, §361.131. A person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to be regulated by the commission.

(8) **Large quantity generator** - A generator that generates, through ongoing processes and operations at a facility:

(A) more than 1,000 kilograms of hazardous waste in a month; or

(B) more than one kilogram of acute hazardous waste in a month.

(9) **Media and medium** - Air, water, and land into which waste is emitted, released, discharged, or disposed.

(10) **Pollutant or contaminant** - Includes any element, substance, compound, disease-causing agent, or mixture that after release into the environment and on exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavioral

abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction, or physical deformations in the organism or its offspring. The term does not include petroleum, crude oil, or any fraction of crude oil that is not otherwise specifically listed or designated as a hazardous substance under §101(14)(A) - (F) of the environmental response law, nor does it include natural gas, natural gas liquids, liquefied natural gas, synthetic gas of pipeline quality, or mixtures of natural gas and synthetic gas.

(11) **Release** - Any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment. The term does not include:

(A) a release that results in an exposure to a person solely within a workplace, concerning a claim that the person may assert against the person's employer;

(B) an emission from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine;

(C) a release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined by the Atomic Energy Act of 1954, as amended (42 United States Code, §§2011 *et seq.*), if the release is subject to requirements concerning financial protection established by the United States Nuclear Regulatory Commission under that Act, §170;

(D) for the purposes of the federal CERCLA (Superfund), §104, or other response action, a release of source, by-product, or special nuclear material from a processing site designated under the Uranium Mill Tailings Radiation Control Act of 1978 ((42 United States Code, §7912 and §7942), §102(a)(1), or §302(a)); and

(E) the normal application of fertilizer.

(12) **Small quantity generator** - A generator that generates through ongoing processes and operation at a facility:

(A) equal to or less than 1,000 kilograms but more than or equal to 100 kilograms of hazardous waste in a month; or

(B) equal to or less than one kilogram of acute hazardous waste in a month.

(13) **Source reduction** - Has the meaning assigned by the federal Pollution Prevention Act of 1990, Publication Law 101 - 508, §6603, 104 Stat. 1388. The term "source reduction" means any practice which:

(A) reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(B) reduces the hazards to public health and the environment associated with the release of such substances, pollutants, or contaminants. The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control.

(14) **Tons** - 2,000 pounds, also referred to as short tons.

(15) **Toxic release inventory** - A program which includes those chemicals on the list in Committee Print Number 99 - 169 of the United States Senate Committee on Environment and Public Works, titled "Toxic Chemicals Subject to the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA, 42 United States Code, §11023), 313" including any revised version of the list as may be made by the administrator of the EPA.

(16) **Waste minimization** - A practice that reduces the environmental or health hazards associated with hazardous wastes, pollutants, or contaminants. Examples may include reuse, recycling, neutralization, and detoxification.

§335.472. Pollutants and Contaminants.

The following pollutants and contaminants are subject to pollution prevention planning:

(1) all hazardous wastes generated that are reportable in accordance with §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators); and

(2) all chemicals that exceed the Form R threshold reporting requirements in accordance with Emergency Planning and Community Right-To-Know Act of 1986, §313.

§335.473. Applicability.

This subchapter applies to facilities that are required to develop a pollution prevention plan in accordance with the Waste Reduction Policy Act of 1991, or the regulations promulgated thereunder, including:

(1) all large quantity generators of hazardous waste;

(2) all small quantity generators of hazardous waste; and

(3) all persons subject to §313, Title III, Superfund Amendments and Reauthorization Act of 1986 (Emergency Planning and Community Right-to-Know Act (EPCRA), 42 United States Code, §11023). These toxic release inventory (TRI) covered facilities would be required to develop pollution prevention plans for only the TRI listed chemicals that exceed Form R reportable threshold quantities established under EPCRA.

§335.474. Pollution Prevention Plans.

All persons identified under §335.473 of this title (relating to Applicability) shall prepare a five-year pollution prevention plan that shall be updated as necessary. Plans shall be maintained on-site and available to commission personnel for inspection. Prior to expiration of the initial plan and each succeeding five-year plan, a new five-year plan shall be prepared. Plans prepared under paragraphs (1) - (3) of this section shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

(1) Large quantity generators or toxic release inventory (TRI) Form R reporters. For facilities that are large quantity generators as defined in §335.471(8) of this title (relating to Definitions) or TRI Form R reporters defined in §335.471(15) of this title, the plan shall include, at a minimum:

(A) an initial survey that identifies:

(i) for facilities described in §335.473(1) of this title, all activities that generate hazardous waste; and

(ii) for facilities described in §335.473(3), all activities that result in a release of TRI reportable chemicals;

(B) based on the initial survey, a prioritized list of economically and technologically feasible source reduction and waste minimization projects;

(C) an explanation of source reduction or waste minimization projects to be undertaken, with a discussion of technical and economic considerations, and environmental and human health risks considered in selecting each project to be undertaken;

(D) an estimate of the type and amount of reduction anticipated;

(E) a schedule for the implementation of each source reduction and waste minimization project;

(F) measurable source reduction and waste minimization goals for the entire facility, including incremental goals to aid in evaluating progress;

(G) an explanation of employee awareness and training programs to aid in accomplishing source reduction and waste minimization goals;

(H) identification of cases where the implementation of a source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium;

(I) certification that the plan is complete and correct by the owner of the facility, or, if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan. A copy of the certification is to be submitted to the commission; and

(J) an executive summary of the plan submitted to the commission that shall include at a minimum:

(i) a description of the facility that shall include:

(I) name of facility;

(II) mailing and physical address;

(III) point-of-contact, including phone number and electronic mail (e-mail) address, if available;

(IV) a general description of the facility;

(V) applicable identification numbers, including: Texas Commission on Environmental Quality (TCEQ) solid waste registration number, EPA identification number, and TRI identification number;

(VI) primary standard industrial classification (SIC) code and, if applicable, North American Industry Classification System (NAICS); and

(VII) the specific time period the five-year plan is in effect;

(ii) a list of all hazardous wastes generated and the volume of each;

(iii) a list of all reportable TRI releases and transfers and the volume of each;

(iv) a prioritized list of pollutants and contaminants to be reduced;

(v) a statement of measurable reduction goals;

(vi) an explanation of environmental and human health risks considered in determining reduction goals;

(vii) a list of source reduction and waste minimization projects with an associated schedule toward implementation;

(viii) an implementation schedule for future reduction goals; and

(ix) identification and description of cases where the implementation of source reduction or waste minimization activity designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium. Included in this description shall be a discussion of the change in characteristic of the normal waste stream or release and how it will be managed in the affected medium.

(K) The executive summary of the plan may include:

(i) a discussion of the person's previous efforts at the facility to reduce risk to human health and the environment or to reduce the generation of hazardous waste or the release of pollutants or contaminants;

(ii) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(iii) the effect that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(iv) a description of projects that have reduced the generation of hazardous waste or the release of pollutants or contaminants; and

(v) a discussion of the operational decisions made at the facility that have affected the achievement of the source reduction or waste minimization goals or other risk reduction efforts.

(2) Small quantity generators/non-TRI Form R reporters. For facilities that are small quantity generators as defined in §335.471(12) of this title and are not TRI Form R reporters as defined in §335.471(15) of this title, the plan shall include, at a minimum:

(A) a description of the facility which shall include:

- (i) name of the facility;
- (ii) mailing and physical address;
- (iii) point-of-contact, including phone numbers and electronic mail (e-mail) address, if available;
- (iv) general description of the facility; and
- (v) applicable identification numbers, including: TCEQ solid waste registration number and EPA identification number;

- (B) a list of all hazardous wastes generated and the volume of each;
- (C) a prioritized list of pollutants and contaminants to be reduced;
- (D) a statement of measurable reduction goals;
- (E) information on environmental and human health risks, such as material safety data sheets or other available documentation, considered in determining reduction goals;
- (F) A list of source reduction and waste minimization projects with an associated schedule of implementation;
- (G) an implementation schedule for future reduction goals;
- (H) certification that the plan is complete and correct by the owner of the facility or if the facility is owned by a corporation, by an officer of the corporation that owns the facility who has the authority to commit the corporation's resources to implement the plan. A copy of the certification must be submitted to the commission; and
- (I) an executive summary of the plan submitted to the commission that shall include at a minimum:

(i) a description of the facility that shall include:

(I) name of facility;

(II) mailing and physical address;

(III) point-of-contact, including a phone number and email, if available;

(IV) EPA identification number and TCEQ solid waste registration number;

(V) primary SIC code; and if applicable, NAICS;

(VI) the specific time period the five-year plan is in effect;

(ii) a projection of the amount of hazardous waste that the facility will generate (based on what is reported as hazardous waste under §335.9 of this title (relating to Record Keeping and Annual Reporting Procedures Applicable to Generators)) at the end of the five-year period that the plan is in place;

(iii) prioritized list of pollutants and contaminants to be reduced;

(iv) a list of source reduction activities associated with reductions of pollutants and contaminants identified under subparagraph (C) of this paragraph.

(J) The executive summary of the plan may include:

(i) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through the pollution prevention plan;

(ii) a discussion of the effect that changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(iii) the effects that events the person could not control have had on the achievement of the source reduction and waste minimization goals;

(iv) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals; and

(v) identification and description of cases where the implementation of source reduction and waste minimization activities designed to reduce risk to human health or the environment may result in the release of a different pollutant or contaminant or may shift the release to another medium. Included in this description shall be a discussion of the change in characteristic of the normal waste stream or release and how it will be managed in the affected medium.

§335.475. Implementation.

All facilities subject to this subchapter shall develop a pollution prevention plan. A facility, once subject to this subchapter, shall remain subject until it no longer meets the requirements of §335.473 of this title (relating to Applicability) or is exempted under §335.477 of this title (relating to Exemptions). The executive summary and certificate of completeness shall be submitted to the executive director on the date the plan is required to be in place. Any facility that becomes subject to the requirement to have a pollution prevention plan, shall have 90 days from the date it is required to submit its initial annual waste summary or TRI forms to the commission to have the pollution prevention plan in place and available for review. Facilities subject to this subchapter are required to renew their plan every five years.

§335.476. Reports and Recordkeeping.

All persons required to develop a pollution prevention plan for a facility under this subchapter shall submit to the commission an initial executive summary of the plan following the requirements of §335.474(1)(J) of this title (relating to Pollution Prevention Plans) for large quantity generators/toxic release inventory Form R reporters or §335.474(2)(I) of this title for small quantity generators/non-toxic release inventory Form R and a copy of the certification of completeness and correctness as required by §335.474(1)(I) of this title. Within 30 days of any revision of such plan, a revised executive summary, including a copy of a new certificate of completeness and correctness shall be submitted. All owners and operators required to develop a plan under §335.473(1) or (3) of this title

(relating to Applicability) shall also submit an annual progress report as defined in paragraphs (1) - (3) of this section according to the schedule outlined in paragraph (4) of this section. Persons required to develop a pollution prevention plan for a facility under §335.473(2) of this title may meet the annual progress reporting requirements by submitting their annual waste summary required under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) and by submitting their hazardous waste reduction goals as required under §335.474(2)(I) of this title.

(1) The annual progress report shall detail the facility's progress in implementing the pollution prevention plan and include:

(A) an assessment of the progress toward the achievement of the facility source reduction goals and the facility waste minimization goals;

(B) a statement to include, for facilities described in §335.473(1) of this title, the amount of hazardous waste generated and, for facilities described in §335.473(3) of this title, the amount of any releases and transfers of reportable pollutants or contaminants designated under Texas Health and Safety Code, §361.503(a)(3) in the year preceding the annual progress reporting year, and a comparison of those amounts with the amounts generated or released using the base year; and

(C) any modification to the plan.

(2) The annual progress report may include:

(A) a discussion of the person's previous effort at the facility to reduce hazardous waste or the release of pollutants or contaminants through the pollution prevention plan;

(B) a discussion of the effect changes in environmental regulations have had on the achievement of the source reduction and waste minimization goals;

(C) the effects that events the person could not control have had on the achievement of the source reduction and waste minimization goals; and

(D) a discussion of the operational decisions the person has made that have affected the achievement of the source reduction and waste minimization goals.

(3) The annual progress report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

(4) The first annual progress report shall be submitted on July 1st of the calendar year following the year of first plan due date. Thereafter, the annual progress report shall be submitted annually, due July 1st to report progress from the previous calendar year.

(5) Base year data shall be used in developing both the annual progress report and the executive summary of the plan.

(6) The annual progress report shall be submitted on forms furnished or approved by the executive director and shall contain at a minimum the information specified in paragraph (1) of this section. Upon written request by the facility, the executive director may authorize a modification in the reporting period.

§335.477. Exemptions.

This subchapter does not apply to:

(1) facilities regulated by the Railroad Commission of Texas under the Natural Resources Code, §91.101 or §141.012;

(2) owners and operators of facilities listed in §335.473 of this title (relating to Applicability) who may apply on a case-by-case basis to the executive director for an exemption from this subchapter. The executive director may grant an exemption if the applicant demonstrates that sufficient reductions have been achieved. If an exemption 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 upon the following standards and criteria for determining practical economic and technical completion of the plan:

(A) the facility has reduced the amount of pollutants and contaminants being generated or released by 90% since the base year;

(B) potential impact on human health and the environment of any remaining hazardous waste generated, or pollutant or contaminant released; and

(C) a demonstration that additional reductions are not economically and technically feasible.

(3) facilities that have an environmental management system (EMS) that meets the requirements and is approved by the executive director, as described in §90.36 of this title (relating to Evaluation of an Environmental Management System by the Executive Director) and report annually under the EMS program.

§335.478. Administrative Completeness.

The executive director may review a pollution prevention plan or annual progress report to determine whether the plan or report complies with this subchapter.

§335.479. Enforcement.

Failure to have a pollution prevention plan in accordance with this subchapter or failure to submit a pollution prevention annual progress report in accordance with this subchapter is a violation.

§335.480. Confidentiality.

(a) A pollution prevention plan shall be maintained at each facility owned or operated by a person and/or generator who is subject to this subchapter and shall be available to agency personnel for inspection. The pollution prevention plan is not a public record for the purposes of Chapter 424, Acts of the 63rd Legislature, 1973 (Texas Civil Statutes, Article 6252-17a).

(b) The executive summary of the plan and the annual progress report are public records. On request, the person and/or generator shall make available to the public a copy of the executive summary of the plan or annual progress report.

(c) If an owner or operator of a facility for which a pollution prevention plan has been prepared shows to the satisfaction of the executive director that an executive summary of the plan, annual progress report, or portion of a summary or report prepared under this subchapter would divulge a trade secret if made public, the executive director shall classify as confidential the summary, report, or portion of the summary or report.

(d) To the extent that a plan, executive summary, annual progress report, or portion of a plan, summary, or annual progress report would otherwise qualify as a trade secret, an action by the agency does not affect its status as a trade secret.

(e) Information classified by the executive director as confidential under this section is not a public record for purposes of Chapter 424, Acts of the 63rd Legislature, 1973 (Texas Civil Statutes, Article 6252-17a), and may not be used in a public hearing or disclosed to a person outside the agency unless a court decides that the information is necessary for the determination of an issue being decided at the public hearing.