The Texas Natural Resource Conservation Commission (commission) adopts the amendments to Subchapter A, Industrial Solid Waste and Municipal Hazardous Waste in General, §§335.1, 335.3, 335.4, 335.6, 335.9 - 335.14, 335.17, 335.24, 335.28, 335.29, and 335.31; Subchapter B, Hazardous Waste Management General Provisions, §§335.41 and 335.43 - 335.47; Subchapter C, Standards Applicable to Generators of Hazardous Waste, §§335.61, 335.67, 335.69, 335.76, and 335.78; Subchapter D, Standards Applicable to Transporters of Hazardous Waste, §§335.91, 335.93, and 335.94; Subchapter E, Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, §§335.111, 335.115, 335.117 - 335.119, 335.123, 335.125, and 335.127; Subchapter F, Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, §§335.155, 335.164, 335.165, 335.168 - 335.169, 335.172, 335.177, 335.178, and 335.181; Subchapter G, Location Standards for Hazardous Waste Storage, Processing, or Disposal, §§335.201, 335.202, 335.205, and 335.206; Subchapter H, Standards for the Management of Specific Wastes and Specific Types of Facilities, Division 2, Hazardous Waste Burned for Energy Recovery, §§335.221, 335.222, 335.224, and 335.225; Division 3, Recyclable Materials Utilized For Precious Metal Recovery, §335.241; and Division 5, Universal Waste Rule, §335.262; Subchapter I, Prohibition of Open Dumps, §§335.303 - 335.305 and 335.307; Subchapter J, Hazardous Waste Generation, Facility and Disposal Fee System, §§335.321 - 335.323, 335.325, 335.326, 335.328, and 335.329; Subchapter K, Hazardous Substance Facilities Assessment and Remediation, §§335.341, 335.342, and 335.346; Subchapter N, Household Materials Which Could be Classified as Hazardous Wastes, §§335.401 - 335.403, 335.406, 335.407, 335.409, 335.411, and 335.412; Subchapter O, Land Disposal Restrictions, §335.431; Subchapter Q, Pollution Prevention: Source Reduction and Waste Minimization, §§335.471, 335.473 - 335.478, and 335.480; Subchapter R, Waste

Classification, §§335.501 - 335.504, 335.507 - 335.509, 335.511 - 335.514, and 335.521; and Subchapter S, Risk Reduction Standards, §§335.559, 335.563, and 335.569.

Sections 335.1 and 335.431 are adopted *with changes* to the proposed text as published in the June 22, 2001 issue of the *Texas Register* (26 TexReg 4602). The remaining sections are adopted *without changes* to the proposed text 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 revise the commission's rules to conform to certain federal regulations, either by incorporating the federal regulations by reference or by introducing language into the commission's rules which corresponds to the federal regulations. Establishing equivalency with federal regulations will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA). Most of the federal regulations being addressed in this adoption were promulgated by the EPA in issues of the *Federal Register* from November 1996 through June 2000. In addition, requirements from an earlier federal regulation promulgated in the December 6, 1994 *Federal Register* are also adopted.

The commission's previous review of Chapter 335, adopted by the commission on June 29, 2000 and published in the July 14, 2000 issue of the *Texas Register* (25 TexReg 6820), revealed a number of inconsistencies and incorrect references and citations, which are now being addressed in this adoption. For example, the statutory citations involving the Solid Waste Disposal Act are made consistent

throughout Chapter 335, as "Texas Health and Safety Code, Chapter 361." Such amendments simplify the language and make the rules more readable. The commission also adopts corrections or deletions of out-of-date references to the Texas Water Commission and the Texas Department of Health, and corrections to rule references and other administrative corrections, where appropriate.

SECTION BY SECTION DISCUSSION AND RESPONSE TO COMMENTS

This discussion provides an explanation of changes made to the proposed text since publication in the June 22, 2001 issue of the *Texas Register* (26 TexReg 4602). In addition to changes made to conform to *Texas Register* formatting and style requirements, several minor changes were made in response to comments provided by the Dow Chemical company.

Comment

The Dow Chemical Company commented that the proposed definition of solid waste at §335.1(129)(A)(iv) included the incorrect date of July 7, 2000 in the Federal Register citation for adoption by reference of amendments to 40 CFR §261.38, and stated that the correct date is July 10, 2000.

Response

The commission agrees with this comment. Adopted §335.1(129)(A)(iv) is amended to state that 40 Code of Federal Regulations (CFR) §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292).

Comment

The Dow Chemical Company commented that the update to the regulatory citation under §335.431 regarding the adoption by reference of certain appendices to 40 CFR Part 268 should be a more recent date, and suggested June 8, 2000.

Response

The commission agrees in part and disagrees in part with this comment. The commission believes that the regulatory citation should be more recent than the one that was proposed, but does not agree that the June 8, 2000 *Federal Register* promulgation should be included in this adoption. The commission does not adopt the June 8, 2000 amendment to Appendix VII of 40 CFR Part 268 promulgated in (65 FR 36365) which incorrectly removed the entry for U048 from Table 1. This error appears to be a typographical error, because U408, an organobromine waste, is the waste entry which needs to be deleted from the EPA regulations due to court order. The commission adopts by reference federal amendments to Appendix VIII of 40 CFR Part 268, relating to land disposal restrictions (LDR) through May 26, 1998 (63 FR 28705). This results in the additional adoption by reference of an amendment to Appendix VIII of 40 CFR Part 268, which added a national capacity LDR variance for certain underground injection control wastes.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

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 that statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Although these rules are 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. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state 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 have an adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state; since the portions of this adoption which are more stringent than previously 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 adverse effect caused by the adoption of these state rules. 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 adopted 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, these rules will not exceed a standard set by

federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §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; to provide streamlining and regulatory reform provisions; and to make typographical and other administrative corrections designed to clarify certain rule language, to correct references to the CFR, and to correct other technical errors within the rules, including reinstating rule language which was previously inadvertently deleted and correcting cross-references. The adopted rules will substantially advance this stated purpose by adopting federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations; by incorporating certain streamlining and regulatory reform elements; and by making technical corrections, including reinstatement of rule language and cross-reference corrections. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the rule language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations, as well as language which represents rule reform or streamlining of certain requirements. There is no burden on private real property because 42 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 portions of this adoption which are more stringent than previously 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. The subject regulations do not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adoption and found that the rulemaking is 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 and/or authorization identified in 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 pursuant to 31 TAC §505.22 and has found the adoption is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may

adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 et seq. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the rule amendments will update and enhance the commission's rules concerning hazardous and industrial solid waste facilities. In addition, the adopted rules do not violate any applicable provisions of the CMP's stated goals and policies.

HEARING AND COMMENTERS

The commission did not hold a public hearing on the proposed rules. Two commenters submitted written comments during the comment period which closed at 5:00 p.m., July 23, 2001. Written comments were submitted by the Dow Chemical Company and the Texas Department of Transportation. The Dow Chemical Company's comments are addressed in the SECTION BY SECTION DISCUSSION AND RESPONSE TO COMMENTS section of this preamble. The Texas Department of Transportation commented only that they had no comment to the proposal.

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

SUBCHAPTER A: INDUSTRIAL SOLID WASTE AND

MUNICIPAL HAZARDOUS WASTE IN GENERAL

§§335.1, 335.3, 335.4, 335.6, 335.9 - 335.14, 335.17, 335.24, 335.28, 335.29, 335.31

§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) **Aboveground tank** - A device meeting the definition of tank in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(2) **Act** - Texas Health and Safety Code, Chapter 361.

(3) **Active life** - The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

(4) **Active portion** - That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion.")

(5) **Activities associated with the exploration, development, and protection of oil or gas or geothermal resources** - Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 et seq.).

(6) **Administrator** - The administrator of the United States Environmental Protection Agency or his designee.

(7) **Ancillary equipment** - Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(8) **Aquifer** - A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(9) **Authorized representative** - The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(10) **Battery** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(11) **Boiler** - An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design:

(i) process heaters (units that transfer energy directly to a process stream), and

(ii) fluidized bed combustion units; and

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used

internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance to be Classified as a Boiler).

(12) **Carbon regeneration unit** - Any enclosed thermal treatment device used to regenerate spent activated carbon.

(13) **Certification** - A statement of professional opinion based upon knowledge and belief.

(14) **Class 1 wastes** - Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(15) **Class 2 wastes** - Any individual solid waste or combination of industrial solid waste which cannot be described as Hazardous, Class 1 or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(16) **Class 3 wastes** - Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(17) **Closed portion** - That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

(18) **Closure** - The act of permanently taking a waste management unit or facility out of service.

(19) **Commercial hazardous waste management facility** - Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing

complex.

(20) **Component** - Either the tank or ancillary equipment of a tank system.

(21) **Confined aquifer** - An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(22) **Consignee** - The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(23) **Container** - Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(24) **Containment building** - A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title (relating to Standards).

(25) **Contaminant** - Includes, but is not limited to, “solid waste,” “hazardous waste,” and “hazardous waste constituent” as defined in this subchapter, “pollutant” as defined in the Texas Water Code, §26.001, and Texas Health and Safety Code, §361.431, “hazardous substance” as defined in the Texas Health and Safety Code, §361.003, and other substances that are subject to the Texas

Hazardous Substances Spill Prevention and Control Act, Texas Water Code, §§26.261 - 26.268.

(26) **Contaminated medium/media** - A portion or portions of the physical environment to include soil, sediment, surface water, ground water or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(27) **Contingency plan** - A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(28) **Control** - To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(29) **Corrective action management unit (CAMU)** - An area within a facility that is designated by the commission under 40 Code of Federal Regulations (CFR) Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Water Code, §7.031 (Corrective Action related to Hazardous Waste). A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(30) **Corrosion expert** - A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(31) **Decontaminate** - To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(32) **Designated facility** - A Class 1 or hazardous waste storage, processing, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 CFR Parts 270 and 124; a permit from a state authorized in accordance with 40 CFR Part 271 (in the case of hazardous waste); a permit issued pursuant to §335.2 of this title (relating to Permit Required) (in the case of nonhazardous waste); or that is regulated under §335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator pursuant to §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). If a waste is destined to a facility in an authorized state which has not

yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

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

(34) **Dike** - An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(35) **Dioxins and furans (D/F)** - Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(36) **Discharge or hazardous waste discharge** - The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(37) **Disposal** - The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(38) **Disposal facility** - A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The

term “disposal facility” does not include a corrective action management unit into which remediation wastes are placed.

(39) **Drip pad** - An engineered structure consisting of a curbed, free-draining base, constructed of a non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(40) **Elementary neutralization unit** - A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 CFR §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of non-hazardous industrial solid waste; and

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

(41) **Environmental Protection Agency acknowledgment of consent** - The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(42) **Environmental Protection Agency hazardous waste number** - The number assigned by the EPA to each hazardous waste listed in 40 CFR Part 26l, Subpart D and to each characteristic identified in 40 CFR Part 26l, Subpart C.

(43) **Environmental Protection Agency identification number** - The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(44) **Essentially insoluble** - Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or EPA limits for drinking water as published in the Federal Register.

(45) **Equivalent method** - Any testing or analytical method approved by the administrator under 40 CFR §260.20 and §260.21.

(46) **Existing portion** - That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(47) **Existing tank system or existing component** - A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which

installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(48) **Explosives or munitions emergency -** A situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(49) **Explosives or munitions emergency response** - All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the

actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(50) **Explosives or munitions emergency response specialist -** An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(51) **Extrusion** - A process using pressure to force ground poultry carcasses through a

decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(52) **Facility** - Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several storage, processing, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste).

(53) **Final closure** - The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title

(relating to Accumulation Time).

(54) **Food-chain crops** - Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

(55) **Freeboard** - The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

(56) **Free liquids** - Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

(57) **Generator** - Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(58) **Groundwater** - Water below the land surface in a zone of saturation.

(59) **Hazardous industrial waste** - Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the EPA pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has

identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 CFR Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(60) **Hazardous substance** - Any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 CFR Part 302.

(61) **Hazardous waste** - Any solid waste identified or listed as a hazardous waste by the administrator of the EPA 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.

(62) **Hazardous waste constituent** - A constituent that caused the administrator to list the hazardous waste in 40 CFR Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR §261.24.

(63) **Hazardous waste management facility** - All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators,

boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(64) **Hazardous waste management unit** - A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(65) **In operation** - Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

(66) **Inactive portion** - That portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion.")

(67) **Incinerator** - Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(68) **Incompatible waste** - A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(69) **Individual generation site** - The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(70) **Industrial furnace** - Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous

waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(71) **Industrial solid waste** - Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

(72) **Infrared incinerator -** Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(73) **Inground tank** - A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(74) **Injection well** - A well into which fluids are injected. (See also "underground injection.")

(75) **Inner liner** - A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents

used to treat the waste.

(76) **Installation inspector** - A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(77) **International shipment** - The transportation of hazardous waste into or out of the jurisdiction of the United States.

(78) **Lamp -** Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(79) **Land treatment facility** - A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(80) **Landfill** - A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(81) **Landfill cell** - A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(82) **Leachate** - Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(83) **Leak-detection system** - A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(84) **Liner** - A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(85) **Management or hazardous waste management** - The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(86) **Manifest** - The waste shipping document which accompanies and is used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is TNRCC-0311 (Uniform Hazardous Waste Manifest) which is furnished by the executive director or may be printed through the agency's "Print Your Own Manifest Program."

(87) **Manifest document number** - A number assigned to the manifest by the commission for reporting and recordkeeping purposes.

(88) **Military munitions -** All ammunition products and components produced or used by or for the DOD or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term “military munitions”:

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(89) **Miscellaneous unit** - A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research Development and Demonstration Permits).

(90) **Movement** - That solid waste or hazardous waste transported to a facility in an individual vehicle.

(91) **Municipal hazardous waste** - A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(92) **Municipal solid waste** - Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(93) **New tank system or new tank component** - A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 CFR §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986 (see also "existing tank system.")

(94) **Off-site** - Property which cannot be characterized as on-site.

(95) **Onground tank** - A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(96) **On-site** - The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls

and to which the public does not have access, is also considered on-site property.

(97) **Open burning** - The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

(98) **Operator** - The person responsible for the overall operation of a facility.

(99) **Owner** - The person who owns a facility or part of a facility.

(100) **Partial closure** - The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing

or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(101) **PCBs or polychlorinated biphenyl compounds** - Compounds subject to Title 40, CFR Part 761.

(102) **Permit** - A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify or operate a specified municipal hazardous waste or industrial solid waste storage, processing, or disposal facility in accordance with specified limitations.

(103) **Person** - Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

(104) **Personnel or facility personnel** - All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

(105) **Pesticide** - Has the definition adopted under §335.261 of this title.

(106) **Petroleum substance** - A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances - i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels - a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes but is not limited to stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines - i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels - i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils - i.e., Number 1-D, Number 1, Number 2-D,

and Number 2;

(vi) residual fuel oils - i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils - i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils - i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants - i.e., automotive and industrial lubricants;

(x) building materials - i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials - i.e., transformer oils and cable oils;

(xii) used oils - (See definition for "used oil" in this section); and

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a

hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials - i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(107) **Pile** - Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(108) **Plasma arc incinerator** - Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(109) **Poultry** - Chickens or ducks being raised or kept on any premises in the state for profit.

(110) **Poultry carcass** - The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(111) **Poultry facility** - A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(112) **Primary exporter** - Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 CFR Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous

waste will be sent and any intermediary arranging for the export.

(113) **Processing** - The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the 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.

(114) **Publicly-owned treatment works (POTW)** - Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

(115) **Qualified groundwater scientist** - A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(116) **Receiving country** - A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(117) **Regional administrator** - The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

(118) **Remediation** - The act of eliminating or reducing the concentration of contaminants in contaminated media.

(119) **Remediation waste** - All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste. For a given facility, remediation wastes may originate only from within the facility

boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title (relating to Corrective Action for Solid Waste Management Units).

(120) **Remove** - To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for storage, processing, or disposal.

(121) **Replacement unit** - A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or state approved corrective action.

(122) **Representative sample** - A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(123) **Run-off** - Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

(124) **Run-on** - Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

(125) **Saturated zone or zone of saturation** - That part of the earth's crust in which all voids are filled with water.

(126) **Shipment** - Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(127) **Sludge dryer** - Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

(128) **Small quantity generator** - A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

(129) **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 CFR §261.4(a)(1) - (19), as amended through May 11, 1999, (64 FR 25408), subject to the changes in this clause, 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). For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of 'Solid Waste' in §335.1 of this title (relating to Definitions)":

(I) in the certification statement under 40 CFR §261.38(c)(1)(i)(C)(4), the reference to “40 CFR §261.38" is changed to “40 CFR §261.38, as revised under subparagraph (A)(iv) under the definition of ‘Solid Waste’ in 30 TAC §335.1 ,” and the reference to “40 CFR §261.28(c)(10)” is changed to “40 CFR §261.38(c)(10)”;

(II) in 40 CFR §261.38(c)(2), the references to “§260.10 of this chapter” are changed to “§335.1 of this title (relating to Definitions),” and the reference to “parts 264 or 265 of this chapter” is changed to “Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities)”;

(III) in 40 CFR §261.38(c)(3), (4), and (5), the references to “parts 264 and 265, or §262.34 of this chapter” are changed to “Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";

(IV) in 40 CFR §261.38(c)(5), the reference to “§261.6(c) of this chapter” is changed to “§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)”;

(V) in 40 CFR §261.38(c)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director";

(VI) in 40 CFR §261.38(c)(8), the reference to "§262.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)";

(VII) in 40 CFR §261.38(c)(9), the reference to "§261.2(c)(4) of this chapter" is changed to "§335.1(129)(D)(iv) of this title (relating to Definitions)"; and

(VIII) in 40 CFR §261.38(c)(10), the reference to "implementing authority" is changed to "executive director."

(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.

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

(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) Except for materials described in subparagraph (H) of this paragraph, 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)(17)). 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)(17)).

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

Figure: 30 TAC §335.1(129)(D)(iv)

Figure 1: 30 TAC §335.1(129)(D)(iv)

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i) (1)	Energy Recovery/Fuel S.W. Def. (D)(ii) (2)	Reclamation S.W. Def. (D)(iii) (3)[2]	Speculative Accumulation S.W. Def. (D)(iv) (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).

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

[2]Except as provided in 40 CFR §261.4(a)(17) for mineral processing secondary materials

(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;

(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)(17) apply rather than this provision; or

(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 12 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) Except for materials described in subparagraph (H) of this paragraph, 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 EPA, as described in 40 CFR §261.2(d)(1) - 2.

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that would otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as would be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Chapter 335, Subchapter R of this title (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Chapter 335, Subchapter R of this title; and

(-b-) does not exceed a concentration limit under 30 TAC §312.43(b)(3), Table 3; and

(viii) notwithstanding the requirements under §335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on an annual basis; and

(II) if the recycling material is placed in protective storage, such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a biennial basis.

(I) 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.

(J) 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.

(K) 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 of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

(130) **Sorbent** - A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(131) **Spill** - The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(132) **Staging pile** - An accumulation of solid, non-flowing remediation waste, as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 CFR §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(133) **Storage** - The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled or stored elsewhere.

(134) **Sump** - Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste storage, processing, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(135) **Surface impoundment or impoundment** - A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen

materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(136) **Tank** - A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(137) **Tank system** - A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(138) **TEQ** - Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(139) **Thermal processing** - The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

(140) **Thermostat** - Has the definition adopted under §335.261 of this title.

(141) **Totally enclosed treatment facility** - A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(142) **Transfer facility** - Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste are held during the normal course of transportation.

(143) **Transit country** - Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(144) **Transport vehicle** - A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

(145) **Transporter** - Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(146) **Treatability study** - A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 CFR §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(147) **Treatment** - To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

(148) **Treatment zone** - A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(149) **Underground injection** - The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

(150) **Underground tank** - A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

(151) **Unfit-for-use tank system** - A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

(152) **Universal waste** - Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) of this title that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(153) **Universal waste handler** - Has the definition adopted under §335.261 of this title.

(154) **Universal waste transporter** - Has the definition adopted under §335.261 of this title.

(155) **Unsaturated zone or zone of aeration** - The zone between the land surface and the water table.

(156) **Uppermost aquifer** - The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(157) **Used oil** - Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, Conditionally Exempt Small Quantity Generator (CESQG) hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil) and 40 CFR Part 279 (Standards for Management of Used Oil).

(158) **Wastewater treatment unit** - A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code §466 et seq., §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of tank or tank system as defined in this section.

(159) **Water (bulk shipment)** - The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(160) **Well** - Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(161) **Zone of engineering control** - An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

§335.3. Technical Guidelines.

In order to promote the proper collection, handling, storage, processing, and disposal of industrial solid waste or municipal hazardous waste in a manner consistent with the purposes of Texas Health and Safety Code, Chapter 361, the executive director will make available on request, copies of technical guidelines outlining methods designed to aid in the prevention of the conditions prohibited in this chapter. Guidelines should be considered as suggestions only.

§335.4. General Prohibitions.

In addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Natural Resource Conservation Commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health and welfare.

§335.6. Notification Requirements.

(a) Any person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (e), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director in writing or using electronic notification software provided by the executive director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. The executive director may require submission of information necessary to determine whether storage, processing, or disposal is compliant with the terms of this chapter. Required information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.

(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any changes

or additional information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.

(c) Any person who generates hazardous waste in a quantity greater than the limits specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in any calendar month or greater than 100 kilograms in any calendar month of industrial Class 1 waste shall notify the executive director of such activity using electronic notification software or paper forms provided by the executive director. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. The executive director may require submission of information necessary to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title, or any reports required by §335.9 of this title (relating to Recordkeeping and Annual

Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any such changes or additional information to that reported previously. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. If waste is recycled on-site or managed pursuant to §335.2(d) of this title, the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

(1) a description of the waste;

(2) a description of the process generating the waste;

(3) the composition of the waste;

(4) a proper hazardous waste determination which includes the appropriate EPA hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261. Generators must determine whether such waste is hazardous as defined in 40 CFR Part 261 and submit the results of that hazardous waste determination to the executive director;

(5) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including the following information:

(A) whether the waste is managed on-site and/or off-site;

(B) a description of the type and use of each on-site waste management facility unit;

(C) a listing of the wastes managed in each unit;

(D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title.

(d) Any person who transports hazardous or Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director, except:

(1) industrial generators who generate less than 100 kilograms of Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste; and

(2) municipal generators who generate less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste.

(e) Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.

(f) Upon written request of the executive director, any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste and provide results of the analysis to the executive director.

(g) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter.

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title or Subchapter H of this chapter (relating to

Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or Subchapter H of this chapter must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(i) The owner or operator of a facility qualifying for the small quantity burner exemption under 40 CFR §266.108 must provide a one-time signed, written notification to the EPA and to the executive director indicating the following:

(1) The combustion unit is operating as a small quantity burner of hazardous waste;

(2) The owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection of this section; and

(3) The maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

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

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

§335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators.

(a) Except with regard to nonhazardous recyclable materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous or industrial solid waste shall comply with the following.

(1) The generator shall keep records of all hazardous and industrial solid waste

activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal and which, at a minimum, includes the information described in subparagraphs (A) - (G) of this paragraph. These records may be maintained in any format, provided they are retrievable and easy to copy. The required records must be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to:

(A) the description, character, and classification of each waste, and any changes and additional information required under §335.6(c) and (d) of this title (relating to Notification Requirements);

(B) the quantity generated;

(C) except for conditionally exempt small quantity generators regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators), the quantity held in on-site storage as of December 31 of each calendar year;

(D) the quantity processed or disposed of at each on-site facility unit during the calendar year;

(E) the method of storage, processing, or disposal as described by codes listed

on the form or instructions;

(F) the quantity shipped off-site for storage, processing, or disposal each calendar year, including the name, address, and location of each off-site facility and transporter receiving shipments;

(G) the location of all hazardous waste accumulation areas, situated at or near any point of generation, where hazardous wastes under the control of the operator of the process generating the wastes are placed in containers and initially accumulated without a permit or interim status in accordance with §335.69(d) of this title (relating to Accumulation Time).

(2) The generator shall submit to the executive director a complete and correct Annual Waste Summary detailing the management of each hazardous and Class 1 waste generated on-site during the reporting calendar year. The Annual Waste Summary shall also include the management of any hazardous or Class 1 waste generated in a year previous to the reporting year, but managed in the reporting calendar year. The Annual Waste Summary shall be submitted using electronic software or paper forms provided or approved by the executive director. Upon written request by the generator, the executive director may authorize an extension to the report due date. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must submit the Annual Waste Summary using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative reporting method. Generators shall report as follows.

(A) Generators submitting their Annual Waste Summary on paper forms must do so on or before January 25 of the year following the reporting calendar year.

(B) Generators submitting their Annual Waste Summary electronically must do so on or before March 1 of the year following the reporting calendar year.

(3) Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:

(A) during the year, total on-site accumulation of hazardous waste did not equal or exceed 1,000 kilograms;

(B) no acute hazardous waste was generated or accumulated during the year exceeding the limits specified in §335.78(e)(1) and (2) of this title;

(C) a total of less than 1,200 kilograms of hazardous waste, and a total of less than 1,200 kilograms of Class 1 waste (2,400 kilograms or less of hazardous waste plus Class 1 waste combined) was generated during the year.

(4) Generators who are regulated under §335.78 of this title and also meet the requirements of paragraph (3) of this subsection are not required to submit an annual summary.

(b) A generator who ships his hazardous waste off-site must also report the information specified in §335.71 of this title (relating to Biennial Reporting). Any waste related information that has already been submitted by generators under the requirements of this section or §335.71 of this title need not be included in the reports from permitted or interim status facilities under 40 CFR §264.75 or §265.75.

§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 process, storage, or disposal facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1) for generators of industrial nonhazardous Class 1 waste in a quantity greater than 100 kilograms per month and/or generators of hazardous waste shipping hazardous waste which is part of a total quantity of hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste storage, processing, or disposal facility in Texas; a Texas Natural Resource Conservation Commission (TNRCC) manifest on Form TNRCC-0311 is prepared;

(2) the generator is either an industrial generator that generates less than 100 kilograms of nonhazardous Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title;

(3) for generators of hazardous waste or Class 1 waste generated in Texas for consignment to another state the consignment state's manifest, if provided, or a Texas state manifest if the consignment state does not provide a manifest, is prepared, unless the generator is identified in paragraph (2) of this section;

(4) for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a manifest from the primary exporter's state if that state supplies the manifest form and requires its use or a manifest from any source if the primary exporter's state does not supply the manifest form; and

(5) a generator designates on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternate facility which is authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "Special Handling Instructions and Additional Information." If the transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or

instruct the transporter to return the waste;

(6) for shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

(b) The manifest shall contain the following information.

(1) The manifest shall contain the generator's United States Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest by the generator. This requirement does not apply if the waste being shipped is nonhazardous or if the generator is a conditionally exempt small quantity generator of hazardous waste.

(2) The manifest shall contain the total number of pages used to complete the manifest, plus the number of continuation sheets, if any (page 1 of ____).

(3) The manifest shall contain the name, mailing address, and telephone number of the generator.

(4) The manifest shall contain the telephone number where an authorized agent of the generator may be reached in the event of an emergency.

(5) The manifest shall contain the generator's TNRCC registration and/or permit number. Conditionally exempt small quantity generators (CESQGs) of hazardous waste or industrial generators of less than 100 kg per month of nonhazardous Class 1 waste and less than CESQG limits of hazardous waste that are exempt from manifesting may voluntarily choose to manifest their hazardous or Class 1 industrial nonhazardous waste. Such exempt generators may utilize the letters "CESQG" for their TNRCC generator registration number.

(6) The manifest shall contain the first transporter's company name.

(7) The manifest shall contain the first transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous or the transporter is a conditionally exempt small quantity generator transporting only his own hazardous waste.

(8) The manifest shall contain the first transporter's state registration number. Conditionally exempt small quantity generators who are not required to notify of their transportation activities as specified in §335.6(d) of this title (relating to Notification Requirements) may use the letters "CESQG" as the TNRCC transporter's registration number when transporting their own hazardous or Class 1 nonhazardous waste.

(9) The manifest shall contain a telephone number where an authorized agent of first transporter may be reached in the event of an emergency.

(10) The manifest shall contain the second transporter's company name.

(11) The manifest shall contain the second transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is non-hazardous.

(12) The manifest shall contain the second transporter's state registration number.

(13) The manifest shall contain a telephone number where an authorized agent of the second transporter may be reached in the event of an emergency.

(14) The manifest shall contain the company name and site address of the facilities designated to receive the waste identified on the manifest and an alternate facility, if designated. Except as provided otherwise in §335.78 of this title for the shipment of hazardous wastes that are required to be manifested under subsection (a) of this section, generators shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an approved state hazardous waste program administered in lieu thereof.

(15) The manifest shall contain the designated facility's EPA 12-digit identification number; however, this requirement does not apply if the waste being shipped is non-hazardous.

(16) The manifest shall contain the TNRCC storage, processing, or disposal facility registration and/or permit number.

(17) The manifest shall contain the appropriate notation in the hazardous materials (HM) column of the Texas uniform hazardous waste manifest. The form has been designed to allow the listing of both federally regulated wastes and wastes regulated solely by the state. In order to distinguish between federally regulated wastes and other waste, as required by United States Department of Transportation (DOT) regulations (49 Code of Federal Regulations (CFR) §172.201(a)(1)), the TNRCC has added an HM column on the manifest before the DOT description. When a waste shipment consists of both federally regulated materials and state-regulated wastes, the HM column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials.

(18) The manifest shall contain the DOT proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 CFR Parts 171-177. If the shipment contains non-hazardous waste solely regulated by the TNRCC, then the TNRCC waste classification code description should be used.

(19) The manifest shall contain the number of containers for each waste and the appropriate abbreviation from Table 1 from §335.30 of this title (relating to Appendix I) for the type of container.

(20) The manifest shall contain the total quantity of each waste described on each line.

(21) The manifest shall contain the unit of measure of each waste described on each line. The appropriate abbreviation for the unit of measure may be found in Appendix I, Table 1 of 40 CFR Parts 264 or 265.

(22) The manifest shall contain the TNRCC waste classification code assigned to the waste by the generator.

(23) The manifest shall contain a certification by the generator stating: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations, including applicable state regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of processing, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; or, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

(24) If a mode other than highway is used, the word “highway” should be lined out

and the appropriate mode (rail, water, or air) inserted in the space provided below the word “highway”. If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space provided below the word “highway.”

(c) The manifest shall consist of at least the number of copies which will provide the generator, each transporter, the owner or operator of the storage, processing, or disposal facility and in the case of hazardous waste exports, the United States customs official, with one copy each for their records and another copy to be returned to the generator.

(d) At the time of waste transfer, the generator shall:

(1) sign the manifest by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;

(3) retain one copy, in accordance with §335.13(i) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste); and

(4) give the transporter the remaining copies of the manifest.

(e) For shipments of hazardous waste or Class 1 waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(f) For rail shipments of hazardous waste or Class 1 waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) the next non-rail transporter, if any;

(2) the designated facility if transported solely by rail; or

(3) the last rail transporter to handle the waste in the United States if exported by rail.

(g) No manifest is required for the shipment of Class 1 waste which is not hazardous waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered another source

with respect to other plants or operations owned by the same person.

(h) No manifest and no marking in accordance with §335.67(b) of this title (related to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).

§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste.

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary exporters of hazardous waste) to an off-site storage, processing, or disposal facility, unless the transporter:

(1) obtains a manifest completed by the generator or primary exporter where appropriate in accordance with §335.10 of this title;

(2) upon receipt and prior to shipment, signs and dates the manifest acknowledging the acceptance of waste from the generator or primary exporter where appropriate;

(3) returns a signed copy to the generator or primary exporter where appropriate before leaving the generator's property; and

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

(b) The transporter shall ensure that the manifest accompanies the municipal hazardous waste or Class 1 waste.

(c) No transporter may cause, suffer, allow, or permit the delivery of a shipment of hazardous waste or Class 1 waste to another transporter designated on the manifest, unless the transporter:

(1) obtains the date of delivery and the handwritten signature of the accepting transporter on the manifest;

(2) retains one copy of the manifest in accordance with §335.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste);

(3) gives the remaining copies of the manifest to the accepting transporter; and

(4) in the case of hazardous waste exports, ensures that a copy of the EPA

acknowledgment of consent also accompanies the hazardous waste.

(d) No transporter may cause, suffer, allow, or permit the delivery of a shipment of municipal hazardous waste or Class 1 waste to a storage, processing, or disposal facility, unless the transporter:

(1) obtains the date of delivery and the handwritten signature on the manifest of the owner or operator of the facility designated on the manifest;

(2) retains one copy of the manifest in accordance with §335.14(a) of this title; and

(3) gives the remaining copies of the manifest to the owner or operator of the facility designated on the manifest.

(e) The requirements of subsections (b) - (d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) the waste is delivered by water (bulk shipment) to the facility designated on the manifest;

(2) a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste;

(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the facility on either the manifest or the shipping paper;

(4) the person delivering the waste to the initial water (bulk shipment) transporter obtains the date of delivery and the signature of the water (bulk shipment) transporter on the manifest and forwards it to the facility; and

(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §335.14(b) of this title.

(f) For shipments involving rail transportation, the requirements of subsections (b) - (e) of this section do not apply and the following requirements do apply.

(1) When accepting Class 1 waste from a nonrail transporter, the initial rail transporter must:

(A) sign and date, the manifest acknowledging acceptance of the waste;

(B) return a copy of the manifest to the nonrail transporter;

(C) forward at least three copies of the manifest to:

(i) the next non-rail transporter, if any;

(ii) the designated facility, if the shipment is delivered to that facility by rail; or

(iii) the last rail transporter designated to handle the waste in the United States;

(D) retain one copy of the manifest and rail shipping paper in accordance with §335.14(c) of this title.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering Class 1 waste or municipal hazardous waste to the designated facility, a rail transporter must:

(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been

received by the facility); and

(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title.

(4) When delivering hazardous waste or Class 1 waste to a nonrail transporter, a rail transporter must:

(A) obtain the date of delivery and the handwritten signature of the next nonrail transporter on the manifest; and

(B) retain a copy of the manifest in accordance with §335.14(c) of this title.

(5) Before accepting municipal hazardous waste or Class 1 waste from a rail transporter, a nonrail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste or Class 1 waste out of the United States shall:

(1) indicate on the manifest the date the municipal hazardous waste or Class 1 waste left the United States under the item labeled "special handling instructions and additional information";

(2) sign the manifest and retain one copy in accordance with §335.14(c) of this title;

(3) return a signed copy of the manifest to the generator or primary exporter where appropriate; and

(4) give a copy of the manifest to a United States customs official at the point of departure from the United States.

(h) The transporter must deliver the entire quantity of municipal hazardous waste or Class 1 waste which he has accepted from a generator or a transporter to:

(1) the designated facility listed on the manifest;

(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery;

(3) the next designated transporter; or

(4) the place outside the United States designated by the generator.

(i) If the transporter cannot deliver the waste in accordance with subsection (h) of this section, the transporter must contact the generator for further directions and must revise the manifest according

to the generator's instructions.

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

(a) No owner or operator of a storage, processing, or disposal facility may accept delivery of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), for off-site storage, processing, or disposal unless:

(1) a manifest accompanies the shipment which designates that facility to receive the waste; and

(2) the owner or operator signs the manifest and immediately gives at least one copy of the signed manifest to the transporter; and

(3) retains one copy of the manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(4) within 30 days after the delivery, sends a copy of the manifest to the generator or primary exporter where appropriate; and

(5) in the case of hazardous waste exports, a copy of the EPA acknowledgment of consent also accompanies the waste and the owner or operator has no knowledge that the shipment does not conform to the EPA acknowledgment of consent.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste or Class 1 waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall:

(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste or Class 1 waste covered by the manifest or the shipping paper was received;

(2) immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(3) within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and

(4) retain at the facility a copy of each shipping paper and manifest in accordance with §335.15(a) of this title.

(c) If a facility receives hazardous waste or Class 1 waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment), by a shipping paper, the owner or operator, or his agent, must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) Manifest discrepancies are differences between the quantity or type of hazardous waste or Class 1 waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste or Class 1 waste a facility actually received. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported in the manifest or shipping paper. Significant discrepancies in quantity are:

(A) for bulk weight, variations greater than 10% in weight; and

(B) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that

the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations (CFR) §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

(d) Within three working days of the receipt of a shipment subject to 40 CFR Part 262, Subpart H, concerning transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries, as defined under 40 CFR §262.81. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.

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

(a) Unregistered generators who ship hazardous waste or Class 1 waste shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

(b) Unregistered generators or out-of-state primary exporters who export hazardous waste from or through Texas to a foreign country, shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

(c) Registered generators or out-of-state primary exporters who import hazardous or Class 1 waste from a foreign country through Texas to another state shall prepare a complete and correct Foreign Waste Shipment Summary (F1) from the manifests.

(d) The Waste Shipment Summary (S1) and the Foreign Waste Shipment Summary (F1) shall be prepared in a form provided or approved by the executive director and submitted to the executive director on or before the 25th of each month for shipments originating during the previous month. The unregistered generator or in-state/out-of-state primary exporter must keep a copy of each summary for a period of at least three years from the due date of the summary. These generators are required to prepare and submit a Waste Shipment Summary (S1) and/or Foreign Waste Shipment Summary (F1) only for those months in which shipments are actually made. Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.

(e) The following figure is a graphic representation illustrating generator, waste type, shipment type, and report method.

Figure: 30 TAC §335.13(e)

Generator Type	Waste Type	Shipment Type	Report Method
In-State Registered Generator	Texas Waste	Ship within Texas	Annual Waste Summary (G1)
		Ship out of Texas	Annual Waste Summary (G1)
In-State Unregistered Generator	Texas Waste	Ship within Texas	Waste Shipment Summary (S1)
		Ship out of Texas	Waste Shipment Summary (S1)
In-State Unregistered Primary Exporter/ Importer (TX EPA#)	Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	No Report Required
Out-of-State Primary Exporter/Importer (Other State EPA #)	Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	No Report Required
	Other State's Haz. Waste Exported to Foreign Country	Ship through Texas	Waste Shipment Summary (S1)

(f) A registered generator is defined as an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements), and is assigned a solid waste registration number.

(g) An unregistered generator is defined as an in-state generator who is not a conditionally exempt small quantity generator, as defined in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), that ships hazardous waste and/or Class 1 waste using a temporary solid waste registration number and a temporary Texas

waste code number assigned by the executive director.

(h) A primary exporter/importer is defined as:

(1) an in-state generator who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste to a foreign country; or

(2) an out-of-state generator/importer of record who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste through Texas to a foreign country.

(i) The registered/unregistered generator or primary exporter shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) for a minimum of three years from the date of shipment by the registered/unregistered generator or primary exporter.

(j) A registered/unregistered generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class 1 waste.

(k) A registered/unregistered generator or primary exporter of hazardous waste subject to §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments) must submit an exception report to the executive director if he has not received a copy of the manifest with the handwritten signatures of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report must be retained by the registered/unregistered generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.

(l) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(m) The requirements of subsections (j) and (k) of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title.

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

§335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste.

(a) A transporter of hazardous waste or Class 1 waste shall retain a copy of each manifest signed by the generator or, in the case of exports of hazardous waste, the primary exporter; the transporter; and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of hazardous waste or Class 1 waste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title for a period of three years from the date the

hazardous waste or Class 1 waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste or Class 1 waste was accepted by the initial transporter.

(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the hazardous waste or waste left the United States for a minimum of three years from the date of initial shipment.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

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

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

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

(2) sludge has the same meaning used in Texas Health and Safety Code, §361.003;

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

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

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

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

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

conditioner in wastewater treatment);

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

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

(8) a material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

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

(10) Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (40 CFR §261.4(a)(14)).

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

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

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title, under the definition of Solid Waste, §335.6 of this title (relating to Notification

Requirements), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title, and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

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

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d) - (f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) and (i) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits); 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); and Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property).

(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(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) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986:

(A) a person initiating a shipment for reclamation in a foreign country, and any

intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 CFR §§262.53, 262.56(a)(1)-(4) and (6) and (b), and 262.57, which are in effect as of November 8, 1986, export such materials only upon such consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in the regulations contained in 40 CFR Part 262, Subpart E, which are in effect as of November 8, 1986, and provide a copy of the EPA acknowledgment of consent to the shipment to the transporter transporting the shipment for export;

(B) transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment;

(2) scrap metal that is not already excluded under 40 CFR §261.4(a)(13);

(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 CFR §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) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a) - (c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits); 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 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and the notification requirements under §335.6 of this title, except as provided in subsections (a) - (c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a) - (c) of this section:

(1) notification requirements under §335.6 of this title;

(2) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(g) Recyclable materials (excluding those listed in subsections (b)(4), (c)(1) and (2) - (5) of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (b)(4) and subsection (c)(2) of this section remain subject to the requirements of §335.4 of this title. In addition, industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6 of this title. Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (b)(4) and subsection (c)(2) of this section may also be subject to the requirements of §§335.10 - 335.15 of this title, as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

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

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into nonharmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(9) other relevant factors.

(i) Except as provided in Texas Health and Safety Code, §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;

(2) whether hazardous and nonhazardous wastes that are incompatible are stored and/or processed in the same or connected units;

(3) whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;

(4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

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

(6) the persistence of any objectionable constituent or any objectionable degradation

product in the waste;

(7) the potential for the objectionable constituent to degrade into harmful constituents;

(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(12) other relevant factors.

(j) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A - I or O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage,

Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions), but is regulated under Chapter 324 of this title (relating to Used Oil). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

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

(l) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in 40 CFR §262.58(a)(1), for purpose of recovery, and any person who exports or imports such hazardous waste, is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996 at 61 FedReg 16290), if the hazardous waste is subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(m) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of

this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title, §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), and Subchapter H of this chapter.

§335.28. Adoption of Memoranda of Understanding by Reference.

(a) The memorandum of understanding (effective July 14, 1987) between the attorney general of Texas and the Texas Water Commission, which concerns public participation in the state hazardous waste enforcement process, is adopted by reference.

(b) The memorandum of understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission, which concerns radiation control functions and mutual cooperation, is adopted by reference under §7.118 of this title (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions.

(c) Copies of these documents are available upon request from the Texas Natural Resource Conservation Commission, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

§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) Appendix I - Representative Sampling Methods;

(2) Appendix II - Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) (as amended through August 31, 1993, (58 FR 46040));

(3) Appendix III--Chemical Analysis Test Methods (as amended through August 31, 1993, (58 FR 46040));

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

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

(6) Appendix IX - Wastes Excluded Under §260.20 and §260.22 (as amended through October 19, 1999, (64 FR 56256)).

§335.31. Incorporation of References.

When used in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), the references contained in 40 Code of Federal Regulations (CFR) §260.11 are incorporated by reference as amended and adopted in the CFR through May 14, 1999 (64 FR 26315) .

SUBCHAPTER B: HAZARDOUS WASTE MANAGEMENT

GENERAL PROVISIONS

§§335.41, 335.43 - 335.47

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.41. Purpose, Scope and Applicability.

(a) The purpose of this chapter is to implement a state hazardous waste program which controls from point of generation to ultimate disposal those wastes which have been identified by the administrator of the EPA in 40 Code of Federal Regulations (CFR) Part 261.

(b) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities) and §335.12 of this title (relating to Shipping Requirements Applicable to Owners

or Operators of Storage, Processing, or Disposal Facilities) and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) do not apply to an owner or operator of a totally enclosed treatment facility, as defined in §335.1 of this title (relating to Definitions).

(c) Except as provided in §335.47 of this title (relating to Special Requirements for Persons Eligible for a Federal Permit by Rule), Subchapter E of this chapter and Subchapter F of this chapter do not apply to the owner or operator of a publicly-owned treatment works (POTW) which processes, stores, or disposes of hazardous waste.

(d) Subchapter E of this chapter and Subchapter F of this chapter do not apply to:

(1) the owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §335.1 of this title, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 40 CFR §268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in 40 CFR §264.17(b);

(2) persons engaged in processing or containment activities during immediate response to a discharge of a hazardous waste; an imminent and substantial threat of discharge of hazardous waste; a discharge of a material which, when discharged, becomes a hazardous waste; or an immediate

threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in §335.1 of this title, except that:

(A) an owner or operator of a facility otherwise regulated under Subchapter E of this chapter must comply with all applicable requirements of §335.112(a)(2) and (3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(B) an owner or operator of a facility otherwise regulated under Subchapter F of this chapter must comply with all applicable requirements of §335.152(a)(2) and (3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(C) any person who continues or initiates hazardous waste processing or containment activities after the immediate response is over is subject to all applicable requirements of Subchapter E of this chapter, Subchapter F of this chapter and Chapter 305 of this title (relating to Consolidated Permits); and

(D) in the case of an explosives or munitions emergency response, if a federal, state, tribal, or local official acting within the scope of his or her official responsibilities, or an explosives or emergency response specialist, determines that immediate removal of the material is

necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition;

(3) persons adding absorbent material to waste in a container, as defined in §335.1 of this title and persons adding waste to absorbent material in a container, provided that these actions occur at the time that waste is first placed in the container, and that in the case of permitted facilities, 40 CFR §§264.17(b), 264.171, and 264.172 are complied with, and for all other facilities, 40 CFR §§265.17(b), 265.171, and 265.172 are complied with.

(4) A farmer disposing of waste pesticides from his own use in compliance with §335.77 of this title (relating to Farmers).

(e) Subchapter E of this chapter does not apply to:

(1) a person who stores, processes or disposes of hazardous waste on-site and meets the requirements of §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators); or

(2) the owner or operator of a solid waste facility who stores, processes, or disposes of hazardous waste received from a conditionally exempt small quantity generator.

(f) The following requirements apply to residues of hazardous waste in containers.

(1) Subchapters B - F and O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste, Storage, Processing, or Disposal Facilities; and Land Disposal Restrictions) do not apply to any hazardous waste remaining in either an empty container or an inner liner removed from an empty container, as defined in paragraph (2) of this subsection. This exemption does not apply to any hazardous waste in either a container that is not empty or an inner liner removed from a container that is not empty.

(2) For purposes of determining whether a container is empty under this subsection, the following provisions apply:

(A) a container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e) is empty if:

(i) all wastes have been removed that can be using the practices commonly employed to remove materials from that type of container, e.g. pouring, pumping, and aspirating; and

(ii) no more than 2.5 centimeters (one inch) of residue remains on the bottom of the container or inner liner; or

(iii) no more than 3.0% by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 110 gallons in size, or no more than 0.3% by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 110 gallons in size.

(B) a container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmosphere;

(C) a container or an inner liner removed from a container that has held an acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e) is empty if:

(i) the container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) the container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) in the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

(g) Subchapters B - F and O of this chapter do not apply to hazardous waste which is managed as a recyclable material described in §§335.24(b) and (c) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), except to the extent that requirements of these subchapters are referred to in Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and Chapter 324 of this title (relating to Used Oil).

(h) Subchapter E of this chapter and Subchapter F of this chapter apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in Subchapter O of this chapter.

(i) Except as provided in §335.47 of this title, Subchapter F of this chapter does not apply to persons disposing of hazardous waste by means of underground injection. However, Subchapter F of this chapter does apply to the aboveground storage or processing of hazardous waste before it is injected

underground.

(j) Except as specified in Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule), Subchapters B-F and O of this chapter and Chapter 305 of this title do not apply to universal wastes, universal waste handlers, or universal waste transporters as defined in §335.261 of this title (relating to Universal Waste Rule). Universal wastes are not fully regulated hazardous wastes, but are subject to regulation under Subchapter H, Division 5 of this chapter.

§335.43. Permit Required.

(a) Except as provided in §335.2 of this title (relating to Permit Required), no person shall store, process, or dispose of hazardous waste without first having obtained a permit from the Texas Natural Resource Conservation Commission.

(b) Upon receipt of federal Hazardous and Solid Waste Act (HSWA) authorization for the Texas Natural Resource Conservation Commission's Hazardous Waste Program, the commission shall be authorized to enforce the HSWA provisions that the EPA imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

§335.44. Application for Existing On-Site Facilities.

(a) In order to satisfy the application deadline specified in §335.2(c) of this title (relating to

Permit Required), an application must be submitted prior to that date which contains information defining the following:

(1) owner(s) and operator(s) of the facility;

(2) description of the site;

(3) description of the facility and all facility components;

(4) identification of wastes generated, stored, processed, or disposed, together with quantities and sources; and

(5) methods and types of operations used in the storage, processing, or disposal of wastes.

(b) In addition to the information required in subsection (a) of this section, a complete application, required prior to action on an application by the commission, must include the following:

(1) engineering plans and specifications and other documentation necessary to demonstrate that all components of the facility design, construction, and operation conform to standards established by the commission; and

(2) information describing actions necessary to bring existing facilities into compliance with commission standards and a schedule for completion of such actions.

(c) An application form can be obtained from the executive director for each geographical location for which the storage, processing, or disposal of hazardous waste is proposed.

(d) The application shall be signed by the applicant or by a duly authorized agent, employee, officer, or representative of the applicant and shall be verified before a notary public.

§335.45. Effect on Existing Facilities.

(a) Effect on permitted off-site facilities. Subchapters B - E of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; and Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), provide minimum requirements applicable to all persons generating, transporting, storing, processing, and disposing of hazardous waste. All persons holding permits or any other authorizations from the commission or its predecessor agencies, which relate to hazardous waste, shall meet the requirements of Subchapter E of this chapter until final administrative disposition of their permit application pursuant to standards prescribed by Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) is made. However, where the permit or authorization specifies additional or more stringent requirements, the provisions of the permit or

authorization shall be complied with.

(b) Effect on off-site facilities without a permit to re-use, recycle, or reclaim hazardous waste, or to burn hazardous waste in boilers or industrial furnaces. Any person who has commenced the off-site storage, processing, or disposal of hazardous wastes, or activities that are listed, identified or described by the administrator of the United States Environmental Protection Agency in 40 Code of Federal Regulations Part 261, on or before the effective date of statutory or regulatory amendments under the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code §§6901 et seq., concerning the re-use, recycling, or reclamation of hazardous waste, or relating to the burning of hazardous waste in boilers or industrial furnaces, that render such wastes or activities subject to the requirements to have a hazardous waste permit, shall file an application with the commission on or before the effective date of such amendments, which includes the applicable information required by §335.44 of this title (relating to Application for Existing On-site Facilities). Any person who has commenced off-site storage, processing, or disposal of hazardous waste on or before the effective date of such amendments, who has filed a hazardous waste permit application with the commission on or before the effective date of such amendments in accordance with the rules and regulations of the commission, and who complies with requirements in this chapter applicable to such activities, may continue the off-site storage, processing, or disposal of the newly listed or identified wastes or waste activities until such time as the Texas Natural Resource Conservation Commission approves or denies the application. In cases where the aforementioned federal statutory or regulatory amendments become effective prior to the effective date of state statutory or regulatory amendments under Texas Health and Safety Code, Chapter 361, submittal to the executive director of a copy of the properly filed EPA

permit application within 30 days of the effective date of the applicable state statutory or regulatory requirements shall constitute compliance with this subsection with regard to application filing requirements. Facilities that have received a permit for the re-use, recycling, or reclamation of hazardous waste in accordance with Subchapter F of this chapter are not required to comply with this subsection and may operate pursuant to their existing permit. Such permits, however, are subject to amendment under §305.62 of this title (relating to Amendment) or to modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) to reflect new regulatory requirements.

§335.46. Sharing of Information.

Any information obtained or used by the commission in the administration of a hazardous waste program authorized under the Resource Conservation and Recovery Act of 1976, §3006 and 40 Code of Federal Regulations (CFR) Part 271 shall be available to the Environmental Protection Agency upon request without restriction. If the information has been submitted to the commission under a claim of confidentiality, the commission shall submit that claim to the Environmental Protection Agency when providing information under this section. Any information obtained from the commission and subject to a claim of confidentiality will be treated by the Environmental Protection Agency in accordance with 40 CFR Part 2. If the Environmental Protection Agency obtains information that is not claimed to be confidential, the Environmental Protection Agency may make that information available to the public without further notice.

§335.47. Special Requirements for Persons Eligible for a Federal Permit by Rule.

(a) The following persons are eligible for a permit by rule under 40 Code of Federal Regulations (CFR) §270.60:

(1) the owner or operator of a barge or other vessel which accepts hazardous waste for ocean disposal;

(2) the owner or operator of a publicly owned treatment works (POTW) which accepts hazardous waste for treatment; and

(3) the owner or operator of an injection well used to dispose of hazardous waste.

(b) To be eligible for a permit by rule, such person shall comply with the requirements of 40 CFR §270.60 and the following rules:

(1) 40 CFR §264.11 (EPA identification number);

(2) 40 CFR §264.73(a) and (b)(1) (operating record);

(3) 40 CFR §264.75 (biennial report);

(4) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); and

(5) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(c) In addition to the requirements stated in subsection (b) of this section, the owner or operator of an injection well used to dispose of hazardous waste shall:

(1) comply with the applicable personnel training requirements of 40 CFR §264.16;

(2) when abandonment is completed, submit to the executive director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in §331.46 of this title (relating to Plugging and Abandonment Standards); and

(3) for underground injection control permits issued after November 8, 1984, comply with §335.167 of this title (relating to Corrective Action for Solid Waste Management Units). Where the underground injection well is the only unit at a facility which requires a permit, comply with 40 CFR §270.14(d) (concerning information requirements for solid waste management units). Persons who dispose of hazardous waste by means of underground injection must obtain a permit under the Texas Water Code, Chapter 27.

(d) In addition to the requirements stated in subsection (b) of this section, the owner or operator of a POTW which accepts hazardous waste for treatment shall:

(1) meet all federal, state, and local pretreatment requirements which would be applicable to the waste if it were being discharged into the POTW through a sewer, pipe, or similar conveyance; and

(2) for National Pollutant Discharge Elimination System permits issued after November 8, 1984, comply with §335.167 of this title.

SUBCHAPTER C: STANDARDS APPLICABLE TO

GENERATORS OF HAZARDOUS WASTE

§§335.61, 335.67, 335.69, 335.76, 335.78

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.61. Purpose, Scope and Applicability.

(a) Except as provided in subsection (b) of this section, this subchapter establishes standards for generators of hazardous waste. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) The provisions of this subchapter with which a generator who stores, processes or disposes of hazardous waste on-site must comply are §335.62 of this title (relating to Hazardous Waste Determination), §335.63 of this title (relating to EPA Identification Numbers), §335.70 of this title

(relating to Recordkeeping), §335.73 of this title (relating to Additional Reporting), and, if applicable, §335.77 of this title (relating to Farmers), and §335.69 of this title (relating to Accumulation Time).

(c) Any person who imports hazardous waste into the state from a foreign country shall comply with standards applicable to generators.

(d) An owner or operator who initiates a shipment of hazardous waste from a processing, storage or disposal facility must comply with the generator standards contained in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and this subchapter. The provisions of §335.69 of this title (relating to Accumulation Time) are applicable to on-site accumulation of hazardous wastes by generators. Therefore, the provisions of §335.69 of this title only apply to owners or operators who are shipping hazardous waste which they generate at that facility.

(e) A farmer who generates waste pesticides which are hazardous waste and who complies with §335.77 of this title is not required to comply with this chapter with respect to those pesticides.

(f) A generator who treats, stores, or disposes of hazardous waste on-site must comply with the applicable standards and permit requirements set forth in Subchapters E, F, H, and O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste and with Chapter 305 of this title

(relating to Consolidated Permits).

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

(h) The requirements of this subchapter do not apply to persons responding to an explosives or munitions emergency in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

§335.67. Marking.

(a) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each package of hazardous waste in accordance with the applicable Department of Transportation regulations on hazardous materials under 49 Code of Federal Regulations (CFR) Part 172.

(b) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each container of 110 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR §172.304: HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the EPA.

§335.69. Accumulation Time.

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f) - (k) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

(A) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, and CC, as adopted by reference under §335.112(a) of this title; and/or

(B) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, and CC, except 40 CFR §265.197(c) and §265.200, as adopted by reference under §335.112(a) of this title; and/or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title and maintains the following records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from

the drip pad and the sump or collection system and the date and time of removal; and/or

(D) the waste is placed in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(i) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or

(ii) documentation that the unit is emptied at least once every 90 days.

(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

(3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) the generator complies with the following:

(A) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D and with 40 CFR §265.16, as adopted by reference in §335.112(a) of this title;

(B) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title (relating to Purpose, Scope, and Applicability); and

(C) §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(b) A generator who accumulates hazardous waste for more than 90 days is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title (relating to Consolidated Permits) applicable to such owners and operators, unless he has been granted an extension to the 90-day period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) applicable to generators of Class 1 waste.

(d) A generator, other than a conditionally exempt small quantity generator regulated under

§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 CFR §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with subsection (a) of this section provided he:

(1) complies with 40 CFR §§265.171, 265.172 and 265.173(a), as adopted by reference under §335.112(a) of this title (relating to Standards); and

(2) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(e) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 40 CFR §261.33(e) in excess of the amounts listed in subsection (d) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this section or other applicable provisions of this chapter. During the three-day period, the generator must continue to comply with subsection (d) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of

hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) the quantity of waste accumulated on-site never exceeds 6,000 kilograms;

(2) the generator complies with the requirements of 40 CFR Part 265, Subpart I, as adopted by reference under §335.112(a) of this title, except 40 CFR §265.176 and §265.178;

(3) the generator complies with the requirements of 40 CFR §265.201, as adopted by reference under §335.112(a) of this title;

(4) the generator complies with the requirements of:

(A) subsections (a)(2) and (3) of this section;

(B) 40 CFR Part 265, Subpart C, as adopted by reference under §335.112(a) of this title; and

(C) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title; and

(5) the generator complies with the following requirements:

(A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph (D) of this paragraph. This employee is the emergency coordinator.

(B) The generator must post the following information next to telephones that may be used to summon emergency assistance:

(i) the name and telephone number of the emergency coordinator;

(ii) location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) the telephone number of the fire department, unless the facility has a direct alarm.

(C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;

(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows:

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher;

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil;

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using their 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) Identification Number of the generator;

(II) date, time, and type of incident (e.g., spill or fire);

(III) quantity and type of hazardous waste involved in the incident;

(IV) extent of injuries, if any; and

(V) estimated quantity and disposition of recovered materials, if any.

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste), and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the executive director if hazardous wastes must

remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(i) A generator who generates or collects hazardous waste for the purpose of treatability studies is not subject to this section.

(j) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) the generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering the F006 waste or otherwise released to the environment prior to its recycling;

(2) the F006 waste is legitimately recycled through metals recovery;

(3) no more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

(4) the F006 waste is managed in accordance with the following:

(A) the F006 waste is placed:

(i) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC; and/or

(ii) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200; and/or

(iii) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(I) a written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and

documentation that the generator is complying with the procedures; or

(II) documentation that the unit is emptied at least once every 180 days;

(B) the generator complies with 40 CFR §265.111 and §265.114, as adopted by reference under §335.112(a)(6) of this title;

(C) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(D) while being accumulated on-site, each container and tank is labeled or marked clearly with the words “Hazardous Waste”; and

(E) the generator complies with the following:

(i) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D, and 40 CFR §265.16, as adopted by reference under §335.112(a) of this title ;

(ii) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title; and

(iii) §335.113 of this title.

(k) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of subsection (j)(1) - (4) of this section.

(l) A generator accumulating F006 waste in accordance with subsection (j) or (k) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title applicable to such owners and operators, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the executive director if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the executive director on a case-by-case basis.

§335.76. Additional Requirements Applicable to International Shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, as amended and adopted through April 12, 1996 (61 FR 16290) provide otherwise, a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

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

(1) notification in accordance with the regulations contained in 40 CFR §262.53, as amended and adopted through April 12, 1996 (61 FR 16290) has been provided;

(2) the receiving country has consented to accept the hazardous waste;

(3) a copy of the EPA acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));

(4) the hazardous waste shipment conforms to the terms of the receiving country's written consent as reflected in the EPA acknowledgment of consent; and

(5) the primary exporter complies with the manifest requirements of §335.10(a) - (d) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) except that:

(A) in lieu of the name, site address, and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;

(B) in lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;

(C) in special handling instructions and additional information, the primary

exporter must identify the point of departure from the United States;

(D) the following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form, as set out in §335.10(b)(23) of this title: "and conforms to the terms of the attached EPA acknowledgment of consent";

(E) the primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in §335.12(c)(1) of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) as the subsection applies to hazardous waste between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste;

(F) in lieu of the requirements of §335.10(a) of this title, where a shipment cannot be delivered for any reason to the designated or alternate consignee, the primary exporter must:

(i) renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with the regulations contained in 40 CFR §262.53(c), which are in effect as of November 8, 1986, and obtain an EPA acknowledgment of consent prior to delivery; or

(ii) instruct the transporter to return the waste to the primary exporter

in the United States or designate another facility within the United States; and

(iii) instruct the transporter to revise the manifest in accordance with the primary exporter's instructions;

(G) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and

(H) the primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the United States customs official at the point the hazardous waste leaves the United States in accordance with §335.11(g)(4) of this title.

(c) A primary exportor must submit an exception report to the executive director if:

(1) he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter;

(2) within 90 days from the date the waste was accepted by the initial transporter, the primary exportor has not received written confirmation from the foreign consignee that the hazardous waste was received; or

(3) the waste was returned to the United States.

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title for the manifest except that:

(1) in place of the generator's name, address, and EPA identification number, the name and address of the foreign generator and the importer's name, address, and EPA identification number must be used;

(2) in place of the generator's signature on the certification statement, the United States importer or his agent must sign and date the certification and obtain the signature of the initial transporter; and

(3) a person who imports hazardous waste must obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.

(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

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

(g) Except to the extent that they are clearly inconsistent with Texas Health and Safety Code, Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR §262.57, which are in effect as of November 8, 1986.

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

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

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he

generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (e) - (g) and (j) of this section, a conditionally exempt small quantity generator's hazardous wastes are not subject to regulation under Subchapters C - H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); or the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) When making the quantity determinations of Subchapters A - C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste), the generator must include all hazardous waste it generates, except hazardous waste that:

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

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

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

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

(5) are spent lead-acid batteries managed under the requirements of §335.251 of this

title (relating to Applicability and Requirements); or

(6) is universal waste managed under §335.41(j) of this title (relating to Purpose, Scope and Applicability) and Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;

(2) hazardous waste which is generated or collected for the purpose of treatability studies;

(3) hazardous waste produced by on-site processing (including reclamation) of his hazardous waste, so long as the hazardous waste that is processed was counted once; or

(4) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.

(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C - H and O of this chapter (relating to Standards

Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; and Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); and the notification requirements of the Resource Conservation and Recovery Act, §3010:

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

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

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

(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination).

(2) The generator may accumulate acute hazardous waste on-site. If the generator accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C - H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter

261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

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

(A) permitted by the EPA under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

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

(E) permitted, licensed, or registered by a state to manage non-municipal non-

hazardous waste and, if managed in a non-municipal non-hazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30;

(F) a facility which:

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

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

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.

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

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title.

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If such generator accumulates at any time more than a total of 1000 kilograms of its hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D-H and O of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits); and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1000 kilograms;

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

(A) permitted by the EPA under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

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

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

(F) a facility which:

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

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

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.

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

(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Chapter 324 of this title (relating to Used Oil Standards) and 40 CFR Part 279 if it is destined to be burned for energy recovery. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated if it is destined to be burned for energy

recovery.

SUBCHAPTER D: STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

§§335.91, 335.93, 335.94

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.91. Scope.

(a) This subchapter establishes standards for transporters transporting hazardous waste to off-site storage, processing, or disposal facilities. These standards are in addition to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) This subchapter does not apply to on-site transportation of hazardous waste by generators or by owners or operators of storage, processing or disposal facilities.

(c) A transporter of hazardous waste must also comply with any standards applicable to generators of hazardous waste if he:

(1) transports hazardous waste into the state from a foreign country; or

(2) mixes hazardous waste of different Department of Transportation shipping descriptions by placing them into a single container.

(d) Transporters who store hazardous waste are owners or operators of storage facilities and, as such, are also subject to the permit requirements and storage standards contained in this chapter.

(e) A transporter of hazardous waste subject to the federal manifesting requirements of 40 Code of Federal Regulations (CFR) Part 262, or subject to state hazardous waste manifesting requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste), or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule), that is being imported from or exported to any of the countries listed in 40 CFR §262.58(a)(1) for purposes of recovery is subject to this subchapter and to all other relevant requirements of 40 CFR Part 262, Subpart H, including, but not limited to, 40 CFR §262.84 for tracking documents.

(f) The regulations in this chapter do not apply to transportation during an explosives or munitions emergency response conducted in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

(g) 40 CFR §266.203, as adopted by reference under Subchapter H, Division 6 of this chapter (relating to Military Munitions), identifies how the requirements of this subchapter apply to military munitions classified as solid waste under 40 CFR §266.202.

§335.93. Hazardous Waste Discharges.

(a) In the event of a discharge of hazardous waste during transportation, the transporter shall notify the commission as soon as possible and not later than 24 hours after the occurrence, according to the provisions of the Texas Water Code, §26.039, and the procedures set out in the State Oil and Hazardous Substances Spill Contingency Plan, and also take appropriate immediate action to protect human health and the environment (e.g., notify local authorities, dike the discharge).

(b) If a discharge of hazardous waste occurs during transportation and a commission official acting within the scope of his official responsibilities determines that immediate removal of the waste is necessary to protect human health or the environment, that official may authorize the removal of the waste by transporters who do not have EPA identification numbers and without the preparation of a manifest.

(c) An air, rail, highway, or water transporter who has discharged hazardous waste must also:

(1) give notice, if required by 49 Code of Federal Regulations (CFR) §171.15, to the National Response Center (800-424-8802 or 202-426-2675); and

(2) report in writing as required by 49 CFR §171.16 to the Director, Office of Hazardous Waste Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.

(d) A water (bulk shipment) transporter who has discharged hazardous waste must give the same notice as required by 33 CFR §153.203 for oil and hazardous substances.

(e) A transporter must clean up any hazardous waste discharge that occurs during transportation or take such action as required in §327.5 of this title (relating to Actions Required) so that the hazardous waste discharge no longer presents a hazard to human health or the environment.

§335.94. Transfer Facility Requirements.

(a) Unless the executive director determines that a permit should be required in order to protect human health and the environment, a transporter who stores manifested shipments of hazardous waste in containers meeting the requirements of §335.65 of this title (relating to Packaging) at a transfer facility owned or operated by a registered transporter for a period of ten days or less is not subject to the requirement for a permit under §335.2 of this title (relating to Permit Required), with respect to the storage of those wastes provided that the transporter complies with the following sections:

(1) 40 Code of Federal Regulations (CFR) §265.14 (relating to Security);

(2) 40 CFR §265.15 (relating to General Inspection Requirements);

(3) 40 CFR §265.16 (relating to Personnel Training);

(4) 40 CFR Part 265, Subpart C;

(5) 40 CFR Part 265, Subpart D (except §265.56(j)) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator); and

(6) 40 CFR Part 265, Subpart I.

(b) The executive director may require a permit for that portion of a facility otherwise exempted from that requirement under subsection (a) of this section, with respect to the storage of hazardous waste in containers, if the facility's operation also includes other storage and processing of hazardous waste which is not exempt under subsection (a) of this section.

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

§§335.111, 335.115, 335.117 - 335.119, 335.123, 335.125, 335.127

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.111. Purpose, Scope and Applicability.

(a) The purpose of this subchapter is to establish minimum requirements that define the acceptable management of hazardous waste prior to the issuance or denial of a hazardous waste permit and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. Except as provided in 40 Code of Federal Regulations (CFR) §265.1080(b), this subchapter and the standards of 40 CFR §264.552, §264.553, and §264.554 apply to owners and operators of hazardous waste storage, processing, or disposal facilities who have fully complied with the requirements for interim status under the Resource Conservation and Recovery Act, §3005(e), except as specifically provided for in §335.41 of this title (relating to Purpose, Scope and

Applicability).

(b) EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027 must not be managed at facilities subject to regulation under this subchapter, unless:

(1) the wastewater treatment sludge is generated in a surface impoundment as part of the plant's wastewater treatment system;

(2) the waste is stored in tanks or containers;

(3) the waste is stored or processed in waste piles that meet the requirements of 40 CFR §264.250(c) as well as all other applicable requirements of 40 CFR Part 265, Subpart L, and §335.120 of this title (relating to Containment for Waste Piles);

(4) the waste is burned in incinerators that are certified pursuant to the standards and procedures in 40 CFR §265.352; or

(5) the waste is burned in facilities that thermally process the waste in a device other than an incinerator and that are certified pursuant to the standards and procedures in 40 CFR §265.383.

(c) The requirements of this section apply to owners or operators of all facilities which process, store or dispose of hazardous waste referred to in 40 CFR Part 268, and the 40 CFR Part 268 standards are considered material conditions or requirements of the Part 265 interim status standards

incorporated by reference in §335.112 of this title (relating to Standards).

§335.115. Additional Reports.

In addition to submitting the waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities) and the reports described in this subchapter, the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations (CFR) §265.56(j);

(2) groundwater contamination and monitoring data as specified in 40 CFR §265.93 and §335.117 of this title (relating to Recordkeeping and Reporting);

(3) facility closure as specified in 40 CFR §265.115; and

(4) as otherwise required by §335.112(a)(2) of this title (relating to Standards), which incorporates the requirements of 40 CFR Part 265, Subparts AA and BB.

§335.117. Recordkeeping and Reporting.

(a) Unless the groundwater is monitored to satisfy the requirements of 40 Code of Federal

Regulations (CFR) §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses required in 40 CFR §265.92(c) and (d), the associated groundwater surface elevations required in 40 CFR §265.92(e), and the evaluations required in §335.93(b) of this title (relating to Hazardous Waste Discharges) throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) report the following groundwater monitoring information to the executive director:

(A) during the first year, when initial background concentrations are being established for the facility, concentrations or values of the parameters listed in 40 CFR §265.92(b)(1) for each groundwater monitoring well within 15 days after completing each quarterly analysis. The owner or operator must separately identify for each monitoring well any parameters whose concentration or value has been found to exceed the maximum contaminant levels listed in Appendix III of 40 CFR Part 265.

(B) quarterly, during the initial year of groundwater monitoring, concentrations or values of the parameters listed in 40 CFR §265.92(b)(2) and (3) for each groundwater monitoring well. Annually thereafter, concentrations or values of the parameters listed in 40 CFR §265.92(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under 40 CFR §265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with 40 CFR §265.93(c)(1). In addition, concentration of the groundwater quality parameters listed in 40 CFR §265.92(b)(2) shall be

reported annually.

(C) as a part of the annual report, results of the evaluation of groundwater surface elevations under 40 CFR §265.93(f), and a description of the response to that evaluation where applicable.

(b) If the groundwater is monitored to satisfy the requirements of 40 CFR §265.93(d)(4), the owner or operator must:

(1) keep records of the analyses and evaluations specified in the plan which satisfies the requirements of 40 CFR §265.93(d)(3), throughout the active life of the facility, and, for disposal facilities, throughout the post-closure care period as well; and

(2) annually, until final closure of the facility, submit to the executive director a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period.

(c) The owner or operator shall submit, upon request of the executive director, the following static information for each groundwater monitoring well:

(1) date of well construction;

(2) total depth of well (based on mean sea level);

(3) type of well (ex. trench lysimeter, piezometer, well cluster, multiple screen, pressure vacuum, lysimeter);

(4) latitude/longitude (based on United States Geological Survey topographic map);

(5) geologic age of aquifer sampled;

(6) aquifer name/geologic formation and age.

(d) The owner or operator shall submit, upon request of the executive director, the following information on each sampling event for each groundwater monitoring well sampled:

(1) date of observation;

(2) depth to water level (based upon mean sea level);

(3) sample collection method (i.e. pumped well, bailer, probe, air-lift pump, jetted, peristaltic pump, centrifugal pump, or pitcher pump);

(4) depth to the top of the sample interval which is measured in the number of feet below the land surface datum (LSD);

(5) depth to the bottom of the sample interval which is measured in feet below the LSD.

§335.118. Closure Plan; Submission and Approval of Plan.

(a) Except as provided in this section, the owner or operator must submit his closure plan to the executive director in accordance with the procedures outlined in 40 Code of Federal Regulations (CFR) §265.112. The owner or operator must submit his closure plan to the executive director no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, or Texas Health and Safety Code, Chapter 361, to cease receiving wastes or close.

(b) The executive director will provide the owner or operator and the public, through newspaper notice, the opportunity to submit written comments on the plan and request modifications of the plan within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever such a hearing might clarify one or more issues concerning a closure plan. The executive director will give public notice of the hearing at least 30 days before it occurs. (Public notice

of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of receipt. If the executive director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan within 30 days after receiving such written statement. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved closure plan. The executive director's decision must assure that the approved closure plan is consistent with 40 CFR §§265.111 - 265.115, and the applicable closure requirements contained in this chapter for specific waste management methods, and contained in 40 CFR §264.1102. A copy of this modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

§335.119. Post-Closure Plan; Submission and Approved of Plan.

(a) The owner or operator of a facility with hazardous waste management units subject to the post-closure care requirements in 40 Code of Federal Regulations (CFR) Part 265, Subpart G, must submit his post-closure plan to the executive director at least 180 days before the date he expects to begin partial or final closure of the first hazardous waste disposal unit. The date when he expects to begin closure must be either within 30 days after the date on which the hazardous waste management unit receives the known final volume of hazardous wastes or, if there is a reasonable possibility that the hazardous waste management unit will receive additional hazardous waste no later than one year after the date on which the unit received the most recent volume of hazardous wastes. The owner or operator must submit his post-closure plan to the executive director no later than 15 days after:

(1) termination of interim status (except when a permit is issued to the facility simultaneously with termination of interim status); or

(2) issuance of a judicial decree or compliance order under the Resource Conservation and Recovery Act of 1976, §3008, as amended, or Texas Health and Safety Code, Chapter 361, to cease receiving wastes or close.

(b) The executive director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit written comments on the post-closure plan and request modifications of the plan, including modification of the 30-year post-closure period required in 40 CFR §265.117 within 30 days of the date of the notice. The owner or operator is responsible for the cost of publication. The executive director may, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the post-closure plan. The executive director will give the public notice of the hearing at least 30 days before it occurs. (Public notice of the hearing may be given at the same time as notice of the opportunity for written public comments and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of its receipt. If the executive director does not approve the plan, he shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved post-closure plan. The executive director must ensure that the approved post-closure plan is consistent with 40 CFR §§265.117 - 265.120. A copy of this modified plan with a detailed statement of reasons

for the modifications must be mailed to the owner or operator. If an owner or operator plans to begin closure before November 19, 1981, he must submit the post-closure plan by May 19, 1981.

§335.123. Closure and Post-Closure (Land Treatment Facilities).

(a) In the closure plan under 40 Code of Federal Regulations (CFR) §265.112 and the post-closure plan under 40 CFR §265.118, the owner or operator must address the following objectives and indicate how they will be achieved:

(1) control of the migration of hazardous waste and hazardous waste constituents from the treated area into the groundwater;

(2) control of the release of contaminated run-off from the facility into surface water;

(3) control of the release of airborne particulate contaminants caused by wind erosion; and

(4) compliance with 40 CFR §265.276, concerning the growth of food-chain crops.

(b) The owner or operator must consider at least the following factors addressing the closure and post-closure care objectives of subsection (a) of this section:

(1) type and amount of hazardous waste and hazardous waste constituents applied to

the land treatment facility;

(2) the mobility and the expected rate of migration of the hazardous waste and hazardous waste constituents;

(3) site location, topography, and surrounding land use, with respect to the potential effects of pollutant migration (e.g., proximity to groundwater, surface water, and drinking water sources);

(4) climate, including amount, frequency, and pH or precipitation;

(5) geological and soil profiles and surface and subsurface hydrology of the site, and soil characteristics, including cation exchange capacity, total organic carbon, and pH;

(6) unsaturated zone monitoring information obtained under 40 CFR §265.278; and

(7) type, concentration, and depth of migration of hazardous waste constituents in the soil as compared to their background concentrations.

(c) The owner or operator must consider at least the following methods in addressing the closure and post-closure care objectives of subsection (a) of this section:

(1) removal of contaminated soils;

(2) placement of a final cover, considering:

(A) functions of the cover (e.g., infiltration control, erosion and run-off control, and wind erosion control), and

(B) characteristics of the cover, including material, final surface contours, thickness, porosity and permeability, slope, length of run of slope, and type of vegetation on the cover;

(3) collection and treatment run-off;

(4) diversion structures to prevent surface water run-on from entering the treated area; and

(5) monitoring of soil, soil-pore water, and groundwater.

(d) In addition to the requirements of 40 CFR Part 265; Subpart G, relating to closure and post-closure, §335.118 of this title (relating to Closure Plan; Submission and Approval of Plan) and §335.119 of this title (relating to Post-Closure Plan; Submission and Approval Plan), during the closure period the owner or operator of a land treatment facility must:

(1) continue unsaturated zone monitoring in a manner and frequency specified in the closure plan, except that soil pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone;

(2) maintain the run-on control system required under §335.121(b) of this title (relating to General Operating Requirements (Land Treatment Facilities));

(3) maintain the run-off management system required under §335.121(c) of this title ; and

(4) control wind dispersal of particulate matter which may be subject to wind dispersal.

(e) For the purpose of complying with 40 CFR §265.115 concerning certification of closure, when closure is completed, the owner or operator may submit to the executive director certification both by the owner or operator and by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(f) In addition to the requirements of 40 CFR §265.117 concerning post-closure care and use of property during the post-closure care period, the owner or operator of a land treatment unit must:

(1) continue soil-core monitoring by collecting and analyzing samples in a manner and

frequency specified in the post-closure plan;

(2) restrict access to the unit as appropriate for its post-closure use;

(3) assure that growth of food chain crops complies with 40 CFR §265.276 concerning food chain crops; and

(4) control wind dispersal of hazardous waste.

§335.125. Special Requirements for Bulk and Containerized Waste.

(a) Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985, only if prior to disposal, the liquid waste or waste containing free liquids is processed or stabilized, chemically or physically (e.g., by mixing with a sorbent solid), so that free liquids are no longer present.

(b) Effective May 8, 1985, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(c) A container holding liquid waste or waste containing free liquids must not be placed in a

landfill unless:

(1) the container is designed to hold liquids or free liquids for use other than storage, such as a capacitor or battery;

(2) the container is very small, such as an ampule; or

(3) the container is disposed of in accordance with 40 Code of Federal Regulations (CFR) §265.316.

(d) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR §260.11 and in §335.31 of this title (relating to Incorporation of References).

(e) The date for compliance with subsection (a) of this section is November 19, 1981. The date for compliance with subsection (c) of this section is March 22, 1982.

(f) Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the executive director, or the executive director determines that:

(1) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted or operating under interim status, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(2) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)).

§335.127. Cost Estimate for Closure.

In addition to the requirements of 40 Code of Federal Regulations §265.142 (excluding 40 CFR §265.142(a)(2)), the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither a parent nor a subsidiary of the owner or operator (see the definition of parent corporation in 40 CFR §265.141(d)). Notwithstanding other closure costs, such estimate must also include the costs associated with third party removal, shipment off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility:

(1) maximum inventory of wastes in storage and/or processing units, including but not limited to, storage surface impoundments, waste piles, tanks, and containers;

(2) wastes generated as a result of closure activities (e.g. decontamination, removal of

liquids from surface impoundments, or waste piles);

(3) contaminated stormwater; or

(4) leachate.

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

§§335.155, 335.164, 335.165, 335.167 - 335.169, 335.172, 335.177, 335.178, 335.181

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.155. Additional Reports.

In addition to submitting the waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities), the owner or operator must also report to the executive director:

(1) releases, fires, and explosions as specified in 40 Code of Federal Regulations (CFR) §264.56(j);

(2) facility closure as specified in 40 CFR §264.115;

(3) as otherwise required by 40 CFR Part 264, Subparts F, K-N, X, AA, and BB.

§335.164. Detection Monitoring Program.

An owner or operator required to establish a detection monitoring program must, at a minimum, discharge the following responsibilities:

(1) The owner or operator must monitor for indicator parameters (e.g., specific conductance, total organic carbon, or total organic halogen), waste constituents, or reaction products that provide a reliable indication of the presence of hazardous constituents in groundwater. The commission will specify the parameters or constituents to be monitored in the facility permit, after considering the following factors:

(A) the types, quantities, and concentrations of constituents in wastes managed at the regulated unit;

(B) the mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the waste management area;

(C) the detectability of indicator parameters, waste constituents, and reaction products in groundwater; and

(D) the concentrations or values and coefficients of variation of proposed monitoring parameters or constituents in the groundwater background.

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §335.161 of this title (relating to Point of Compliance). The groundwater monitoring system must comply with §335.163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) The owner or operator must conduct a groundwater monitoring program for each chemical parameter and hazardous constituent specified in its permit pursuant to paragraph (1) of this section in accordance with §335.163(7) of this title. The owner or operator must maintain a record of groundwater analytical data as measured and in a form necessary for the determination of statistical significance under §335.163(8) of this title.

(A) The owner or operator must comply with §335.163(7) of this title in developing the data base used to determine background values.

(B) The owner or operator must express background values in a form necessary for the determination of statistically significant increases under §335.163(8) of this title .

(C) In taking samples used in the determination of background values, the owner or operator must use a groundwater monitoring system that complies with §335.163(1)(A), (2), and (3) of this title.

(4) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (1) of this section in accordance with §335.163(7) of this title. A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during detection monitoring.

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(6) The owner or operator must determine whether there is statistically significant evidence of contamination for any chemical parameter or hazardous constituent specified in the permit pursuant to paragraph (1) of this section at a frequency specified under paragraph (4) of this section.

(A) In determining whether statistically significant evidence of contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title. These method(s) must compare data collected at the compliance point(s) to the background groundwater quality data.

(B) The owner or operator must determine whether there is statistically significant evidence of contamination at each monitoring well at the compliance point within a reasonable period of time after completion of sampling. The commission will specify in the facility permit what period of time is reasonable, after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(7) If the owner or operator determines pursuant to paragraph (6) of this section that there is statistically significant evidence of contamination for chemical parameters or hazardous constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what chemical parameters or hazardous constituents have shown statistically significant evidence of contamination;

(B) immediately sample the groundwater in all monitoring wells that exhibit statistically significant evidence of contamination and determine whether constituents in the list of Appendix IX of 40 Code of Federal Regulations Part 264 are present, and if so, in what concentration;

(C) For any Appendix IX compounds found in the analysis pursuant to subparagraph (B) of this paragraph, the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial

results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to subparagraph (B) of this paragraph, the hazardous constituents found during this initial Appendix IX analysis will form the basis for compliance monitoring.

(D) within 90 days, submit to the executive director an application for a permit amendment or modification to establish a compliance monitoring program meeting the requirements of §335.165 of this title (relating to Compliance Monitoring Program). The application must include the following information:

(i) an identification of the concentration of any Appendix IX constituent detected in the groundwater at each monitoring well that exhibits statistically significant evidence of contamination at the compliance point;

(ii) any proposed changes to the groundwater monitoring system at the facility necessary to meet the requirements of §335.165 of this title;

(iii) any proposed additions or changes to the monitoring frequency, sampling and analysis procedures or methods, or statistical methods used at the facility necessary to meet the requirements of §335.165 of this title; and

(iv) for each hazardous constituent detected at the compliance point, a proposed concentration limit under §335.160(a)(1) or (2) of this title (relating to Concentration Limits), or a notice of intent to seek an alternate concentration limit under §335.160(b) of this title;

(E) within 180 days, submit to the executive director:

(i) all data necessary to justify an alternate concentration limit sought under §335.160(b) of this title (relating to Concentration Limits);

(ii) an engineering feasibility plan for a corrective action program necessary to meet the requirements of §335.166 of this title (relating to Corrective Action Program), unless:

(I) all hazardous constituents identified under subparagraph(b) of this paragraph are listed in Table 1 of §335.160 of this title (relating to Concentration Limits) and their concentrations do not exceed the respective values given in that table; or

(II) the owner or operator has sought an alternate concentration limit under §335.160(b) of this title (relating to Concentration Limits) for every hazardous constituent identified under subparagraph (B) of this paragraph.

(F) if the owner or operator determines, pursuant to paragraph (6) of this section, that there is a statistically significant difference for chemical parameters or hazardous constituents specified pursuant to paragraph (1) of this section at any monitoring well at the compliance point, he or she may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by an error in sampling, analysis, or statistical evaluation or natural variation in the groundwater. The owner operator may make a demonstration under this paragraph in addition to, or in lieu of, submitting a permit amendment or modification application under subparagraph (D) of this paragraph; however, the owner or operator is not relieved of the requirement to submit a permit amendment or modification application within the time specified in subparagraph (D) of this paragraph unless the demonstration made under this paragraph successfully shows that a source other than a regulated unit caused the increase, or that the increase resulted from error in sampling, analysis, or evaluation. In making a demonstration under this paragraph, the owner or operator must:

(i) notify the executive director in writing within seven days of determining statistically significant evidence of contamination at the compliance point that he intends to make a demonstration under this paragraph;

(ii) within 90 days, submit a report to the executive director which demonstrates that a source other than a regulated unit caused the contamination or that the contamination resulted from error in sampling, analysis, or evaluation;

(iii) within 90 days, submit to the executive director an application for

a permit amendment or modification to make any appropriate changes to the detection monitoring program at the facility; and

(iv) continue to monitor in accordance with the detection monitoring program established under this section.

(8) If the owner or operator determines that the detection monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a permit amendment or modification to make any appropriate changes to the program.

§335.165. Compliance Monitoring Program.

An owner or operator required to establish a compliance monitoring program must, at a minimum, discharge the following responsibilities.

(1) The owner or operator must monitor the groundwater to determine whether regulated units are in compliance with the groundwater protection standard under §335.158 of this title (relating to Groundwater Protection Standard). The commission will specify the groundwater protection standard in the compliance plan, including:

(A) a list of the hazardous constituents identified under §335.159 of this title

(relating to Hazardous Constituents);

(B) concentration limits under §335.160 of this title (relating to Concentration Limits) for each of those hazardous constituents;

(C) the compliance point under §335.161 of this title (relating to Point of Compliance); and

(D) the compliance period under §335.162 of this title (relating to Compliance Period).

(2) The owner or operator must install a groundwater monitoring system at the compliance point as specified under §335.161 of this title. The groundwater monitoring system must comply with §335.163(1)(B), (2), and (3) of this title (relating to General Groundwater Monitoring Requirements).

(3) The commission will specify the sampling procedures and statistical methods appropriate for the constituents at the facility, consistent with §335.163(7) and (8) of this title.

(A) The owner or operator must conduct a sampling program for each chemical parameter or hazardous constituent in accordance with §335.163(7) of this title.

(B) The owner or operator must record groundwater analytical data as measured by and in a form necessary for the determination of statistical significance under §335.163(8) of this title for the compliance period of the facility.

(4) The owner or operator must determine whether there is statistically significant evidence of increased contamination for any chemical parameter or hazardous constituent specified in the permit, pursuant to paragraph (1) of this section, at a frequency specified under paragraph (6) under this section.

(A) In determining whether statistically significant evidence of increased contamination exists, the owner or operator must use the method(s) specified in the permit under §335.163(8) of this title. The method(s) must compare data collected at the compliance point(s) to a concentration limit developed in accordance with §335.163 of this title.

(B) The owner or operator must determine whether there is statistically significant evidence of increased contamination at each monitoring well at the compliance point within a reasonable time period after completion of sampling. The commission will specify that time period in the facility permit after considering the complexity of the statistical test and the availability of laboratory facilities to perform the analysis of groundwater samples.

(5) The owner or operator must determine the groundwater flow rate and direction in the uppermost aquifer at least annually.

(6) The commission will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with §335.163(7) of this title. A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during the compliance period of the facility.

(7) The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in Appendix IX of 40 Code of Federal Regulations Part 264 reasonably expected to be in or derived from waste managed at the site at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in §335.164(6) of this title (relating to Detection Monitoring Program). If the owner or operator finds Appendix IX constituents in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the Appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the executive director within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he must report the concentrations of these additional constituents to the executive director within seven days after completion of the initial analysis and add them to the monitoring list.

(8) If the owner or operator determines, pursuant to paragraph (4) of this section, that any concentration limits under §335.160 of this title are being exceeded at any monitoring well at the point of compliance, he must:

(A) notify the executive director of this finding in writing within seven days. The notification must indicate what concentration limits have been exceeded;

(B) submit to the executive director an investigation report to establish a corrective action program meeting the requirements of §335.166 of this title (relating to Corrective Action Program) within 180 days, or within 90 days if an engineering feasibility study has been previously submitted to the executive director under §335.164(7)(E) of this title. The report must at a minimum include the following information:

(i) a detailed description of corrective actions that will achieve compliance with the groundwater protection standard specified in the permit under paragraph (1) of this section; and

(ii) a plan for a groundwater monitoring program that will demonstrate the effectiveness of the corrective action. Such a groundwater monitoring program may be based on a compliance monitoring program developed to meet the requirements of this section.

(9) If the owner or operator determines, pursuant to paragraph (4) of this section, that the groundwater concentration limits are being exceeded at any monitoring well at the point of compliance, he may demonstrate that a source other than a regulated unit caused the contamination or that the detection is an artifact caused by error in sampling, analysis, or evaluation or natural variation in groundwater. In making a demonstration under this subsection, the owner or operator must:

(A) notify the executive director in writing within seven days that he intends to make a demonstration under this section;

(B) within 90 days submit a report to the executive director which demonstrates that a source other than a regulated unit caused the standard to be exceeded or that the apparent noncompliance with the standards resulted from error in sampling, analysis, or evaluation;

(C) within 90 days submit to the executive director an application for a compliance plan amendment or compliance modification to make any appropriate change to the compliance monitoring program at the facility; and

(D) continue to monitor in accord with the compliance monitoring program established under this section.

(10) If the owner or operator determines that the compliance monitoring program no longer satisfies the requirements of this section, he must, within 90 days, submit an application for a plan modification to make any appropriate changes to the program.

(11) The owner or operator shall prepare an annual summary to include the groundwater quality data and groundwater flow rate and direction required under paragraphs (3) and (5) of this section. Such annual summary shall be submitted to the executive director by January 21 of each year on forms provided or approved by the executive director. An owner or operator must keep a

copy of the summary for a period of at least three years from the due date of the summary. The period of record retention required by this section is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

§335.168. Design and Operating Requirements (Surface Impoundments).

(a) Any surface impoundment that is not covered by subsection (c) of this section or 40 Code of Federal Regulations (CFR) §265.221 must have a liner for all portions of the impoundment (except for existing portions of such impoundments). The liner must be designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil or groundwater or surface water) during the active life of the facility, provided that the impoundment is closed in accordance with §335.169(a)(1) of this title (relating to Closure and Post-Closure Care (Surface Impoundments)). For impoundments that will be closed in accordance with §335.169(a)(2) of this title, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility. The liner must be:

(1) constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(2) placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(3) installed to cover all surrounding earth likely to be in contact with the waste or leachate.

(b) The owner or operator will be exempted from the requirements of subsections (a) and (j) of this section if the commission finds, based on a demonstration by the owner or operator, that alternate design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents (see §335.159 of this title (relating to Hazardous Constituents)) into the groundwater or surface water at any future time. In deciding whether to grant an exemption, the commission will consider:

(1) the nature and quantity of the wastes;

(2) the proposed alternate design and operation;

(3) the hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and groundwater or surface water; and

(4) all other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to groundwater or surface water.

(c) The owner or operator of each new surface impoundment unit on which construction commences after January 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992, must meet the requirements of 40 CFR §264.221(c), as amended through January 29, 1992 (57 FR 3487).

(d) The executive director may approve alternative design or operating practices to those specified in subsection (c) of this section if the owner or operator demonstrates to the executive director that he meets the requirements of 40 CFR 264.221(d), as amended through January 29, 1992 (57 FR 3462).

(e) The double liner requirement set forth in subsection (c) of this section may be waived by the commission for any monofill which contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand, and such wastes do not contain constituents which would render the wastes hazardous for reasons other than the toxicity characteristics in 40 CFR §261.24, and is in compliance with either of the following requirements:

(1) the monofill:

(A) has at least one liner for which there is no evidence that such liner is leaking. For the purposes of this subsection, the term "liner" means a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility, or a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, groundwater, or surface water at any time during the active life of the facility. In the case of any surface impoundment which has been exempted from the requirements of subsection (c) of this section on the basis of a liner designed, constructed, installed, and operated to prevent hazardous waste from passing beyond the liner, at the closure of such impoundment, the owner or operator must remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment will comply with appropriate post-closure requirements, including, but not limited to, groundwater monitoring and corrective action;

(B) is located more than ¼ mile from an underground source of drinking water (as that term is defined in §331.2 of this title (relating to Definitions)); and

(C) is in compliance with groundwater monitoring requirements of this subchapter; or

(2) the owner or operator demonstrates that the monofill is located, designed, and operated so as to assure that there will be no migration of any hazardous constituent into groundwater

or surface water at any future time.

(f) The owner or operator of any replacement surface impoundment unit is exempt from subsection (c) of this section if:

(1) The existing unit was constructed in compliance with the design standards of Resource Conservation and Recovery Act, §3004(o)(1)(A)(i) and (o)(5); and

(2) There is no reason to believe that the liner is not functioning as designed.

(g) A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind, and wave action; rainfall; run-off, malfunctions of level controllers, alarms, and other equipment; and human error.

(h) A surface impoundment must have dikes that are designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

(i) The commission will specify in the permit all design and operating practices that are necessary to ensure that the requirements of this section are satisfied.

(j) A surface impoundment (except for an existing portion of a surface impoundment) that will be closed in accordance with §335.169(a)(2) of this title must have an additional liner to that required in subsection (a) of this section which:

(1) prevents any migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water at any time prior to the end of the post-closure care period; and

(2) minimizes the rate of migration of wastes out of the impoundment to the adjacent subsurface soil or groundwater or surface water so as not to pose a substantial present or potential hazard to human health and the environment.

§335.169. Closure and Post-Closure Care (Surface Impoundments).

(a) At closure, the owner or operator must:

(1) remove or decontaminate all waste residues, contaminated containment system components (liners, etc.) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless 40 Code of Federal Regulations (CFR) §261.3(d) applies; or

(2) eliminate free liquids by removing liquid wastes or solidifying the remaining wastes and waste residues; stabilize remaining wastes to a bearing capacity sufficient to support final cover; and cover the surface impoundment with a final cover designed and constructed to:

(A) provide long-term minimization of the migration of liquids through the closed impoundment;

(B) function with minimum maintenance;

(C) promote drainage and minimize erosion or abrasion of the final cover;

(D) accommodate settling and subsidence so that the cover's integrity is maintained; and

(E) have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present.

(b) If some waste residues or contaminated materials are left in place at final closure, the owner or operator must comply with all post-closure requirements contained in 40 CFR §§264.117 - 264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit under 40 CFR §264.117). The owner or operator must:

(1) maintain the integrity and effectiveness of the final cover including making repairs to the cap as necessary to correct the effects of settling, subsidence, erosion, or other events;

(2) maintain and monitor the leak detection system in accordance with 40 CFR §§264.221(c)(2)(iv) and (3) and 264.226(d), and comply with all other applicable leak detection system requirements of this subchapter;

(3) maintain and monitor the groundwater monitoring system and comply with all other applicable requirements of §§335.156 - 335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); and

(4) prevent run-on and run-off from eroding or otherwise damaging the final cover.

(c) If an owner or operator plans to close a surface impoundment in accordance with subsection (a)(1) of this section, and the impoundment does not comply with the liner requirements of §335.168(a) of this title (relating to Design and Operating Requirements (Surface Impoundments)) and is not exempt from them in accordance with §335.168(b) of this title, then:

(1) the closure plan for the impoundment under 40 CFR §264.112 must include both a plan for complying with subsection (a)(1) of this section and a contingent plan for complying with subsection (a)(2) of this section, in case not all contaminated subsoils can be practicably removed at closure; and the owner or operator must prepare a contingent post-closure plan under 40 CFR §264.118 for complying with subsection (b) of this section, in case not all contaminated subsoils can be practicably removed at closure;

(2) the cost estimates calculated under 40 CFR §264.142 and §264.144 for closure and post-closure care of an impoundment subject to this subsection must include the cost of complying with the contingent closure plan and the contingent post-closure plan, but are not required to include the cost of expected closure under subsection (a)(1) of this section.

§335.172. Closure and Post-Closure Care (Land Treatment Units).

(a) During the closure period, the owner or operator must:

(1) continue all operations (including pH control) necessary to maximize degradation, transformation, or immobilization of hazardous constituents within the treatment zone as required under §335.171(1) of this title (relating to Design and Operating Requirements (Land Treatment Units)), except to the extent such measures are inconsistent with paragraph (8) of this subsection;

(2) continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under §335.171(3) of this title;

(3) maintain the run-on control system required under §335.171(3) of this title ;

(4) maintain the run-off management system required under §335.171(4) of this title ;

(5) control wind dispersal of hazardous waste if required under §335.171(6) of this title;

(6) continue to comply with any prohibitions or conditions concerning growth of food-chain crops under 40 Code of Federal Regulations (CFR) §264.276;

(7) continue unsaturated zone monitoring in compliance with 40 CFR §264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone; and

(8) establish a vegetative cover on the portion of the facility being closed at such time that the cover will not substantially impede degradation, transformation, or immobilization of hazardous constituents in the treatment zone. The vegetative cover must be capable of maintaining growth without extensive maintenance.

(b) For the purpose of complying with 40 CFR §264.115, when closure is completed, the owner or operator may submit to the executive director certification by an independent qualified soil scientist, in lieu of an independent registered professional engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

(c) During the post-closure care period, the owner or operator must:

(1) continue all operations (including pH control) necessary to enhance degradation and transformation and sustain immobilization of hazardous constituents in the treatment zone to the extent that such measures are consistent with other post-closure care activities;

(2) maintain a vegetative cover over closed portions of the facility;

(3) maintain the run-on control system required under §335.171(3) of this title ;

(4) maintain the run-off management system required under §335.171(4) of this title ;

(5) control wind dispersal of hazardous waste if required under §335.171(6) of this title;

(6) continue to comply with any prohibition or conditions concerning growth of food-chain crops under 40 CFR §264.276; and

(7) continue unsaturated zone monitoring in compliance with 40 CFR §264.278, except that soil-pore liquid monitoring may be terminated 90 days after the last application of waste to the treatment zone.

(d) The owner or operator is not subject to regulation under subsections (a)(8) and (c) of this section if the commission finds that the level of hazardous constituents in the treatment zone does not exceed the background value of those constituents by an amount that is statistically significant when using the test specified in paragraph (3) of this subsection. The owner or operator may submit such a demonstration to the executive director at any time during the closure or post-closure care periods.

(1) The owner or operator must establish background soil values and determine whether there is a statistically significant increase over those values for all hazardous constituents specified in the facility permit under 40 CFR §264.271(b).

(A) Background soil values may be based on a one-time sampling of a background plot having characteristics similar to those of the treatment zone.

(B) The owner or operator must express background values and values for hazardous constituents in the treatment zone in a form necessary for the determination of statistically significant increases under paragraph (3) of this subsection.

(2) In taking samples used in the determination of background and treatment zone values, the owner or operator must take samples at a sufficient number of sampling points and at appropriate locations and depths to yield samples that represent the chemical make-up of soil that has not been affected by solid waste or leakage from the treatment zone, and the soil within the treatment zone, respectively.

(3) In determining whether a statistically significant increase has occurred, the owner or operator must compare the value of each constituent in the treatment zone to the background value for that constituent using a statistical procedure that provides reasonable confidence that constituent presence in the treatment zone will be identified. The owner or operator must use a statistical procedure that:

(A) is appropriate for the distribution of the data used to establish background values; and

(B) provides a reasonable balance between the probability of falsely identifying hazardous constituent presence in the treatment zone and the probability of failing to identify real presence in the treatment zone.

(e) The owner or operator is not subject to regulation under §§335.156 - 335.166 of this title (relating to Applicability of Groundwater Monitoring and Response; Required Programs; Groundwater Protection Standard; Hazardous Constituents; Concentration Limits; Point of Compliance; Compliance

Period; General Groundwater Monitoring Requirements; Detection Monitoring Program; Compliance Monitoring Program; and Corrective Action Program); if the commission finds that the owner or operator satisfied subsection (d) of this section and if unsaturated zone monitoring under 40 CFR §264.278 indicates that hazardous constituents have not migrated beyond the treatment zone during the active life of the land treatment unit.

§335.177. General Performance Standard.

No person may cause, suffer, allow, or permit the storage, processing, or disposal of hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of hazardous waste, hazardous or nonhazardous constituents, or any other materials resulting from industrial solid waste activities, including, but not limited to, reaction products, into or adjacent to the waters in the state without specific authorization for such discharge from the Texas Natural Resource Conservation Commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health or welfare.

§335.178. Cost Estimate for Closure.

In addition to the requirements of 40 Code of Federal Regulations (CFR) §264.142 (excluding 40 CFR §264.142(a)(2)), the closure cost estimate must be based on the costs to the owner or operator of hiring a third party to close the facility. A third party is a party who is neither the parent nor a subsidiary of the owner or operator (see definition of parent corporation in 40 CFR §264.141(d)). Notwithstanding other closure costs, such estimate must also include the costs associated with third party removal, shipment, off-site, and processing or disposal off-site, and processing or disposal off-site of the following wastes to an authorized storage, processing, or disposal facility:

(1) maximum inventory of wastes in storage and/or processing units, including, but not limited to, storage surface impoundments, waste piles, tanks, and containers;

(2) wastes generated as a result of closure activities (e.g. decontamination, removal of liquids from surface impoundments, or waste piles);

(3) contaminated stormwater; and

(4) leachate.

§335.181. Need for Specific Commercial Hazardous Waste Management Technologies.

In evaluating an application for a new commercial hazardous waste management facility permit, the commission shall determine the need for the specific technology proposed in the facility to manage new or increased volumes of waste generated in the state, in accordance with Texas Health and Safety Code, §361.0232.

SUBCHAPTER G: LOCATION STANDARDS FOR HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL

§§335.201, 335.202, 335.205, 335.206

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.201. Purpose, Scope, and Applicability.

(a) This subchapter establishes minimum standards for the location of facilities used for the storage, processing, and disposal of hazardous waste. These standards are to be applied in the evaluation of an application for a permit to manage hazardous waste. Except as otherwise provided in this section, this subchapter applies to permit applications for new hazardous waste management facilities and areal expansions of existing hazardous waste management facilities, filed on or after September 1, 1984. These sections do not apply to the following:

(1) permit applications submitted pursuant to §335.2(c) of this title (relating to Permit Required), §335.43(b) of this title (relating to Permit Required), and §335.45(b) of this title (relating to Effect on Existing Facilities), including any revision submitted pursuant to §305.51 of this title (relating to Revision of Applications for Hazardous Waste Permits);

(2) permit applications filed pursuant to §335.2(a) of this title which have been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which have been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984; and

(3) on-site remedial actions conducted pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 United States Code §9601 et seq., as amended by the Superfund Amendments Reauthorization Act of 1986 or Texas Health and Safety Code, Chapter 361, Subchapter F.

(b) The standards contained in §335.204(a)(6) - (9), (b)(7) - (12), (c)(6) - (11), (d)(6) - (11), and (e)(8) - (13) are not applicable to facilities that have submitted a notice of intent to file a permit application pursuant to §335.391 of this title (relating to Pre-Application Review) prior to May 3, 1988, or to facilities that have filed permit applications pursuant to §335.2(a) of this title which were submitted in accordance with Chapter 305 of this title and that were declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to May 3, 1988.

(c) The purpose of this subchapter is to condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a site that reasonably minimizes possible contamination of surface water and groundwater; to define the characteristics that make an area unsuitable for a hazardous waste management facility; and to prohibit issuance of a permit for a facility to be located in an area determined to be unsuitable, unless the design, construction and operational features of the facility will prevent adverse effects from unsuitable site characteristics. Nothing herein is intended to restrict or abrogate the commission's general authority under Texas Health and Safety Code, Chapter 361 to review site suitability for all facilities which manage municipal hazardous waste or industrial solid waste.

§335.202. Definitions.

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

(1) **Active geologic processes** - Any natural process which alters the surface and/or subsurface of the earth, including, but not limited to, erosion (including shoreline erosion along the coast), submergence, subsidence, faulting, karst formation, flooding in alluvial flood wash zones, meandering river bank cutting, and earthquakes.

(2) **Aquifer** - A geologic formation, group of formations, or part of a formation

capable of yielding a significant amount of groundwater to wells or springs. Portions of formations, such as clay beds, which are not capable of yielding a significant amount of groundwater to wells or springs are not aquifers.

(3) **Area subject to active shoreline erosion** - A coastal area where shoreline erosion has been documented within historic time.

(4) **Areal expansion of an existing facility** - The enlargement of a land surface area of an existing hazardous waste management facility from that described in a solid waste permit authorizing the facility.

(5) **Areas of direct drainage** - Those land areas from which surface water runoff could flow into a lake used to supply public drinking water.

(6) **Commercial hazardous waste management facility** - Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(7) **Critical habitat of an endangered species** - An area that is determined by the United States Fish and Wildlife Service to be a critical habitat for an endangered species.

(8) **Erosion** - The group of natural processes, including weathering, deterioration, detachment, dissolution, abrasion, corrasion, wearing away, and transportation, by which earthen or rock material is removed from any part of the earth's surface.

(9) **Existing hazardous waste management facility** - Any facility used for the storage, processing, or disposal of hazardous waste and which is authorized by a hazardous waste permit. Facilities identified in the following pending applications will also be considered existing hazardous waste management facilities pending final action on the application by the commission:

(A) an application submitted pursuant to §335.2(c) of this title (relating to Permit Required), §335.43(b) of this title (relating to Permit Required), and §335.45(b) of this title (relating to Effect on Existing Facilities), including any revisions made in accordance with §305.51 of this title (relating to Revision of Applications for Hazardous Waste Permits); or

(B) an application filed pursuant to §335.2(a) of this title which has been submitted in accordance with Chapter 305 of this title (relating to Consolidated Permits) and which has been declared to be administratively complete pursuant to §281.3 of this title (relating to Initial Review) prior to September 1, 1984.

(10) **New hazardous waste management facility** - Any facility to be used for the storage, processing, or disposal of hazardous waste and which is not an existing hazardous waste management facility.

(11) **One hundred-year floodplain** - Any land area which is subject to a 1.0% or greater chance of flooding in any given year from any source.

(12) **Public water system** - A system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly services an average of at least 25 individuals daily at least 60 days out of the year.

(13) **Regional aquifer** - An aquifer which has been identified by the Texas Natural Resource Conservation Commission as a major or minor aquifer. Major aquifers yield large quantities of water in large areas of the state. Minor aquifers yield large quantities of water in small areas of the state or small quantities of water in large areas of the state. (These aquifers are identified in Appendix B of the Texas Department of Water Resources Report Number 238).

(14) **Residence** - The structure and surrounding property within the property boundaries not to exceed 100 feet from the structure in all directions.

(15) **Secondary containment** - A system designed and constructed to collect rainfall runoff, to prevent rainfall run-on from outside the structure, and to contain waste spills, leaks, or

discharges within the structure until such waste can be removed.

(16) **Sole-source aquifer** - An aquifer designated pursuant to the Safe Drinking Water Act of 1974, §1424(e), which solely or principally supplies drinking water to an area, and which, if contaminated, would create a significant hazard to public health. The Edwards Aquifer has been designated a sole-source aquifer by the EPA. The Edwards Aquifer recharge zone is specifically that area delineated on maps in the offices of the executive director.

(17) **Storage surface impoundment** - A surface impoundment from which all wastes and waste-contaminated soils are removed at the time of closure of the impoundment.

(18) **Wetlands** - Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

§335.205. Prohibition of Permit Issuance.

(a) The commission shall not issue a permit for any of the following:

(1) a new hazardous waste management facility or an areal expansion of an existing facility if the facility or expansion does not meet the requirements of §335.204 of this title (relating to

Unsuitable Site Characteristics);

(2) a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed of at the landfill;

(3) a new commercial hazardous waste management facility as defined in §335.202 of this title (relating to Definitions) including such facilities that burn or propose to burn waste-derived fuel, as defined in this section, or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within 1/2 of a mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park;

(4) a new commercial hazardous waste management facility that is proposed to be located at a distance greater than 1/2 mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park unless the applicant demonstrates to the satisfaction of the commission that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment, at any distance beyond the facility's property boundaries; or

(5) a Class I injection well, a proposed hazardous waste management facility other than a Class I injection well, or a capacity expansion of an existing hazardous waste management facility if a fault exists within 2-1/2 miles from the proposed or existing wellbore of the Class I injection well or the area within the cone of influence whichever is greater, or if a fault exists within 3,000 feet of the proposed hazardous waste management facility other than a Class I injection well or of the capacity expansion of an existing hazardous waste management facility unless the applicant demonstrates to the satisfaction of the commission unless previously demonstrated to the commission or to the EPA that:

(A) in the case of Class I injection wells, that the fault is not sufficiently transmissive or vertically extensive to allow migration of hazardous constituents out of the injection zone; or

(B) in the case of a proposed hazardous waste management facility other than a Class I injection well or for a capacity expansion of an existing hazardous waste management facility, that:

(i) the fault has not had displacement within Holocene time, or if faults have had displacement within Holocene time, that no such faults pass within 200 feet of the portion of the surface facility where treatment, storage, or disposal of hazardous waste will be conducted; and

(ii) the fault will not result in structural instability of the surface

facility or provide for groundwater movement to the extent that there is endangerment to human health or the environment.

(b) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with subsection (a)(3) of this section, distances shall be measured from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(c) The measurement of distances required in subsection (a)(1), (3), and (4), and subsection (b) of this section shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the notice of intent to file a permit application is filed with the commission or, if no notice of intent is filed, when the permit application is filed with the commission. The restrictions imposed by subsection (a)(1), (3), and (4), and subsection (b) of this section do not apply to an established residence, church, school, day care center, surface water body used for a public drinking supply, or dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(d) The measurement of distances required in subsection (a)(1), (3), and (4), and subsection (b) of this section shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be not more than 75 feet from the edge of the proposed hazardous waste

management unit.

(e) Nothing in this subchapter shall be construed to require the commission to issue a permit notwithstanding a finding that the proposed facility would satisfy the requirements of §335.203 of this title (relating to Site Selection to Protect Groundwater or Surface Water) and notwithstanding the absence of site characteristics which would disqualify the site from permitting pursuant to §335.204 of this title.

(f) The term "Waste-derived fuel" when used in this section, shall mean any material resulting from the blending or inclusion of hazardous waste that is to be burned for energy recovery. Such fuel does not include material derived from nonhazardous waste such as nonhazardous waste garbage, rubbish, refuse, tires, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, or other nonhazardous waste solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, or agricultural operations or from community or institutional activities.

§335.206. Petitions for Rulemaking.

Local governments may petition the commission for a rule which restricts or prohibits the siting of a new hazardous waste management facility in areas including, but not limited to, those meeting one or more of the characteristics delineated in Texas Health and Safety Code,, §361.022, and §335.204 of this title (relating to Unsuitable Site Characteristics). Such petitions shall be submitted in writing and

shall comply with the requirements of §275.78 of this title (relating to Petition for Adoption of Rules). No rule adopted by the commission under this section shall affect the siting of a new hazardous waste management facility if an application or a notice of intent to file an application with respect to such facility has been filed with the commission prior to the filing of a petition under this section.

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

DIVISION 2: HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY

§§335.221, 335.222, 335.224, 335.225

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.221. Applicability and Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the CFR through November 19, 1999 (64 FR 63209), except as noted in this section:

(1) §266.100 -- Applicability, except §266.100(c);

(A) reference to "§266.212" is changed to "§266.112"; and

(B) reference to "the applicable requirements of subparts A through H, BB and CC of parts 264 and 265 of this chapter" is changed to "the applicable requirements of §§335.111 of this title (relating to Purpose, Scope and Applicability), 335.112(a)(1) - (7), (20), and (21) of this title (relating to Standards), 335.151 of this title (relating to Purpose, Scope and Applicability), and 335.152(a)(1) - (6), (18), and (19) of this title (relating to Standards);

(2) §266.102(a) -- Permit Standards for Burners - Applicability, excepting those portions of §266.102(a) containing references to §§264.56(d), 264.71-264.72, 264.75-264.77, 264.90, 264.101, and 264.142(a)(2);

(3) §266.102(b) -- Permit Standards for Burners -Hazardous Waste Analysis;

(4) §266.102(c) -- Permit Standards for Burners - Emission Standards;

(5) §266.102(d) -- Permit Standards for Burners - Permits;

(6) §266.102(e) -- Permit Standards for Burners - Operating Requirements;

(7) §266.103 (a)(1)-(3) -- Interim Status Standards for Burners - Purpose, Scope, and Applicability -- General; Exemptions; and Prohibition on Burning Dioxin-Listed Wastes, respectively,

except §§266.103(a)(1)(iii) and 266.103(a)(2);

(8) §266.103(a)(4) -- Interim Status Standards for Burners -- Purpose, Scope, and Applicability -- Applicability of Part 265 Standards, excepting those portions of §266.103(a)(4) containing references to §§265.56(d), 265.71 - 265.72, 265.75 - 265.77, 265.142(a)(2); facilities qualifying for a corporate guarantee for liability are subject to §265.147(g)(2) and §264.151(h)(2), as amended;

(9) §266.103(a)(5) - (6) -- Interim Status Standards for Burners - Purpose, Scope, and Applicability: Special Requirements for Furnaces; and Restrictions on Burning Hazardous Waste That is Not a Fuel;

(10) §266.103(b) -- Interim Status Standards for Burners - Certification of Precompliance, except §§266.103(b)(1) and (6);

(11) §266.103(c) -- Interim Status Standards for Burners - Certification of Compliance, except §266.103(c)(3)(i);

(12) §266.103(f) -- Interim Status Standards for Burners - Start-Up and Shut-Down;

(13) §266.103(g)(1) - (2) -- Interim Status Standards for Burners - Automatic Waste Feed Cutoff;

(14) §266.103(h) - (l) -- Interim Status Standards for Burners: Fugitive Emissions; Changes; Monitoring and Inspections; Recordkeeping; and Closure, respectively.

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

(16) §266.105 - Standards to Control Particulate Matter, except §266.105(d);

(17) §266.106 -- Standards to Control Metals Emissions, except §266.106(i);

(18) §266.107 -- Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas ($C1_2$) Emissions, except §266.107(h);

(19) §266.108 -- Small Quantity On-Site Burner Exemption, except §266.108(d), and except that hazardous wastes subject to §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) may not be burned in an off-site device under the exemption provided by §266.108;

(20) §266.109 -- Low-Risk Waste Exemption;

(21) §266.110 -- Waiver of DRE Trial Burn for Boilers;

(22) §266.111 -- Standards for Direct Transfer; and

(23) §266.112 -- Regulation of Residues.

(b) The following hazardous wastes and facilities are not regulated under this division :

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C, from use versus mixing. Such used oil is subject to regulation by the EPA under 40 CFR Part 279 and Chapter 324 of this title (relating to Used Oil). This exception does not apply if the used oil has been made hazardous by mixing with characteristic or listed hazardous waste other than by a CESQG or household generator;

(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) gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery; and

(4) coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

§335.222. Management Prior To Burning.

(a) Generators. Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(b) Transporters. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste).

(c) Storage and processing facilities. The provisions listed under paragraph (1) of this subsection apply to storage or processing by burners and by intermediaries such as processors, blenders, and distributors between the generator and the burner.

(1) Owners and operators of facilities that store or process hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of the following, except as provided by paragraph (2) of this subsection:

(A) Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General);

(B) Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions);

(C) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), except §335.112(a)(12) - (19) of this title (relating to Standards);

(D) Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, except §335.152(11) - (16) of this title (relating to Standards);

(E) Chapter 305 of this title (relating to Consolidated Permits).

(2) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulations under the small quantity burner provisions of 40 Code of Federal Regulations §266.108, only hazardous waste that they generate are exempt from regulation under the provisions listed above in paragraph (1) of this subsection applicable to storage units for those units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage or processing of hazardous waste by such owners

and operators prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (1) of this subsection.

§335.224. Additional Interim Status Standards for Burners.

In addition to the interim status standards for burners under §335.221(a)(7) - (14) of this title (relating to Applicability and Standards), owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), as follows:

(1) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the owner or operator must comply with the applicable rules and regulations dealing with permit amendments or modifications under Chapter 305 of this title (relating to Consolidated Permits) and 40 Code of Federal Regulations (CFR) §270.42, or revisions of applications for hazardous waste permits and changes during interim status under Chapter 305 of this title and 40 CFR §270.72.

(2) The requirements of this section and §335.221(a)(7) - (14) of this title do not apply to hazardous wastes and facilities exempt under §335.221(b) of this title or exempt under 40 CFR §266.108, as adopted under §335.221(a)(19) of this title.

(3) Owners and operators of existing boilers and industrial furnaces that burn hazardous waste are subject to the following provisions:

(A) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(B) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(C) §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(D) §335.114 of this title (relating to Reporting Requirements);

(E) §335.115 of this title (relating to Additional Reports);

(F) §335.127 of this title (relating to Cost Estimate for Closure);

(4) The owner or operator must provide complete and accurate information specified in 40 CFR §266.103(b)(2) to the executive director on or before August 21, 1992, and must establish limits for the operating parameters specified in 40 CFR §266.103(b)(3). Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has

determined that, when the facility is operated within the limits specified in 40 CFR §266.103(b)(3), the owner or operator believes that, using best engineering judgment, emissions of particulate matter, metals, HCl and $C1_2$ are not likely to exceed the limits provided under 40 CFR §§266.105, 266.106, and 266.107. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under 40 CFR §266.103(b)(3) until the owner or operator submits a revised certification of precompliance under 40 CFR §266.103(b)(8) or a certification of compliance under 40 CFR §266.103(c), or until a permit is issued.

(5) On or before August 21, 1992, the owner or operator must submit a notice for publication in a newspaper regularly published, and generally circulated within the county and area wherein the facility is located and send a copy of the notice of those persons and entities listed under §305.103(b)(2) - (12) of this title (relating to Notice by Mail). The owner and operator must provide to the executive director, with the certification of precompliance, evidence of submittal of the notice for publication. The public notice requirements of this subsection do not apply to recertifications under 40 CFR §266.103(b)(8). The notice shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 Code of Federal Regulations §266.103(b) and 30 TAC §335.224(4) and (5)." An owner or operator who satisfied the public notice requirements under 40 CFR §266.103(b)(6) will be considered compliant with this paragraph provided that the owner or operator submits evidence of such public notice on or before 30 days after the effective date of this paragraph. The notice shall include:

(A) name and address of the owner and operator of the facility as well as the

location of the device burning hazardous waste;

(B) date that the certification of precompliance was submitted to the executive director;

(C) brief description of the regulatory process required to comply with the interim status requirements of this section, §335.221(a)(7) - (14) of this title, and 40 CFR §266.103, including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl_2;

(D) types and quantities of hazardous waste burned including, but not limited to, source(s), whether solids or liquids, as well as an appropriate description(s) of the waste(s);

(E) type of device(s) in which the hazardous waste is burned including a physical description and maximum production rate of each device;

(F) types and quantities per year of other fuels and industrial furnace feedstocks fed to each unit;

(G) brief description of the basis for this certification of precompliance as specified in 40 CFR §266.103(b)(2);

(H) locations where the record for the facility can be viewed and copied by interested parties. These records and locations shall at a minimum include:

(i) The administrative record kept by the local Texas Natural Resource Conservation Commission regional office; and

(ii) The BIF correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and the Regional Director of the EPA, state and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and state site visit reports submitted to the owner or operator.

(I) notification of the establishment by the facility owner or operator of a facility mailing list whereby interested parties shall notify the facility owner or operator that they wish to be placed on the mailing list to receive future information and notices about this facility; and

(J) location (mailing address) of the local Texas Natural Resource Conservation Commission (TNRCC) regional office, where further information can be obtained on TNRCC regulation of hazardous waste burning.

(6) On or before August 21, 1992, the owner or operator shall conduct emissions testing to document compliance with the emissions standards of 40 CFR §§266.103(a)(5)(i)(D), 266.104(b) - (e), and 266.105 - 266.107, under the procedures prescribed by this paragraph and paragraphs (7) and (8) of this section and 40 CFR §266.103(c), except under extensions of time provided by 40 CFR §266.103(c)(7). Based on the compliance test, the owner or operator shall submit to the executive director a complete and accurate "certification of compliance," in accordance with 40 CFR §266.103(c)(4), with those emission standards establishing limits on the operating parameters specified in 40 CFR §266.103(c)(1). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the certification of compliance or require additional information to be submitted within specified time frames.

(7) Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under 40 CFR §266.103(b) and paragraphs (4) - (5) of this section, and under conditions established in the notification of compliance testing required by 40 CFR §266.103(c)(2). The owner and operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of §266.103(c).

(8) If the owner or operator chooses to submit a revised certification of compliance (recertification of compliance) under 40 CFR §266.103(c)(8), or if the owner or operator is required to submit a recertification of compliance under paragraphs (9) or (11) of this section, then the owner or operator shall submit the recertification of compliance to the executive director under the procedures in 40 CFR §266.103(c)(8)(i) - (iv). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(9) The owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR §266.103(c), within 150 days of rejection by the executive director under this paragraph and paragraphs (6) and (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames. Except for the activities necessary for the owner or operator to conduct the compliance testing in accordance with 40 CFR §266.103(c)(8)(i) - (iv), and except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon rejection by the executive director and until a subsequent recertification of compliance is approved under paragraph (8) of this section, the owner or operator shall not burn hazardous waste in the unit for which a certification of compliance or recertification of compliance was rejected.

(10) Except for a rejection by the executive director of a recertification of compliance

which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon receipt of the third rejection by the executive director of a certification of compliance and/or recertification of compliance for the burning of hazardous waste in a boiler or industrial furnace, the owner or operator shall stop burning hazardous waste in the unit for which the certification and/or recertification were rejected, begin closure activities under 40 CFR §266.103(l), and shall not resume the burning of hazardous waste except under an operating permit issued under Chapter 305 of this title (relating to Consolidated Permits);

(11) Notwithstanding any requirement for a recertification under paragraph (9) of this section, the owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR §266.103(c) within three years from submitting the previous certification or recertification (excluding recertification(s) submitted under paragraph (9) of this section). If the owner or operator seeks to recertify compliance under new operating conditions, then the owner or operator must comply with the requirements of paragraph (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(12) The executive director may reject certifications or recertifications of compliance based on the failure of the owner or operator to meet the substantive requirements under 40 CFR §266.103 or this section, including, but not limited to, the following:

(A) incorrect or inappropriate calculations or other mathematical techniques which lead to significant effects on operating condition limitations;

(B) incorrect or inappropriate sampling, physical measurements, or analysis techniques which lead to significant effects on operating condition limitations;

(C) equipment failure or malfunction during the compliance test which leads to inadequate results or incorrect results which significantly affects the limits on operating conditions;

(D) inappropriate feed rates of waste, raw production materials, and/or fuels which leads to significant effects on operating condition limitations;

(E) failure to operate the compliance test under steady-state conditions; or

(F) other significant deficiencies which, in the opinion of the executive director will lead to endangerment to public health and welfare or insufficient protection of public property or the environment.

(13) The owner or operator may appeal to the commission any rejection of a certification or recertification by the executive director. Owners and operators who appeal to the commission any rejection of a certification or recertification by the executive director may continue operations under the rejected certification or recertification until the rejection is upheld by the commission.

(14) If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (4) - (6), (9), or (11) of this section, hazardous waste burning must terminate on the date of the deadline, closure activities must begin under 40 CFR §266.103(l), and hazardous waste burning may not resume except under an operating permit issued under Chapter 305 of this title. For purposes of compliance with the closure provisions of paragraph (4) of this subsection and 40 CFR §265.112(d)(2) and §265.113 (as adopted in §335.112(a)(6) of this title (relating to Standards)) the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

(15) During the compliance test required by paragraph (7) of this section and 40 CFR §266.103(c)(3), and upon certification of compliance under 40 CFR §266.103(c), a boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in 40 CFR §266.103(c)(1)(i) and (v) - (xiii) deviate from those established in the certification of compliance, and the boiler or industrial furnace must be operated in accordance with 40 CFR §266.103(g)(1) - (2).

§335.225. Additional Standards for Direct Transfer.

(a) The requirements of this section and 40 Code of Federal Regulations (CFR) §266.111, adopted by reference at §335.221(a)(22) of this title (relating to Applicability and Standards), apply to owners and operators of boilers and industrial furnaces subject to 40 CFR §266.102 or §266.103, if hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit.

(b) The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not adversely affect the capability of the boiler or industrial furnace to meet required standards.

DIVISION 3: RECYCLABLE MATERIALS UTILIZED

FOR PRECIOUS METAL RECOVERY

§335.241

STATUTORY AUTHORITY

The amendment is adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.241. Applicability and Requirements.

(a) The regulations of this section apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

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

(1) §335.4 of this title (relating to General Prohibitions);

(2) §335.6 of this title (relating to Notification Requirements);

(3) §§335.9 - 335.12 of this title (relating to Shipping and Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class 1 Industrial Solid Waste; Shipping Requirements for Transporters of Municipal Hazardous Waste or Class 1 Industrial Solid Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), for generators, transporters, or persons who store, as applicable; and

(4) For precious metals exported to or imported from designated OECD member countries for recovery, 40 Code of Federal Regulations (CFR) Part 262, Subpart H and §265.12(a). For precious metals exported to or imported from non-OECD countries for recovery, §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments).

(c) Persons who store recyclable materials that are regulated under this section shall keep the following records to document that they are not accumulating these materials speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) records showing the volume of these materials stored at the beginning of the calendar year;

(2) the amount of these materials generated or received during the calendar year; and

(3) the amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under this section that are accumulated speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), are subject to all applicable provisions of this chapter (excluding this subchapter), Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and Chapter 305 of this title (relating to Consolidated Permits).

DIVISION 5: UNIVERSAL WASTE RULE

§335.262

STATUTORY AUTHORITY

The amendment is adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.262. Standards for Management of Paint and Paint-Related Waste.

(a) This section establishes requirements for managing paint and paint-related waste as described in subsection (b) of this section, and provides an alternative set of management standards in lieu of regulation under other portions of this chapter not otherwise referenced under this section.

(b) Paint and paint-related waste is used or unused paint and paint-related material which is "hazardous waste" as defined under §335.1 of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination), and which is any mixture of pigment and a suitable liquid which forms a closely adherent coating when spread on a surface or any material which results from painting activities.

(c) Except as otherwise provided in this section, the following definitions and requirements apply to persons managing paint and paint-related wastes:

(1) Those requirements which apply to universal wastes in general and the definitions under the following regulations, as adopted by reference under §335.261 of this title (relating to Universal Waste Rule): Title 40 Code of Federal Regulations (CFR) §§273.5, 273.6, 273.10 - 273.12, 273.15 - 273.20, 273.30 - 273.32, 273.35 - 273.40, 273.50 - 273.56, 273.60 - 273.62, and 273.70;

(2) In addition to the requirements referenced under paragraph (1) of this subsection, small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4 of this title (relating to General Prohibitions). The paint and paint-related waste must be contained in one or more of the following:

(A) a container that remains closed, except when necessary to add or remove waste;

(B) a container that is structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(C) a container that does not meet the requirements of subparagraphs (A) and (B) of this paragraph, provided that the unacceptable container is overpacked in a container that does

meet the requirements of subparagraphs (A) and (B) of this paragraph; or

(D) a tank that meets the requirements of 40 CFR Part 265, Subpart J, except for 40 CFR §§265.197(c), 265.200, and 265.201; or

(E) a transport vehicle or vessel that is closed, structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; and

(F) a container, multiple container package unit, tank, transport vehicle or vessel that is labeled or marked clearly with the words “Universal Waste - Paint and Paint-Related Wastes;” and

(3) For paint and paint-related waste that is ignitable, reactive, or incompatible waste, the applicable requirements under 40 CFR §§265.17, 265.176, and 265.177.

(d) Hazardous waste determinations under subsection (b) of this section shall be documented at the time of the determination and maintained for at least three years.

SUBCHAPTER I: PROHIBITION ON OPEN DUMPS

§§335.303 - 335.305, 335.307

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.303. Criteria for Classification of Solid Waste Disposal Facilities and Practices.

Except to the extent that they are clearly inconsistent with the express provisions of Texas Health and Safety Code, Chapter 361, or the rules of the commission, the regulations contained in 40 Code of Federal Regulations (CFR) Part 257 are adopted by reference. The executive director will maintain in the offices of the commission a set of the regulations contained in 40 CFR Part 257 and adopted by reference herein. The regulations may be examined in the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

§335.304. Classification of Facilities.

The executive director may evaluate all existing solid waste disposal facilities, except those exempted under 40 Code of Federal Regulations (CFR) §257.1, according to the criteria in 40 CFR Part 257. The executive director shall classify as open dumps all facilities which fail to satisfy these criteria and shall prepare a list of those facilities. This list shall be submitted to the EPA for inclusion in the open dump inventory under the Resource Conservation and Recovery Act of 1976, §4005.

§335.305. Upgrading or Closing of Open Dumps.

(a) All existing industrial solid waste disposal facilities which are classified as open dumps shall be upgraded or closed in accordance with measures specified by the commission so that the facility or practice no longer violates the criteria in 40 Code of Federal Regulations Part 257.

(b) The executive director may establish a timetable or schedule of compliance for any facility classified as an open dump where the facility owner or operator has demonstrated that other public or private alternatives to comply with the prohibition on open dumping have been considered and such alternatives to so comply cannot be utilized. The schedule of compliance shall specify a schedule of remedial measures and an enforceable sequence of actions leading to compliance within a reasonable time, not to exceed five years from the date of publication of the inventory under the Resource Conservation and Recovery Act of 1976, §4005.

(c) Nothing in this section precludes the executive director from seeking any relief deemed necessary for violation of this subchapter, any provision of Texas Health and Safety Code, Chapter 361, or any other regulations of the commission nor does this section establish any prerequisite for seeking that relief.

§335.307. Notification of Classification by Commission.

(a) Upon determination by the commission that a facility or practice violates any of the criteria set forth in 40 Code of Federal Regulations (CFR) Part 257 and should be in the open dump inventory under the Resource Conservation and Recovery Act of 1976, §4005(b), the owner or operator of such facility shall be so notified in writing by the commission at least 30 days prior to the initial submission of the classification to the EPA. If the owner or operator wishes to contest that determination, he must so notify the commission within 20 days of the date of the notification and include any information indicating that the facility does not violate any of the criteria classification set forth in 40 CFR Part 257. If the owner or operator fails to respond to the notification, or if the commission determines that the information provided by the owner or operator does not affect its initial determination, the commission shall forward the name of the facility to the EPA for publication in the *Federal Register*. The commission may delete the name of a facility from the list to be forwarded to the EPA if, in the opinion of the commission, the information presented by the owner or operator pursuant to this subsection shows that the facility or practice does not violate any of the criteria set forth in 40 CFR Part 257.

(b) The commission shall also provide written notification of the availability of the results of

any classification pursuant to §335.304 of this title (relating to Classification of Facilities) to all other persons on the list required by §335.306 of this title (relating to List of Interested or Affected Persons) at least 30 days prior to the initial submission of any classifications to the EPA.

SUBCHAPTER J: HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

§§335.321 - 335.323, 335.325, 335.326, 335.328, 335.329

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.321. Purpose.

(a) It is the purpose of this subchapter to establish an industrial solid waste and hazardous waste fee program. Under this program the following fees are imposed:

(1) an annual fee on each generator of Class 1 industrial solid waste or hazardous waste;

(2) an annual fee on each facility which either holds a Class 1 industrial solid waste or hazardous waste permit or operates Class 1 industrial solid waste or hazardous waste management units

subject to permit authorization;

(3) a fee on the operator of a commercial solid waste disposal facility for Class 1 industrial waste which is disposed on site by the facility;

(4) a fee on the operator of a hazardous waste storage, processing, or disposal facility for hazardous waste which is managed on site by the facility; and

(5) a fee on each application for a permit for an industrial solid waste or hazardous waste facility assessed under §305.53 of this title (relating to Application Fees).

(b) Hazardous and solid waste fees fund.

(1) The hazardous and solid waste fees fund shall be used for the purpose of regulation of industrial solid waste and hazardous waste, including payment to other state agencies for services provided under contract relating to enforcement of the Texas Health and Safety Code, Chapter 361.

(2) The fund shall consist of:

(A) generation fees assessed under §335.323 of this title (relating to Generation Fee Assessment);

(B) facility fees assessed under §335.324 of this title (relating to Facility Fee Assessment);

(C) hazardous waste management fees and Class 1 industrial waste disposal fees assessed and apportioned under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment);

(D) application fees assessed under §305.53 of this title; and

(E) interest penalties for late payment of industrial solid waste and hazardous waste fees imposed by §335.331 of this title (relating to Failure to Make Payment or Report).

(c) Hazardous and solid waste remediation fee fund.

(1) The hazardous and solid waste remediation fee fund shall be used for the purpose of the following:

(A) necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action;

(B) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if funds from a liable party have been collected and deposited in the fund for that purpose or if funds from a liable party, independent third party, or the federal government are not sufficient for the maintenance;

(C) expenses related to complying with the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 United States Code §§9601 et seq.) as amended, the federal Superfund Amendments and Reauthorization Act of 1986 (10 United States Code §§2701 et seq.), and the Texas Health and Safety Code, Chapter 361, Subchapters F and I;

(D) expenses concerning the regulation and management of household hazardous substances and the prevention of pollution of the water resources of the state from the uncontrolled release of hazardous substances; and

(E) expenses concerning the cleanup or removal of a spill, release, or potential threat of release of a hazardous substance where immediate action is appropriate to protect human health and the environment.

(2) The fund shall consist of:

(A) hazardous waste management fees and Class 1 industrial waste disposal fees assessed and apportioned under §335.325 of this title;

(B) interest and penalties imposed under §335.331 of this title (relating to Failure to Make Payment or Report);

(C) money paid by a person liable for facility cleanup and maintenance under provisions of the Texas Health and Safety Code, §361.197;

(D) interest received from the investment of the fund in accounts under the charge of the treasurer; and

(E) monies collected on behalf of the commission or transferred from other agencies under any applicable provisions of the Texas Health and Safety Code, including §361.138 concerning fees on lead-acid batteries, or grants from any person made for the purpose of remediation of facilities under the Texas Health and Safety Code, Chapter 361.

(d) Waste management fees collected under §335.325 of this title shall be credited to the funds of the state as follows.

(1) One quarter, or 25%, of the waste management fee collected from a commercial waste storage, processing, or disposal facility shall be credited to the hazardous and solid waste fees fund to be distributed to the county in which the facility paying the fee is located. Funds due the affected county shall be paid by the commission within 60 days of the receipt and verification of payments from a commercial hazardous waste facility in the county.

(2) The remaining amount of commercial waste management fees and the total amount of noncommercial waste fees shall be deposited as follows.

(A) One half, or 50%, of each amount shall be credited to the hazardous and solid waste remediation fee fund.

(B) One half, or 50%, of each amount shall be credited to the hazardous and solid waste fees fund.

§335.322. Definitions.

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

(1) **Affidavit of exclusion** - A sworn statement by a permit applicant in support of an exclusion or exemption from permitting pursuant to §335.2(c) of this title (relating to Permit Required) or §335.43(b) of this title (relating to Permit Required).

(2) **Authorized hazardous waste management unit** - A unit at a hazardous waste management facility which is authorized by permit or which is identified in an application submitted pursuant to and in accordance with §335.2(c) of this title or §335.43(b) of this title.

(3) **Captured facility** - A manufacturing or production facility which generates an industrial solid waste or hazardous waste which is routinely stored, processed, or disposed, on a shared basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

(4) **Class 1 waste** - Any industrial solid waste or mixture of industrial solid wastes meeting the definition of Class 1 waste under §335.1 of this title (relating to Definitions).

(5) **Class 1 nonhazardous waste** - Any Class 1 waste which is not a hazardous waste as defined in this section.

(6) **Commercial hazardous waste storage, processing, and disposal facility** - Any facility which accepts a hazardous waste for storage, processing (including incineration), or disposal from an off-site generator for a charge.

(7) **Commercial waste storage, processing, and disposal facility** - Any facility which accepts an industrial solid waste or a hazardous waste for storage, processing (including incineration), or disposal for a charge.

(8) **Dry weight** - The weight of all constituents other than water.

(9) **Generator** - Any 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 become subject to regulation by the commission.

(10) **Generator of hazardous waste or generator** - Any person whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation by the commission.

(11) **Hazardous waste** - Those solid wastes not otherwise exempted which have been identified or listed as hazardous wastes by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, 42 United States Code §§6901 et seq., as amended.

(12) **Hazardous waste fuel** - A hazardous waste or blend of hazardous wastes to be burned for energy recovery which, for the purposes of assessment of fees under this section, is not subject to regulation under 40 Code of Federal Regulations Part 264 (or Part 265) Subpart O, relating to incinerators.

(13) **Industrial solid waste** - A solid waste meeting the definition of industrial solid waste under §335.1 of this title (relating to Definitions).

(14) **Injection well** - As provided in the Texas Water Code (TWC), §27.002(11).

(15) **Interim status** - The status of any person who owns or operates a facility required to have a permit under this chapter, and who is required to submit an application for a permit pursuant to §335.2(c) of this title or §335.43(b) of this title.

(16) **Land disposal facility** - Any landfill, surface impoundment (excluding an impoundment treating, processing, or storing waste that is disposed pursuant to TWC, Chapter 26 or Chapter 27), waste pile, facility at which land farming, land treatment, or a land application process is used, or an injection well. Land disposal does not include the normal application of agricultural chemicals or fertilizers.

(17) **Noncommercial waste storage, processing, or disposal facility** - Any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, (including incineration), or disposal for no charge or that stores, processes, or disposes of wastes generated on-site by the facility.

(18) **On-site land disposal facility** - A hazardous waste unit which meets the definition of land disposal facility of this section and on-site disposal as defined in §335.1 of this title.

(19) **Processing** - For the purposes of this subchapter, the term "processing" has the same meaning as defined in §335.1 of this title.

(20) **Recycled** - For the purposes of this subchapter, a waste is recycled if it is used, reused, or reclaimed in a manner consistent with the definition of a recyclable material or nonhazardous recyclable material under §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials).

§335.323. Generation Fee Assessment.

(a) An annual generation fee is hereby assessed each industrial or hazardous solid waste generator that is required to notify under §335.6 of this title (relating to Notification Requirements) and which generates Class 1 industrial solid waste or hazardous waste or whose act first causes such waste to become subject to regulation under Subchapter B of this chapter (relating to Hazardous Waste Management--General Provisions) on or after September 1, 1985. These fees shall be deposited in the hazardous and solid waste fee fund. The amount of a generation fee is determined by the total amount of Class 1 nonhazardous waste or hazardous waste generated during the previous calendar year. The annual generation fee may not be less than $50. The annual generation fee for hazardous waste shall not be more than $50,000 and for nonhazardous waste not more than $10,000.

(b) Wastewaters are exempt from assessment under the following conditions.

(1) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations Part 261,

Subpart C, concerning characteristics of hazardous waste, and are rendered non-hazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) are exempt from the assessment of hazardous waste generation fees.

(2) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title (relating to Class 1 Waste Determination) and are treated on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title or §335.41 of this title and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(3) These exemptions or adjustments in fee assessment in no way limit a generator's obligation to report such waste generation or waste management activity under any applicable provision of this chapter.

(4) A wastewater stream treated to meet a different waste classification is subject to only one assessment under this section.

(c) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(d) Wastes which are recycled shall be exempt from any generation fee assessed under this section.

(e) Generation fees are to be assessed according to the following schedule:

(1) hazardous waste:

Figure: 30 TAC §335.323(e)(1)

Waste Reported (Tons)	Annual Fee
Less than 1 ton	No charge
From 1 - 50 tons	$100
Greater than 50 tons	$2 per ton

(2) nonhazardous waste:

Figure: 30 TAC §335.323(e)(2)

Waste Reported (Tons)	Annual Fee
Less than 1 ton	No charge
From 1 - 100 tons	$50
Greater than 100 tons	$.50 per ton

(f) Any claim of exemption from or adjustment to the assessment of a generation fee under this section must be made in writing to the executive director prior to the due date of the assessment.

§335.325. Industrial Solid Waste and Hazardous Waste Management Fee Assessment.

(a) A fee is hereby assessed on each owner or operator of a waste storage, processing, or disposal facility, except as provided in subsections (b) - (e) of this section. A fee is assessed for hazardous wastes which are stored, processed, disposed, or otherwise managed and for Class 1 industrial wastes which are disposed at a commercial facility. For the purpose of this section, the storage, processing, or disposal of hazardous waste for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) is not subject to a hazardous waste management fee.

(b) A fee imposed on the owner or operator of a commercial hazardous waste storage, processing, or disposal facility for hazardous wastes which are generated in this state and received from an affiliate or wholly owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this section, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(c) The storage, processing, or disposal of industrial solid waste or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(d) A fee shall not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes if such wastes are stored within the time periods allowed by and in accordance with the provisions of §335.69 of this title (relating to Accumulation Time).

(e) A fee may not be imposed under this section on the operation of a facility permitted under the Water Code, Chapter 26, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface waters of the state. For the purpose of this section, the management of a hazardous waste in a surface impoundment which is not exempt from assessment under this subsection will be assessed the fee for processing under subsection (j) of this section.

(f) The waste management fee authorized under this section shall be based on the total weight or volume of a waste except for wastes which are disposed of in an underground injection well, in which case the fee shall be based on the dry weight of the waste, measured in dry weight tons (dwt), as defined in §335.322 of this title (relating to Definitions) and §335.326 of this title (relating to Dry Weight Determination).

(g) The hazardous waste management fee for wastes generated in this state shall not exceed $40 per ton for wastes which are landfilled.

(h) The operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed the fee amount required on wastes generated in state plus an additional increment to be established by rule, except as provided in subsection (k) of this section.

(i) For the purposes of subsection (j) of this section, energy recovery means the burning or incineration of a hazardous waste fuel and fuel processing means the handling of a waste fuel, including storage and blending, prior to its disposal by burning.

(j) Except as provided in subsections (k) - (q) of this section, waste management fees shall be assessed according to the following schedule.

(1) Hazardous waste.

Figure: 30 TAC §335.325(j)(1)

	Noncommercial		Commercial	
Disposition	In State	Imported	In State	Imported
Landfill	$15/ton	$19/ton	$30/ton	$37.50/ton
Land Treatment	$12/ton	$15/ton	$24/ton	$30/ton
Underground Injection	$9/dwt	$11/dwt	$18/dwt	$22.50/dwt
Incineration	$8/ton	$10/ton	$16/ton	$20/ton
Processing	$4/ton	$5/ton	$8/ton	$10/ton
Storage	$1/ton	$1/ton	$2/ton	$2/ton
Energy Recovery	$4/ton	$4/ton	$8/ton	$8/ton
Fuel Processing	$3/ton	$3/ton	$6/ton	$6/ton

(2) Class 1 non-hazardous waste.

Figure: 30 TAC §335.325(j)(2)

	Noncommercial		Commercial	
Disposition	In State	Imported	In State	Imported
Landfill	N/A	N/A	$6/ton	$7.50/ton
Land Treatment	N/A	N/A	$4.80/ton	$6/ton
Underground Injection	N/A	N/A	$3.60/dwt	$4.50/dwt
Incineration	N/A	N/A	$3.20/ton	$4/ton

(k) For wastes which are generated out-of-state, the fee will be that specified in subsection (j) of this section, except that the fee for the storage, processing, incineration, and disposal of hazardous waste fuels shall be the same for wastes generated out-of-state and in-state.

(l) Except as provided in subsection (m) of this section, only one waste management fee shall be paid for a waste managed at a facility. In any instance where more than one fee could be applied under this section to a specific volume of waste, the higher of the applicable fees will be assessed.

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other waste management methods at a facility. No fee shall be assessed under this section for the storage of a hazardous waste for a period of less than 90 days as determined from the date of receipt or generation of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section shall apply to the quantity of waste in any month which has been in storage

for more than 90 days or the number for which an extension has been granted under §335.69 of this title.

(n) A facility which receives waste transferred from another facility shall pay any waste management fee applicable under this section and shall not receive credit for any fee applied to the management of the waste at the facility of origin.

(o) The fee rate for incineration of aqueous wastes containing 5.0% or less of total organic carbon will be 10% of the fee for incineration under the schedule in subsection (j) of this section.

(p) A commercial waste disposal facility receiving solid waste not subject to assessment under this section shall pay any assessment due under Chapter 330, Subchapter P of this title (relating to Fees and Reports). No fee for disposal of a solid waste under Chapter 330, Subchapter P of this title, shall be assessed in addition to a fee for disposal under this section.

(q) An operator of a hazardous waste injection well electing to separately measure inorganic salts in the determination of dry weight under the provisions of §335.326(c) of this title shall pay a fee equivalent to 20% of the fee for underground injection assessed in subsection (j) of this section for the components of the waste stream determined to be inorganic salts.

§335.326. Dry Weight Determination.

(a) The method of calculating the dry weight of each waste stream subject to assessment under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) shall be determined initially and at any time the waste stream undergoes a significant change in water content using the appropriate method(s) as specified in this section. Determinations shall be made from a representative sample collected by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.

(1) Wastes which contain suspended solids greater than or equal to 15% of the sample on a weight basis shall have the dry weight determination calculated using the method specified in Appendix I in §335.332 of this title (relating to Appendices I and II).

(2) Aqueous based wastes which contain suspended solids less than 15% of the sample by weight basis and which contain a single liquid phase shall have the dry weight determination calculated using Standard Methods for the Examination of Water and Wastewater, 15th Edition, Method 209A, pages 92-93, or equivalent method in later editions.

(3) Organic-based wastes which contain suspended solids less than 15% of the sample by weight and which contain a single liquid phase shall have the dry weight determination calculated using:

(A) 1981 Annual Book of ASTM Standards, Part 30, Method E203, pages 803 - 812, or equivalent method in later editions; or

(B) the method specified in Appendix II in §335.332 of this title.

(4) Wastes which do not meet any of the criteria specified in paragraphs (1) - (3) of this subsection shall have the dry weight determination calculated using:

(A) The 1981 Annual Book of ASTM Standards, Part 23, Method D96, pages 64 - 81, or equivalent method in later editions; or

(B) the method specified in Appendix II in §335.332 of this title; or

(C) The 1981 Annual Book of ASTM Standards, Part 23, Method D95, pages 59 - 63 or equivalent method in later editions. Method D96 determines the water and sediment content of the sample. The calculations shall be modified to determine only the water content.

(5) The method for calculating the dry weight shall be that method specified in Appendix I in §335.332 of this title or an alternate method selected by the generator pursuant to §335.327 of this title (relating to Alternate Methods of Dry Weight Determination), if the waste cannot be analyzed by one of the other required methods of this section due to interfering constituents. Documentation identifying the method of analysis and describing the interference shall be maintained by the generator.

(b) Wastes containing free liquids which are designated for disposal in a landfill and must be solidified prior to disposal shall have the dry weight determination made on the waste, prior to the addition of the solidification agent.

(c) If the dry weight ratio of a hazardous waste as measured under this section exceeds 10%, an operator of a hazardous waste injection well may elect to determine the composition of the waste stream that is inorganic salts or brines and separately record the weight of such inorganic salts for the purpose of assessment of the fee under §335.325(q) of this title. The methods used to determine the weight of inorganic salts in a hazardous waste stream are subject to review and approval by the executive director. This subsection does not apply to:

(1) any component of a waste stream that is a hazardous constituent or is a constituent for which the waste is designated as hazardous; or

(2) any waste stream received by a commercial facility for a charge.

(d) For purposes of a fee assessed under §335.325 of this title, the dry weight of a waste disposed in an underground injection well, to which brine, inorganic salts, or other authorized agents are added to maintain density control to assure compliance with no-migration requirements of 40 Code of Federal Regulations 148 Subpart C, shall be determined prior to the addition of the agent. No solid waste, as defined by the Texas Health and Safety Code, §361.003(37), may be excluded from the determination of dry weight under this subsection.

§335.328. Fees Payment.

(a) Generation and facility fees are payable each year for all Class 1 industrial solid waste and hazardous waste generators, permittees, and facilities. Fees must be paid by check, certified check, or money order payable to Texas Natural Resource Conservation Commission. Annual facility fees are payable by permittees, owners, or operators regardless of whether the facility is in actual operation. All annual generation and facility fees shall be due by a date to be established by the Texas Natural Resource Conservation Commission at the time payment is requested.

(b) Except as provided in subsection (c) of this section, waste management fees are to be paid monthly by each operator of a waste storage, processing, or disposal facility for wastes managed subject to the provisions of §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) in that month. Fees must be paid by check, certified check, or money order to Texas Natural Resource Conservation Commission and shall be due by the 25th day following the end of the month for which payment is due.

(c) An owner or operator required to pay a waste management fee who owes less than $500 for a calendar month or less than $1,500 for a calendar quarter is not required to file a monthly report under §335.329 of this title (relating to Records and Reports) but should file a quarterly report with and pay a quarterly fee to the commission.

§335.329. Records and Reports.

(a) Generators are required to:

(1) keep records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed on-site or shipped off-site for storage, processing or disposal in accordance with the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators);

(2) keep records of the dry weight amount of each waste designated for disposal in an underground injection well and records of the amounts of any solidification agents, brine, or other authorized material added to a waste stream which may be excluded from the determination of dry weight under §361.326 of this title (relating to Dry Weight Determination);

(3) provide each operator of an underground injection well a certificate of computation of the dry weight of a waste to be disposed. For each off-site shipment, the dry weight amount of each hazardous waste to be disposed in an underground injection well is to be recorded in Item J of the Uniform Hazardous Waste Manifest as required under §335.30 of this title (relating to Appendix I); and

(4) submit the appropriate reports required under §335.13(b) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) on forms furnished or approved by the executive

director.

(b) Owners or operators of waste storage, processing, or disposal facilities are required to:

(1) for on-site facilities, keep records of all hazardous waste and industrial solid waste activities regarding the quantities stored, processed, and disposed on site or shipped off site for storage, processing, or disposal in accordance with the requirements of §335.9 of this title;

(2) for off-site facilities, submit the appropriate reports required under §335.15(2) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(3) record the dry-weight amount of each waste disposed in an underground injection well at the facility;

(4) document the basis for the assessment of any applicable fee as determined under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment), including any adjustment to or exemption from assessment; and

(5) except as provided in §335.328 of this title (relating to Fees Payment), submit a monthly summary of on-site waste management activities subject to the assessment of fees under §335.325 of this title on forms furnished or approved by the executive director. This summary report

shall be due by the 25th day following the end of the month (or quarter) for which a report is made. An owner or operator required to comply with this subsection shall continue to prepare and submit monthly (or quarterly) summaries, regardless of whether any storage, processing, or disposal was made during a particular month (or quarter), by preparing and submitting a summary indicating that no waste was managed during that month (or quarter).

(c) Records or reports required to be kept under this section shall be retained for a minimum of three years after the date the record or report is made.

(d) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

SUBCHAPTER K: HAZARDOUS SUBSTANCE FACILITIES ASSESSMENT AND REMEDIATION

§§335.341, 335.342, 335.346

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.341. Purpose and Scope.

(a) The purpose of this subchapter is to establish an assessment and remediation program to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The provisions of this subchapter supplement and therefore should be read in conjunction with the provisions of Texas Health and Safety Code, Chapter 361, Subchapter F, herein referred to as the Act.

(b) This subsection describes the procedures for identifying, proposing, listing, and delisting facilities on the State Registry.

(1) Prior to proposing a facility for inclusion on the State Registry, the executive director shall first determine whether any potential endangerment to public health and safety or the environment at a facility can be resolved by the present owner or operator under the federal Resource Conservation and Recovery Act, 42 United States Code Annotated §§6901 et seq. (1976), as amended.

(2) If the potential endangerment cannot be fully resolved by the present owner or operator, then the executive director shall determine whether the potential endangerment can be resolved by voluntary cooperation of some or all of the potentially responsible parties (PRPs) identified in the Act, §361.271 or §361.275(g) pursuant to an agreed administrative order issued by the commission or a Voluntary Cleanup Agreement pursuant to Chapter 333 of this title (relating to Voluntary Cleanup Programs). If a facility can be cleaned up pursuant to an agreed administrative order or an executed Voluntary Cleanup Agreement, then it shall not be proposed for listing.

(3) If, after reasonable efforts, the executive director determines that the potential endangerment to public health and safety or the environment cannot be resolved by either of these approaches, the executive director shall evaluate the facility to determine whether it is eligible for listing on the federal National Priorities List established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 United States Code Annotated, §§9601 et seq. (1980), as amended.

(4) The executive director shall determine whether the facility is eligible for proposed listing on the State Registry only if, based on information available to the executive director, the facility is not eligible for inclusion on the federal National Priorities List.

(5) If the executive director determines that the potential endangerment to public health and safety or the environment can be resolved by any of the approaches described in paragraphs (1) - (3) of this subsection, then the site will not be proposed for listing on the State Registry. Notice of the approach selected to resolve the apparent endangerment to public health and safety or the environment and the fact that such action is being taken in lieu of listing the facility on the State Registry shall be published in the *Texas Register*.

(c) A preliminary site investigation, removal action, remedial investigation, and remedial action shall comply with all requirements found in Texas Health and Safety Code, Chapter 361, Subchapter F (relating to Registry and Cleanup of Certain Hazardous Waste Facilities); the requirements of this subchapter; and the requirements of Chapter 350 of this title (relating to Texas Risk Reduction Program) for any release or threatened release of hazardous substances into the environment that may constitute an imminent and substantial endangerment to public health and safety or the environment. Where there is a conflict between the requirements of Chapter 350 of this title and the requirements of Texas Health and Safety Code, Chapter 361, Subchapter F and this subchapter, the requirements of Texas Health and Safety Code, Chapter 361, Subchapter F and of this subchapter shall apply.

§335.342. Definitions.

Definitions set forth in the Act that are not specifically included in this section shall also apply. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Agreed order or agreed administrative order** - An administrative order issued by the commission and agreed to by one or more PRPs for the purpose of settling potential liability for the remedial investigation and/or remedial action concerning a facility proposed for listing, or listed on, the State Registry.

(2) **Divisible** - Hazardous substance(s) released or threatened to be released at or from a facility that are capable of being managed separately under a remedial action plan.

(3) **Facility** - In accordance with the Act, §361.181(c), a facility means:

(A) Any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer, public-owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft); or

(B) Any site or area where a hazardous substance has been deposited, stored, disposed of, or placed or otherwise come to be located, but does not include any consumer product in

consumer use or any vessel.

(4) **Feasibility study (FS)** - A study which describes and evaluates a set of remedial action alternatives for effectively mitigating or minimizing damage to, and for providing adequate protection of, the public health and safety and the environment in accordance with the requirements of §335.348 of this title (relating to General Requirements for Remedial Investigations).

(5) **Good faith offer** - A written proposal by one or more PRPs which is not contingent on participation of other PRPs which, in the judgment of the executive director, will:

(A) In the case of a good faith offer to fund or perform a remedial investigation, fully and effectively determine the nature and extent of the release or threatened release of hazardous substances and its impact on air, soils, groundwater, and surface water, both within and beyond the boundaries of the facility. The executive director will not consider an offer a good faith offer unless it is an offer to fully fund or perform the remedial investigation except in a claim of divisibility; or

(B) In the case of a good faith offer to fund or perform a remedial action, fully and effectively mitigate or minimize damage to, and provide adequate protection of, the public health and safety and the environment. The executive director will not consider an offer a good faith offer unless it is an offer to fully fund or perform the remedial action except in a claim of divisibility.

(6) **Hazard ranking system** - The method used by the EPA and the agency to evaluate the relative potential of hazardous substance releases to cause health or safety problems, ecological or environmental damage. The scoring system was developed by the EPA as set out in 40 Code of Federal Regulations (CFR) Part 300, Appendix A, as amended.

(7) **Hazardous and Solid Waste Remediation Fee Account** - The fund as described in the Texas Health and Safety Code, §361.133.

(8) **Health and safety plan -** A document that addresses the protection of on-site personnel and the public from potential hazards associated with implementing the remedial investigation or remedial action at a particular facility. The plan shall conform to applicable Occupational Safety and Health Administrative Rules, including but not limited to relevant portions of 29 CFR §1910 and §1926.

(9) **Imminent and substantial endangerment** - A danger is imminent if, given the entire circumstances surrounding each case, exposure of persons or the environment to hazardous substances is more likely than not to occur in the absence of preventive action. A danger is substantial if, given the current state of scientific knowledge, the harm to public health and safety or the environment which would result from exposure could cause adverse environmental or health effects.

(10) **Implementation schedule -** A document describing the sequence, duration and interdependency of each activity to be conducted during a remedial investigation or remedial action.

(11) **Nonparticipating PRPs** - Potentially responsible parties who:

(A) Are unwilling or unable to join in the making of a good faith offer;

(B) Are unwilling or unable to become a party to an agreed order to perform an RI/FS, similar study, or remedial action; or

(C) Intentionally violate the terms of an agreed order so as to substantially interfere with the achievement of the purposes of the agreed order.

(12) **Operation and maintenance plan** - A document detailing the necessary operation and maintenance, inspection, and monitoring activities, including schedules, required to maintain the attainment of performance goals after completion of the implementation phase of the remedial action.

(13) **Oversight costs** - All administrative costs and costs for technical and legal services incurred by the agency, or agents or contractors for the agency, incurred in the determination of superfund eligibility, identification of PRPs, oversight of the remedial investigation and remedial action, plus all such costs incurred in verifying compliance by PRPs with the terms of any agreed order which may be issued and costs incurred by the agency for delisting a site from the State Registry and cost recovery costs.

(14) **Potentially responsible party (PRP)** - A person potentially responsible for solid waste as defined in Texas Health and Safety Code, §361.271 and §361.275(g).

(15) **Presumptive remedy** - A remedy in a commission document titled "Presumptive Remedies" which describes site specific remedial alternatives for a facility in lieu of a full feasibility study as required by §335.348 of this title.

(16) **Quality assurance project plan (QAPP)** - A document describing in comprehensive detail the necessary quality assurance, quality control, and other technical activities that must be implemented to meet the data quality objectives during a remedial investigation or remedial action.

(17) **Remedial action (RA)** - An action, including remedial design and post-closure care, consistent with a remedy taken instead of or in addition to a removal action in the event of a release or threatened release of hazardous substances into the environment to prevent or minimize the release of a hazardous substance so that the hazardous substance does not cause an imminent and substantial danger to present or future public health and safety or the environment. A remedial action shall be conducted in accordance with Chapter 350, Subchapter B of this title (relating to Remedy Standards).

(18) **Remedial action drawings and specifications** - Documents that include the drawings showing the scope, extent, and character of the work to be performed during the remedial

action and the written technical descriptions of materials, equipment, remediation systems, standards and workmanship to be applied during the remedial action.

(19) **Remedial design (RD)** - A design consisting of the remedial action drawings and specifications and other documents developed for the remedial action in accordance with the requirements of §335.349(d) of this title (relating to General Requirements For Remedial Activities).

(20) **Remedial investigation (RI)** - An investigative study (i.e., an affected property assessment conducted in accordance with Chapter 350, Subchapter C of this title (relating to Affected Property Assessment) which may include removals and/or a feasibility study, in addition to the development of protective concentration levels in accordance with Chapter 350, Subchapter D of this title (relating to Development of Protective Concentration Levels) designed to adequately determine the nature and extent of a release or threatened release of hazardous substances and, as appropriate, its impact on air, soils, groundwater, and surface water, both within and beyond the boundaries of the facility in accordance with the requirements of §335.348 of this title.

(21) **Responsible party (RP)** - A person responsible for solid waste as defined in Texas Health and Safety Code, §361.271 and §361.275(g).

(22) **Sampling and analysis plan (SAP) -** A document describing the specific sampling and analytical protocols to be implemented during a remedial investigation or remedial action.

(23) **Settlement offer -** A written offer by a potentially responsible party to fund or perform less than a full and complete remedial investigation and/or remedial action.

(24) **Spill/release contingency plan -** A document describing the sequences, procedures, and requirements to be implemented to protect both workers at the facility and the public from hazardous exposure to releases or spills resulting from the remedial action.

(25) **Substantial change in use** - A physical or functional alteration of a facility, the effect of which is to interfere significantly with a proposed or ongoing remedial investigation, proposed, ongoing, or completed remedial action or to expose public health and safety or the environment to a significantly increased threat of harm. The term includes, but is not limited to, actions such as the erection or razing of a building or other structure at the facility, the use of a facility for agricultural production, the paving over of a facility, the creation of a park or other public or private recreational use on the facility, and any other alteration of the site or activity which could interfere with the performance of a remedial investigation or remedial action.

§335.346. Removals and Preliminary Site Investigations.

(a) For facilities listed on the Registry or proposed for listing on the Registry, no person may perform any partial or total removals at such facility or conduct preliminary investigations of any type at such facility until written authorization of the executive director has been received and notice and opportunity for comment has been provided to all other potentially responsible parties.

(b) To expedite the executive director's consideration of a proposal to conduct removals or preliminary investigations at a facility, the person proposing such actions shall submit to the executive director:

(1) a workplan describing the removal and/or investigation activities proposed;

(2) a health and safety plan;

(3) a quality assurance project plan; and

(4) an implementation schedule for completing various subtasks identified in the workplan.

(c) Any authorization by the executive director to perform preliminary investigations, investigation activities, or partial or total removals at a facility does not constitute a finding or determination by the executive director that such preliminary investigation constitutes an approved remedial investigation or that the removal constitutes the final remedial action. An authorization by the executive director to perform any partial or total removals or investigation activities also does not constitute a determination or finding by the executive director that any release or threatened release attributed to the removed materials is divisible as defined in Texas Health and Safety Code, §361.276.

(d) Pursuant to Texas Health and Safety Code, §361.133(c)(1) - (4) and (g), the executive director may perform necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action. The executive director may also perform removals under Texas Health and Safety Code, §361.133(c)(5) to protect human health and the environment.

SUBCHAPTER N: HOUSEHOLD MATERIALS WHICH COULD BE CLASSIFIED AS HAZARDOUS WASTES

§§335.401 - 335.403, 335.406, 335.407, 335.409, 335.411, 335.412

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.401. Purpose.

The purpose of this subchapter is to provide requirements for interested persons to engage in activities which involve the collection, disposal, or recycling of hazardous household wastes and other types of household waste materials that may, due to their quantity and characteristics, pose a potential endangerment to human health or the environment if improperly handled.

§335.402. Definitions.

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

(1) **Aggregate** - The act of bringing together hazardous household waste that, after being separated from other household waste, is collected from two or more households and accumulated at a collection center or transporter's facility for the purpose of disposing of or recycling the waste.

(2) **Collection center** - A designated site and areas within that site used or planned for use by an operator to aggregate hazardous household waste delivered to the site by individuals, households, or collectors.

(3) **Collector** - Any person who accepts directly from two or more households any unmanifested waste materials that have been separated from other household waste and offered to the collector because the generator either knows or considers the materials to be hazardous household waste.

(4) **Division** - The Small Business and Environmental Assistance Division, Texas Natural Resource Conservation Commission.

(5) **Hazardous household waste** - Any solid waste generated in a household by a consumer which, except for the exclusion provided in 40 Code of Federal Regulations (CFR) §261.4(b)(1), would be classified as a hazardous waste under 40 CFR Part 261.

(6) **Hazardous waste processing, storage, or disposal facility** - A hazardous waste processing, storage, or disposal facility that has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 CFR Parts 270 and 124, or that has received a permit from a state authorized in accordance with 40 CFR Part 271.

(7) **Household** - Single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreational areas.

(8) **Recurring collection program** - An organized effort to collect and/or aggregate hazardous household waste in a community at scheduled intervals, at least annually.

§335.403. Authority.

The Texas Natural Resource Conservation Commission is the state agency having responsibility for regulating non-hazardous municipal solid waste and hazardous waste as defined by the EPA in 40 Code of Federal Regulations Part 261. Except for collected materials being used or planned to be used or reused in accordance with §335.410 of this title (relating to Reuse of Collected Material), all hazardous household waste once collected and aggregated at a collection center or at a transporter's

facility shall be transported only by hazardous waste transporters and shall be shipped only to authorized hazardous waste processing, storage, or disposal facilities.

§335.406. General Requirements for Collectors and Operators.

(a) Except as provided in subsection (d) of this section, no person may engage in any activity to collect or aggregate hazardous household waste that has been segregated from other solid waste without having first notified the Small Business and Environmental Assistance Division, Texas Natural Resource Conservation Commission (division), in accordance with subsection (b) of this section and without having submitted to the division an operational plan as provided for in subsection (c) of this section.

(b) The notification shall be submitted 90 days prior to the expected collection date, by letter or on a form provided by the division. It shall include the following information:

(1) name and address of the operator;

(2) name, address, and telephone number of an individual to be the contact person for the operator;

(3) date of planned collection;

(4) areas that are planned to be covered by the collection effort, i.e., city, county, precinct, neighborhood, district, region, etc.;

(5) a conceptual organization of the collection effort with names of persons or groups providing support and identities of all organizations or groups involved together with the operator in any advertising, public service campaigns, or other public information efforts; and

(6) details regarding any planned public information efforts concerning the dangers or risks associated with hazardous household waste, the need or desirability of separating such waste from other household waste, and the procedures for delivery of hazardous household waste to the collection center.prior to collection day. Collectors or operators conducting recurring collection programs need not submit a plan for the second and subsequent operations, provided the original or revised plan has been previously submitted and remains in effect. The plan shall be prepared in format and content as described in paragraphs (1) - (12) of this subsection or as otherwise specified by the division. Changes to the plan may be made after consultation and coordination with the division.

(c) The collector or operator shall submit to the division a complete operational plan not less than 45 days.

(1) The plan shall be in a typewritten report form (except for maps and drawings) on 8 1/2 inches by 11 inches white paper. All materials in excess of 8 1/2 inches by 11 inches shall be folded to that size. Undersized materials shall be mounted on 8 1/2 inches by 11 inches paper, and the

report stapled in the upper left-hand corner or bound along the left margin. All folded material shall be affixed so it can be unfolded without removing binders.

(2) The title page shall show the name of the project, the location by city and county, name of responsible person and date of plan.

(3) The table of contents shall list the main sections of the plan.

(4) The plan shall identify the nature, type, and quantity of hazardous household waste and other household wastes proposed for collection and disposal and include a brief description of the general sources and generation areas contributing wastes.

(5) If the waste is to be collected from households by a point of generation pick-up service, the plan shall describe in detail how this is to be done.

(6) The plan will describe the approximate number of residences, institutions (identify types) and business establishments within 300 feet of the proposed collection center, including the distances and directions to the nearest residence, institution, or business.

(7) Information relating to adequacy of roads or streets to be used to enter or exit the collection center shall be submitted as part of the plan.

(8) The plan shall identify the type and location of fences or other means of access control to protect the public from exposure to potential health and safety hazards and to discourage unauthorized entry.

(9) The following operational concepts shall be discussed in detail:

(A) the storage of waste at the collection center;

(B) provisions for inclement weather operation, e.g., alternate collection site, or alternate collection day, etc.;

(C) provisions for wastes requiring special handling and for wastes that are identified as non-hazardous;

(D) provisions for classifying and controlling the wastes;

(E) procedures to ensure that unauthorized waste, i.e., hazardous waste (or Class 1 industrial solid waste) from industries, businesses, or institutions subject to regulations of the commission, is not accepted as hazardous household waste;

(F) fire control measures, e.g., availability of local fire departments and on-site fire fighting equipment;

(G) spill control measures and cleanup procedures;

(H) the minimum required number of personnel, their functions and their qualifications;

(I) provisions for security, screening waste for acceptability, traffic control, and safety;

(J) measures to control unloading within the collection center; and

(K) the posting of signs at the collection center and enforcement of site rules.

(10) The operator shall provide information on the planned disposal of the waste collected, to include the transporter's name and the EPA identification number, and the name, location, and the EPA identification number of the hazardous waste facility which is to be used for the processing, storage, disposal, or recycling of the waste. The operator, in developing the plan for disposal of waste to be received at the collection center, should determine the feasibility of managing collected hazardous household waste in the following order of preference:

(A) reuse and/or recycling of waste;

(B) treatment to destroy hazardous characteristics;

(C) treatment to reduce hazardous characteristics;

(D) underground injection; and

(E) land disposal.

(11) The operator shall provide information on planned disposition of materials that are accepted at the collection center that are in usable condition.

(12) The plan shall include the following attachments:

(A) Attachment 1 - general location map. This map should be all or a portion of a half-scale county map, prepared by the Transportation Planning Division of the State Department of Highways and Public Transportation, with the collection site marked and labeled thereon in a manner that will facilitate determining the general location of the site and roadway access. If the site is located within a city, a city map may be used for this purpose.

(B) Attachment 2 - planimetric map. This will normally be a constructed map showing the features of the collection center. It need not be drawn to scale but the improvements and boundaries should fairly represent the collection center area. The map should be annotated to show flow of traffic, unloading points, location of emergency vehicles, and classification and storage areas.

(C) Attachment 3 - evidence of financial responsibility. Collectors or operators other than governmental entities shall submit evidence of financial responsibility which assures the division that sufficient assets are available to properly operate the collection center, enable appropriate shipment and disposal of the waste, and to provide for proper closure of the collection center. The amount and type of financial assurance shall be determined by the division after discussing the scope of the collection effort with the operator.

(D) Attachment 4 - evidence of competency. Evidence of competency to operate the center shall be provided, to include experience and qualifications of key personnel.

(E) Attachment 5 - responsible party's statement. The operator or the authorized representative empowered to make commitments for the operator, shall provide a statement that he or she is familiar with the operational plan and is aware of all commitments represented in the plan and that he or she is also familiar with all pertinent requirements in these regulations and agrees to develop and operate the site in accordance with the regulations and any special written instructions from the division.

(d) Owners or operators of hazardous waste processing, storage, or disposal facilities who accept or intend to accept unmanifested hazardous household waste directly from household waste generators or their representatives are not subject to the requirements of this section, provided that prior to first accepting such waste they notify the executive director in writing concerning their intention to accept such waste, and in the notification indicate:

(1) their Texas Natural Resource Conservation Commission registration number and EPA identification number;

(2) the date they intend to start receiving such hazardous household waste;

(3) the kinds of hazardous household waste and other household waste they intend to accept;

(4) the types or classes of waste that will not be accepted;

(5) the information to be required from each generator so as to enable proper classification and handling of waste;

(6) how they intend to handle on-site wastes which may be accepted and what the ultimate disposition of the wastes will be;

(7) the methods and procedures to be utilized so as to assure that only household waste is accepted; and

(8) the identities of all organizations or groups involved together with the notifier in any advertising, public service campaigns, or other public information efforts concerning the dangers or risks associated with hazardous household waste, the need or desirability of separating such waste from

other household solid waste, and the procedures by which the household waste generator may deliver his or her hazardous household waste to the notifier's facility.

§335.407. Operation of Collection Centers.

(a) Minimum requirements. Except as provided in subsection (g) of this section, collection centers established for the purpose of accepting and aggregating hazardous household waste must be operated so as to comply with the minimum requirements set forth in subsections (b) - (f) of this section.

(b) Location. Collection centers shall be located, organized and operated so as to safeguard the health, welfare, and physical property of the people, and to protect the environment. At a minimum, collection centers shall:

(1) be located based on the types and quantities of waste to be collected and suitability of the site for collecting such waste;

(2) provide parking for the public and for essential project vehicles so as not to interfere with the safe entry and exit of traffic;

(3) whenever possible, be structured in a way that allows incoming wastes to be sorted upon arrival and placed in a controlled area for packaging;

(4) keep incompatible wastes separated, including unidentified wastes, while they are waiting to be packaged for further storage or transport;

(5) provide an area, not generally accessible to the public, for sorting, packaging, and handling waste that is accepted;

(6) have designated eating, drinking, and smoking areas for personnel working at the center (such activities shall be prohibited at the collection center work area);

(7) be prepared for the possibility of inclement weather; and

(8) have materials and procedures to control spills.

(c) Personnel. Personnel who work at the collection center shall be familiar with the operational plan. Other requirements pertaining to personnel utilized at the collection center are included in paragraphs (1) - (8) of this subsection.

(1) Personnel who sort and package waste or who supervise these activities for transport to a hazardous waste facility must be trained and knowledgeable concerning the incompatibility of various classes of waste and be qualified to package waste for transport.

(2) At least one person trained to classify hazardous waste and who is competent to perform tests to identify characteristics of hazardous waste (e.g., pH, flammability, etc.) shall be utilized at the collection center to accept or supervise the acceptance of waste at the center.

(3) Personnel involved with handling waste must be instructed in accident prevention, the proper response to fires, explosions, and spills, and in the use of protective devices (such as respiratory gear and gloves) to minimize exposure to hazardous household waste.

(4) Packaging and labeling of waste shall be supervised by a person familiar with the shipping requirements and hazardous waste manifest requirements of the U.S. Department of Transportation (DOT) for packaging, placarding, and labeling of hazardous materials.

(5) At least one person must be on-site who is trained to perform general first aid and who is knowledgeable concerning safety measures to be taken in the event of an accidental contact with a hazardous household waste.

(6) An on-site supervisor must be available and responsible for initiating an emergency response plan that includes site evacuation procedures. The on-site supervisor also assumes responsibility for accepting any unidentified wastes and insuring proper handling and disposal.

(7) The on-site supervisor shall have the authority to remove anyone from the site and prohibit re-entry if it is determined that the person threatens site security or personnel safety.

(8) Manning of the collection center shall consist of an adequate number of persons who jointly possess the necessary skills and expertise needed to accept, sort, package, transport, and manifest the waste and be responsible for on-site supervision and public relations.

(d) Equipment and Materials. Equipment and materials shall be available at the collection center to provide protection, safety and first aid for persons operating the center, to contain and clean up spills, and to properly handle, classify, package, and label the waste. All disposable cleanup materials and protective clothing used during a spill cleanup shall be handled as a hazardous household waste. Nondisposable equipment and materials that are used and contaminated shall be decontaminated before removal from the site. At a minimum, the provision for equipment and material shall include:

(1) a first aid kit available at each collection center and on each point of generation pick-up service vehicle;

(2) a method of communication in the event of a spill, personal injury, etc., at the site and in the point of generation pick-up vehicle. Such method of communication may include a telephone or a citizen's band (CB) radio;

(3) an eyewash, shower station, or hosing device and fire extinguisher; and

(4) sufficient spill containment and absorbent materials at the collection center and on each point of generation waste collection vehicle to contain a spill of 10% of the anticipated volume of

collected liquid waste.

(e) Waste accepted and excluded. The collection center should accept only household wastes. The operator shall take necessary precautions to prohibit the receipt of waste defined as a hazardous waste by Texas Health and Safety Code, Chapter 361; or as Class 1 waste by the commission. Other requirements related to acceptance or exclusion of wastes are as follows:

(1) Any unidentified waste accepted shall be identified by a chemist or trained individual knowledgeable in chemical characteristics and incompatibilities before being packaged for transport. Wastes that cannot be identified by physical assessment or conversation with the generator or his representative may not be packaged until the substance or waste has been analyzed and the appropriate chemical class has been identified.

(2) Announcements and promotional material shall state that compressed gas or explosives (including ammunition) shall not be brought to the collection center. However, if such materials are brought to the collection center, the staff should accept the waste and immediately contact the appropriate authorities, e.g., explosives experts, etc., to properly dispose of the waste.

(3) Decisions to accept certain wastes shall depend on the capabilities of the personnel collecting, sorting, and packaging the waste. A generic list of proposed wastes to be accepted must be submitted to the division with the operational plan. The list should be developed with the intent of minimizing the need for chemical analysis of unidentifiable wastes.

(4) Empty hazardous material and pesticide containers from households may be disposed of as a nonhazardous waste if they are rendered unusable before leaving the collection center.

(5) A container shall be provided at the collection center for collection and storage of waste received at the center, that because of quantity and characteristics, does not pose a potential endangerment to human health on the environment if disposed of in a municipal solid waste facility.

(f) Temporary storage. Storage at the collection center, or other site identified in the operational plan, shall be operated and maintained so as to provide safe handling and storage of waste awaiting final disposition. The facility shall be secured to control access by the public. Operators shall comply with paragraphs (1) - (3) of this subsection when storing aggregated hazardous household waste.

(1) An operator shall not store aggregated hazardous household waste longer than 10 days except under one of the conditions described in subparagraphs (A) - (C) of this paragraph.

(A) The storage facility is an authorized hazardous waste processing, storage, or disposal facility.

(B) The operator requests in writing and obtains a storage time extension from the division.

(C) The operator is conducting a recurring collection program and does not

accumulate more than 3,000 kilograms of hazardous household waste and does not store the waste longer than 180 days.

(2) A label shall be maintained on all containers in which hazardous household waste is stored and shall indicate:

(A) composition and physical state of the waste;

(B) special safety recommendations and precautions for handling the waste;

(C) statement(s) which call attention to the particular hazardous properties of the waste; and

(D) date of acceptance at the collection center.

(3) Records for storage of all hazardous household wastes shall be maintained to include all the information necessary to complete manifests for the wastes. (Copies of manifests may be used in lieu of a separate record).

(g) Requirements for hazardous waste facilities. Facilities which qualify as hazardous waste processing, storage, or disposal facilities and whose owners and operators comply with the notification requirements of §335.406(d) of this title (relating to General Requirements for Collectors and

Operators) are not subject to the requirements of this section, except for the requirements of subsection (c) of this section with respect to personnel; subsection (d) of this section with respect to disposal of cleanup materials and protective clothing used during a spill cleanup; and subsections (f)(2) and (3) of this section with respect to container labeling and recordkeeping.

§335.409. General Shipping, Manifesting, Recordkeeping, and Reporting Requirements.

Except for those collected reusable materials handled in accordance with the requirements of §335.410 of this title (relating to Reuse of Collected Material) and waste received at the center, which can be disposed of at a municipal solid waste facility in accordance with the requirements of §335.407 of this title (relating to Operation of Collection Centers), persons who collect, receive, or aggregate hazardous household waste shall:

(1) when transporting or shipping such waste from a collection center or from a transporter's facility, utilize only hazardous waste transporters who have notified the executive director with respect to transportation of hazardous waste, who have notified the EPA of their involvement in transporting hazardous waste, and who have been issued an EPA identification number;

(2) transport or ship such waste only to receivers who qualify as hazardous waste processing, storage, or disposal facilities, that have agreed to accept the waste, and that have authorization to receive such wastes;

(3) assure, prior to offering such waste for shipment, that such waste is packaged and labeled so as to comply with applicable United States Department of Transportation (DOT) requirements and to comply with the requirements contained in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class 1 Industrial Solid Waste); and

(4) retain for at least one year from the date of shipment copies of all manifests utilized for the shipment of such waste.

§335.411. General Requirements for Transporters.

(a) No person shall transport any hazardous household waste required by this subchapter to be accompanied by a uniform hazardous waste manifest, unless such person:

(1) has notified the executive director with respect to such transportation activities in accordance with the requirements contained in §335.6(d) of this title (relating to Notification Requirements);

(2) has notified the EPA as to his or her transporter status, and has been issued an EPA identification number;

(3) complies with the requirements outlined in §335.11 of this title (relating to Shipping Requirements for Transporters of Municipal Hazardous Waste or Class 1 Industrial Solid Waste) with respect to all manifested household waste;

(4) complies with the requirements outlined in §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Municipal Hazardous Waste or Class 1 Industrial Solid Waste) with respect to all manifested household waste; and

(5) complies with the requirements of paragraphs (1) - (3) of §335.4 of this title (relating to General Prohibitions) with respect to all waste accepted or handled.

(b) Transporters engaged in point of generation pick-up of hazardous household waste, who operate or intend to operate hazardous household waste collection centers, or who otherwise handle or accept unmanifested hazardous household waste, are subject to all the requirements of this subchapter set forth for collectors and shall comply with paragraphs (1) - (4) of this subsection.

(1) Prior to engaging in such activity, notify and submit a plan to the division in accordance with §335.406 of this title (relating to General Requirements for Collectors and Operators).

(2) All activities to collect and/or aggregate hazardous household waste shall be in accordance with rules of this subchapter applicable to collectors and operators and written instructions from the executive director.

(3) All hazardous household waste accumulated by the transporter shall be kept separate and apart from hazardous waste or Class 1 industrial solid waste as defined in Texas Health and Safety Code, Chapter 361, which may be accumulated at a transporter's facilities.

(4) Transporters performing service under this subsection shall comply with requirements specified for operators or collectors engaged in similar activities.

§335.412. General Requirements for Storage, Processing, or Disposal Facilities.

Owners or operators of hazardous waste storage, processing, or disposal facilities may receive manifested shipments of hazardous household waste or other household waste provided they:

(1) comply with the requirements of §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) with respect to all manifested wastes received;

(2) comply with the requirements of §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) with respect to all manifested wastes received;

(3) handle on-site all received or aggregated hazardous household waste in the same manner as if the waste were defined as a hazardous waste under Texas Health and Safety Code, Chapter

361;

(4) comply with the requirements of paragraphs (1) - (3) of §335.4 of this title (relating to General Prohibitions) with respect to all waste received; and

(5) obtain written authorization from the commission to receive hazardous household waste.

SUBCHAPTER O: LAND DISPOSAL RESTRICTIONS

§335.431

STATUTORY AUTHORITY

The amendment is adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.431. Purpose, Scope, and Applicability.

(a) Purpose. The purpose of this subchapter is to identify hazardous wastes that are restricted from land disposal and define those limited circumstances under which an otherwise prohibited waste may continue to be land disposed.

(b) Scope and Applicability.

(1) Except as provided in paragraph (2) of this subsection, the requirements of this subchapter apply to persons who generate or transport hazardous waste and owners and operators of hazardous waste treatment, storage, and disposal facilities.

(2) The requirements of this subchapter do not apply to any entity that is either specifically excluded from coverage by this subchapter or would be excluded from the coverage of 40 Code of Federal Regulations (CFR), Part 268 by 40 CFR, Part 261, if those parts applied.

(3) Universal waste handlers and universal waste transporters, as defined in and subject to regulation under Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule) are exempt from 40 CFR §268.7 and §268.50.

(c) Adoption by Reference.

(1) except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR Part 268, as amended through December 26, 2000 (65 FR 81373) are adopted by reference.

(2) The following sections of 40 CFR, Part 268 are excluded from the sections adopted in paragraph (1) of this subsection: §§268.1(f), 268.5, 268.6, 268.7(a)(10), 268.13, §268.42(b), and 268.44.

(3) Appendices IV, VI - IX, and XI of 40 CFR, Part 268 are adopted by reference as amended through May 26, 1998 (63 FR 28705).

(d) Changes to Adopted Parts. The parts of the CFR that are adopted by reference in subsection (c) of this section are changed as follows:

(1) The words "Administrator" or "Regional Administrator" are changed to "Executive Director;"

(2) The word "treatment" is changed to "processing;"

(3) The words "Federal Register," when they appear in the text of the regulation, are changed to "Texas Register;"

(4) In §268.7(a)(6) and (a)(7), the applicable definition of hazardous waste and solid waste is the one that is set out in this chapter rather than the definition of hazardous waste and solid waste that is set out in 40 CFR Part 261.

(5) In §268.50(a)(1), the citation to "§262.34" is changed to "§335.69."

SUBCHAPTER Q: POLLUTION PREVENTION:

SOURCE REDUCTION AND WASTE MINIMIZATION

§§335.471, 335.473 - 335.478, 335.480

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.471. Definitions.

The words and terms used in this subchapter have the meanings given in the Waste Reduction Policy Act of 1991, Senate Bill 1099, 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 the Resource Conservation and Recovery

Act (RCRA) of 1976 (42 United States Code §6901 et seq.), because the waste meets the criteria for listing hazardous waste identified in 40 Code of Federal Regulations §261.11(a)(2).

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

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

(4) **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.

(5) **Generator and generator of hazardous waste** - Have the meaning assigned by Texas Health and Safety Code, §361.131.

(6) **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.

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

(8) **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.

(9) **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 Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 United States Code §9601 et seq.), §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.

(10) **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.

(11) **Source reduction** - Has the meaning assigned by the federal Pollution Prevention Act of 1990, Publication Law 101 - 508, §6603, 104 Stat. 1388.

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

(13) **Toxic release inventory (TRI)** - 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.

(14) **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.

§335.473. Applicability.

This subchapter applies to facilities which are required to develop a source reduction and waste minimization plan pursuant to the Waste Reduction Policy Act of 1991, Senate Bill 1099, or the regulations promulgated thereunder, including:

(1) all large quantity generators of hazardous waste;

(2) all generators other than large quantity generators and conditionally exempt small quantity generators as defined by Texas Health and Safety Code, §361.431(3);

(3) 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 source reduction and waste minimization plans for only the TRI listed chemicals that exceed threshold quantities established under EPCRA.

§335.474. Source Reduction and Waste Minimization Plans.

All persons identified under §335.473 of this title (relating to Applicability) shall prepare a five year (or more) source reduction and waste minimization plan which may be updated annually as appropriate according to the schedule listed in §335.475 (relating to Implementation Dates). Plans shall

be updated as necessary to assure that there never exists a time period for which a plan is not in effect. Prior to completion of the plan and each succeeding plan, a new five-year (or more) 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) With the exception of small quantity generators which are subject to paragraph (3) of this section, the plan shall include, at a minimum:

(A) an initial survey that identifies:

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

(ii) for facilities described in §335.473(3) of this title, activities that result in the release of pollutants or contaminants designated under §335.472 of this title (relating to Pollutants and Contaminants);

(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) 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) certification 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, that the plan is complete and correct;

(I) identification of cases in which 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; and

(J) an executive summary of the plan which shall include at a minimum:

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

(I) name of the facility;

(II) address;

(III) contact;

(IV) a general description of the facility; and

(V) if applicable, Texas Natural Resource Conservation Commission (TNRCC) air account number, solid waste registration number, and underground injection control well permit number; EPA identification number and Toxics Release Inventory (TRI) identification number, National Pollutant Discharge Elimination System (NPDES) permit number; and Texas Pollutant Discharge Elimination System (TPDES) permit number.

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

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

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

(v) a statement of reduction goals;

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

(vii) implementation milestones for individual project development;

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

(ix) identification and description of cases in which 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 that affected medium.

(2) The source reduction and waste minimization plan may also include:

(A) 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;

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

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

(E) 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.

(3) The plans of small quantity generators shall include, at a minimum:

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

(i) name of the facility;

(ii) address;

(iii) contact;

(iv) general description of the facility; and

(v) if applicable, TNRCC air account number, solid waste registration number, and underground injection control well permit number; EPA identification number and TRI identification number, NPDES permit number; and TPDES permit number.

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

(C) if applicable, a list of all reportable TRI releases and the volume of each;

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

(E) a statement of reduction goals;

(F) information on environmental and human health risks, such as material safety data sheets or other available documentation, considered in determining reduction goals;

(G) implementation milestones for individual project development;

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

(I) identification and description of cases in which 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. 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 that affected medium;

(J) certification 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, that the plan is complete and correct;

(K) an executive summary of the plan which shall include at a minimum:

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

(I) name of facility;

(II) address;

(III) contact;

(IV) EPA ID, TNRCC solid waste notice of registration number;

(V) primary SIC code;

(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 identified under subparagraph (D) of this paragraph.

(4) The executive summary 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 source reduction or waste minimization;

(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 effect 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.

§335.475. Implementation Dates.

All facilities subject to this subchapter shall develop a source reduction and waste minimization plan. The implementation year shall be determined by the prior year's reported volumes of hazardous waste generated and/or total toxic release inventory (TRI) releases. 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 are exempted under §335.477 of this title (relating to Exemptions). Volumes for calculations will be based on total hazardous waste generated and/or total TRI releases. The executive summary shall be submitted to the executive director on the date the plan is required to be in place. Plan implementation will be according to the following schedule:

(1) The source reduction and waste minimization plan shall be in place, available for review, and shall be implemented no later than July 1, 1993 for:

(A) hazardous waste generators reporting 5,000 tons or more; or

(B) TRI facilities reporting 100 tons or more.

(2) The source reduction and waste minimization plan shall be in place, available for review, and shall be implemented no later than January 1, 1994 for:

(A) hazardous waste generators reporting less than 5,000 tons but more than or equal to 500 tons; or

(B) TRI facilities reporting less than 100 tons but more than or equal to 10 tons.

(3) The source reduction and waste minimization plan shall be in place, available for review, and shall be implemented no later than January 1, 1995 for:

(A) hazardous waste generators reporting less than 500 tons but more than or equal to 15 tons; or

(B) TRI facilities reporting less than 10 tons but more than or equal to 5 tons.

(4) The source reduction and waste minimization plan shall be in place, available for review, and shall be implemented no later than January 1, 1996 for:

(A) hazardous waste generators reporting less than 15 tons but more than or equal to 5 tons; or

(B) TRI facilities reporting less than 5 tons but more than or equal to one ton.

(5) The source reduction and waste minimization plan shall be in place, available for review, and shall be implemented no later than January 1, 1997 for:

(A) hazardous waste generators reporting less than five tons but greater than 1.102 tons (1,000 kilograms); or

(B) TRI facilities reporting less than one ton.

(6) After the effective date of this subchapter, any facility which becomes subject to the requirement to have a source reduction and waste minimization plan, either within 90 days prior to or at any time following the dates referenced in paragraph (1) - (5) of this section, shall have 90 days to have the plan in place and available for review.

§335.476. Reports and Recordkeeping.

All persons required to develop a source reduction and waste minimization plan for a facility under this subchapter shall submit to the commission, concurrent with implementation of the plan under

§335.475 of this title (relating to Implementation Dates), an initial executive summary of such plan and a copy of the certification of completeness and correctness in §335.474(1)(H) of this title (relating to Source Reduction and Waste Minimization Plans). 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) and (3) of this title (relating to Applicability) shall also submit an annual 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 source reduction and waste minimization plan for a facility under §335.473(2) of this title may meet the annual 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(K)(ii) of this title.

(1) The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

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

(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 the release of reportable pollutants or contaminants designated under Texas Health and

Safety Code, §361.433(c) in the year preceding the report, and a comparison of those amounts with the amounts generated or released using 1987 as the base year;

(C) any modification to the plan.

(2) The 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 source reduction or waste minimization;

(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 effect 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 report shall contain a separate component addressing source reduction activities and a separate component addressing waste minimization activities.

(4) The report and the executive summary of the plan shall be submitted according to the following schedule and annually thereafter.

(A) For all facilities meeting the specifications of §335.475(1) of this title, the first report will be due on or before March 1, 1994. The report will cover calendar year 1993. Subsequent annual reports will be submitted on or before July 1 of each year.

(B) For all facilities meeting the specifications of §335.475(2) of this title, the first report will be due on or before July 1, 1995. The report will cover calendar year 1994.

(C) For all facilities meeting the specifications of §335.475(3) of this title, the first report will be due on or before July 1, 1996. The report will cover calendar year 1995.

(D) For all facilities meeting the specifications of §335.475(4) of this title, the first report will be due on or before July 1, 1997. The report will cover calendar year 1996.

(E) For all facilities meeting the specifications of §335.475(5) of this title, the first report will be due on or before July 1, 1998. The report will cover calendar year 1997.

(5) Base line data from the calendar year 1987 shall be used in developing each of the first reports referred to in paragraph (4) of this section.

(6) The 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.

(a) This subchapter does not apply to:

(1) conditionally exempt small-quantity generators; and

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

(b) Owners and operators of facilities listed in §335.473 of this title (relating to Applicability) 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:

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

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

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

§335.478. Administrative Completeness.

The executive director may review a source reduction and waste minimization plan or annual report to determine whether the plan or report complies with this subchapter.

§335.480. Confidentiality.

(a) A source reduction and waste minimization 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 source reduction and waste minimization plan is not a public record for the purposes of Chapter 424, Acts of the 63rd Legislature, 1973 (Texas Civil Statues, Article 6252-17a).

(b) The executive summary of the plan and the annual 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 report.

(c) If an owner or operator of a facility for which a source reduction and waste minimization plan has been prepared shows to the satisfaction of the executive director that an executive summary of the plan, annual 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 report, or portion of a plan, summary, or annual 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.

SUBCHAPTER R: WASTE CLASSIFICATION

§§335.501 - 335.504, 335.507 - 335.509, 335.511 - 335.514, 335.521

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.501. Purpose, Scope, and Applicability.

Persons who generate industrial solid waste or municipal hazardous waste shall comply with the provisions of this subchapter. Wastes that are regulated under Chapter 334, Subchapter K, of this title (relating to Storage, Treatment and Reuse Procedures for Petroleum-Substance Contaminated Soil) are not subject to the provisions of this subchapter. Persons who generate wastes in Texas shall classify their own waste according to the standards set forth in this subchapter and may do so without any prior approval or communication with the agency other than notification of waste generation activities pursuant to §335.6 of this title (relating to Notification Requirements) and submittal of required documentation pursuant to §335.513 of this title (relating to Documentation Required). A generator of industrial solid waste or special waste as defined by §330.2 of this title (relating to Definitions) shall

refer to Chapter 330 of this title (relating to Municipal Solid Waste) for regulations regarding the disposal of such waste prior to shipment to a municipal landfill. Used oil, as defined and regulated under Chapter 324 of this title (relating to Used Oil), is not subject to the provisions of this subchapter. This subchapter:

(1) provides a procedure for implementation of Texas waste notification system; and

(2) establishes standards for classification of industrial solid waste and municipal hazardous waste managed in Texas.

§335.502. Conversion to Waste Notification and Classification System.

(a) Waste notification information as required under §335.6 of this title (relating to Notification Requirements) and waste codes required under §335.10(b) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) shall be assigned by the generator and provided to the executive director as provided by this chapter.

(1) All waste notification information provided in accordance with the schedule set forth in this subchapter shall be provided in a format defined by the executive director.

(2) All waste notification information may be submitted on paper or by electronic data transmission, in accordance with the requirements of §335.6 of this title.

(3) Forms and format information for submitting notice of registration information on paper or by electronic means may be obtained by contacting the agency at the address listed in Appendix 2 of this subchapter.

(b) The effective date for management of all wastes under this chapter is January 1, 1995. On and after this date, all solid waste generated or otherwise handled in the state shall be classified and accordingly managed pursuant to this subchapter.

(c) After the effective management date as provided in subsection (b) of this section, future reclassification of a waste may be required because of changes in classification criteria. A generator whose waste stream is reclassified to a more stringent waste classification after the effective management date of this subchapter as provided in subsection (b) of this section must reclassify the waste and begin managing the waste according to the more stringent classification requirements according to the following schedule:

(1) if mandated by a federal or state law, as specified in that law;

(2) if a date is provided in the adoption of the amendment, as required in that rule adoption;

(3) if not otherwise specified, within 180 days of the effective date of the rule amendment adopting the new classification criteria;

(4) in situations where a compliance date creates an unusual hardship a generator may request a different implementation time under the variance provisions of §335.514 of this title (relating to Variance from Waste Classification Provisions).

§335.503. Waste Classification and Waste Coding Required.

(a) All industrial solid and municipal hazardous waste generated, stored, processed, transported, or disposed of in the state shall be classified according to the provisions of this subchapter.

(1) All solid waste shall be classified at the point of generation of the waste. A generator may not dilute a waste to avoid a Class 1 classification; however, combining waste streams for subsequent legitimate processing, storage, or disposal does not constitute dilution and is acceptable. Wastes shall be classified prior to, and following any type of processing or mixing of the waste.

(2) All industrial solid and municipal hazardous waste shall be classified as either:

(A) hazardous;

(B) Class 1;

(C) Class 2; or

(D) Class 3.

(3) A person who generates a solid waste shall first determine if that waste is hazardous pursuant to §335.504 of this title (relating to Hazardous Waste Determination).

(4) After making the hazardous waste determination as required in paragraph (3) of this subsection, if the waste is determined to be nonhazardous, the generator shall then classify the waste as Class 1, Class 2, or Class 3, pursuant to §§335.505 - 335.507 of this title (relating to Class 1 Waste Determination, Class 2 Waste Determination, and Class 3 Waste Determination) using one or more of the following methods:

(A) use the criteria for waste classification as provided in §§335.505 - 335.507 of this title;

(B) use process knowledge as provided in §335.511 of this title (relating to Use of Process Knowledge);

(C) classify the waste as directed under §335.508 of this title (relating to Classification of Specific Industrial Wastes); or

(D) choose to classify a nonhazardous waste as Class 1 without any analysis to support that classification. However, documentation (analytical data and/or process knowledge) is necessary to classify a waste as Class 2 or Class 3, pursuant to §335.513 of this title (relating to Documentation Required).

(b) All industrial solid waste and municipal hazardous waste generated, stored, processed, transported or disposed of in the state shall be coded with an eight-digit waste code number which shall include a four-digit waste sequence number, a three-digit form code, and a one-character classification (either H, 1, 2, or 3). Form codes are provided in §335.521(c) of this title (relating to Appendix 3). Procedures for assigning waste code numbers and sequence numbers are outlined as follows and available from the agency at the address listed in §335.521(b) of this title (relating to Appendix 2).

(1) A waste code is represented by the following 8-digit character string: sequence number + form code + classification code (H, 1, 2, or 3).

(2) In-state generators will assign a unique four-digit sequence number to each individual waste. These sequence numbers will range from 0001 to 9999. They need not be assigned in sequential order. An in-state registered generator may choose to request the executive director assign a sequence number to a specific waste which is not regularly generated by a facility and is being shipped as a one-time shipment or choose to add that waste to the regular sequence numbers on a notice of registration. Sequence numbers provided by the executive director may be a combination of alpha and numeric characters.

(3) The executive director will provide in-state unregistered generators a four-digit sequence number for each regulated waste it generates, which may be a combination of alpha and numeric characters.

(4) Generators of wastes resulting from a spill may obtain a sequence number for the spill related wastes from the agency's Emergency Response Section.

(5) Out-of-state generators will use the sequence code "OUTS" in the first four digits of the waste code.

(6) CESQGs or industrial Class 1 non-hazardous waste generators that are exempt from manifesting as specified in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) who voluntarily manifest their hazardous and or Class 1 nonhazardous waste may use "CESQ" as the first four digits of the waste code.

(7) A facility which receives and consolidates like waste from Municipal Conditionally Exempt Small Quantity Generators should use "CESQ" in the first four positions of the waste code for any manifesting and/or reporting associated with that waste.

(8) A facility which receives a waste and consolidates that waste with other like waste, other than its own, (thus not changing the form code of the waste stream or its composition, hazardous,

or Texas waste class), or stores a waste without treating, processing (as defined in §335.1 of this title (relating to Definitions)), or changing the form or composition of that waste may ship that waste to a storage, treatment, or disposal facility using the sequence code "TSDF" in the first four positions of the waste code. This does not pertain to wastes which are treated or altered or combined with unlike wastes. This "TSDF" designation is only to be used by facilities that store and/or accumulate a quantity of wastes from more than one site for subsequent shipment to a treatment or disposal facility. Manifest documents must note a final destination designated to receive a consolidated waste. The designated "final destination" receiving facility noted on the manifest must be a permitted facility in order to terminate the manifest, unless the waste is nonhazardous and does not require manifesting in accordance with §335.10(g) of this title and is going to a facility described in §335.10(g) of this title. A consolidated waste shipped to a non-permitted facility prior to being shipped to the final destination must proceed with the original manifests (noted with any appropriate changes) to the facility designated on the manifest for final handling.

§335.504. Hazardous Waste Determination.

A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions).

(2) If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart D.

(3) If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C.

§335.507. Class 3 Waste Determination.

An industrial solid waste is a Class 3 waste if it is inert and essentially insoluble, and poses no threat to human health and/or the environment. Class 3 wastes include, but are not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, which are not readily decomposable. An industrial solid waste is a Class 3 waste if it:

(1) is not a hazardous waste pursuant to §335.504 of this title (relating to Hazardous Waste Determination);

(2) does not meet any of the Class 1 waste criteria set forth in §335.505 of this title (relating to Class 1 Waste Determination); and

(3) is inert. Inertness refers to chemical inactivity of an element, compound, or a waste. Ingredients added to mixtures chiefly for bulk and/or weight purposes are normally considered

inert; and

(4) is essentially insoluble.

(A) Essential insolubility is established:

(i) when, using the test methods specified in §335.521(d) of this title (relating to Appendix 4 (Seven-Day Distilled Water Leachate Test)), the extract(s) from the representative sampling of the waste does not leach greater than the Maximum Contaminant Levels listed in §335.521(a)(3) of this title (relating to Appendix 1, Table 3); and

(ii) using the test methods described in 40 Code of Federal Regulations Part 261, Appendix II, or equivalent methods approved by the executive director under the procedures set forth in §335.509 of this title (relating to Waste Analysis), the extract(s) from the representative sampling of the waste does not exhibit detectable levels of constituents found in §335.521(a)(1) of this title (relating to Appendix 1, Table 1) including constituents in §335.521(a)(3) of this title which are marked with an asterisk. This excludes the constituents listed in §335.521(a)(3) of this title which were addressed in clause (i) of this subparagraph; and

(iii) when using an appropriate test method, representative sampling of the waste does not exhibit detectable levels of total petroleum hydrocarbon (TPH). "Petroleum substance wastes" as defined in §334.481 of this title (relating to Definitions) are not subject to this

subsection; and

(iv) when, using an appropriate test method, representative sampling of the waste does not exhibit detectable levels of polychlorinated biphenyls (PCBs).

(B) Subparagraph (A) of this paragraph does not apply to naturally occurring material, i.e., soil, rock, etc., if the generator can demonstrate that the levels present in the waste are naturally occurring in the background of that particular material.

(C) If the detection level submitted by the generator is challenged by the executive director or the commission, and for other enforcement purposes, the burden is on the generator to demonstrate that the detection level was reasonable for the material in question and for the technology in use at the time the waste was classified.

§335.508. Classification of Specific Industrial Solid Wastes.

The following nonhazardous industrial solid wastes shall be classified no less stringently than according to the provisions of this section.

(1) Industrial solid waste containing asbestos material identified as regulated asbestos containing material (RACM), as defined in 40 Code of Federal Regulations (CFR) Part 61, shall be classified as a Class 1 waste.

(2) Empty containers that are a solid waste as defined in §335.1 (relating to Definitions) shall be subject to the following criteria:

(A) A container which has held a Hazardous Substance as defined in 40 CFR Part 302, a Hazardous waste, a Class 1 waste, or a material which would be classified as a Hazardous or Class 1 waste if disposed of, and is empty per §335.41(f)(2) of this title (relating to Purpose, Scope and Applicability concerning empty containers):

(i) shall be classified as a Class 1 waste;

(ii) may be classified as a Class 2 waste if the container has a capacity of five gallons or less; or

(iii) may be classified as a Class 2 waste if the container has a capacity greater than five gallons and:

(I) the residue has been completely removed either by triple rinsing with a solvent capable of removing the waste, by hydroblasting, or by other methods which remove the residue; and

(II) the container has been crushed, punctured, or subjected to other mechanical treatment which renders the container unusable; or

(iv) may be classified as a Class 2 waste if the container is to be sent for recycling and:

(I) the residue has been completely removed either by triple rinsing with a solvent capable of removing the waste, by hydroblasting, or by other methods which remove the residue; and

(II) the container is not regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) 40 CFR Part 165; and

(III) the generator maintains documentation in accordance with §335.513 of this title (relating to Documentation Required) that demonstrates the container is being recycled; and

(IV) the recycling activity involves shredding, dismantling, scrapping, melting, or other method that renders the container unusable.

(B) A container which has held a Class 2 waste shall be classified as a Class 2 waste.

(C) Aerosol cans that have been depleted of their contents, such that the inner pressure of the can equals atmospheric pressure and minimal residues remain in the can, may be

classified as a Class 2 wastes.

(3) Plant trash refers only to paper, cardboard, food wastes, and general plant trash. These wastes shall be subject to the following classification criteria.

(A) The form code 999 ("PLANT TRASH") refers only to Class 2 waste originating in the facility offices or plant production area that is composed of paper, cardboard, linings, wrappings, paper and/or wooden packaging materials, food wastes, cafeteria waste, glass, aluminum foil, aluminum cans, aluminum scrap, stainless steel, steel, iron scrap, plastics, styrofoam, rope, twine, uncontaminated rubber, uncontaminated wooden materials, equipment belts, wirings, uncontaminated cloth, metal bindings, empty containers with a holding capacity of five gallons or less, uncontaminated floor sweepings, and/or food packaging, that are produced as a result of plant production, manufacturing, laboratory, general office, cafeteria, or food services operations. Also included in plant trash are personal cosmetics generated by facility personnel, excluding those cosmetics generated as a result of manufacturing or plant production operations. Plant refuse shall not include oils, lubricants of any type, oil filters, contaminated soils, sludges, wastewaters, bulk liquids of any type, or Special Wastes as defined by §330.2 of this title (relating to Definitions).

(B) The form code 902 ("SUPPLEMENTAL PLANT PRODUCTION REFUSE") only applies to Class 2 Waste from production, manufacturing, or laboratory operations. The total amount of the supplemental plant production refuse (form code 902) shall not exceed 20% of the annual average of the total plant refuse (form code 999) volume or weight, whichever is less.

Individual wastes which have been designated supplemental plant production refuse may be designated by the generator at a later time as a separate waste in order to maintain the supplemental plant production refuse at or below 20% of the appropriate plant refuse amount. For any waste stream included with, removed from, or added to the supplemental plant refuse designation (form code 902), the generator must provide the notification information required pursuant to this subchapter.

(4) Medical wastes which are subject to the provisions of Chapter 330, Subchapter Y of this title (relating to Medical Waste Management) shall be designated as Class 2 wastes.

(5) Media contaminated by a material containing greater than or equal to 50 parts per million total polychlorinated biphenyls (PCBs) and wastes containing greater than or equal to 50 ppm PCBs shall be classified as Class 1.

(6) Wastes which are petroleum substances or contain contamination from petroleum substances, as defined in §335.1 of this title shall be classified as a Class 1 waste until a generator demonstrates that the waste's total petroleum hydrocarbon concentration (TPH) is less than or equal to 1,500 parts per million (ppm). Where hydrocarbons cannot be differentiated into specific petroleum substances, then such wastes with a TPH concentration of greater than 1,500 ppm shall be classified as a Class 1 waste. Wastes resulting from the cleanup of leaking underground storage tanks (USTs) which are regulated under Chapter 334, Subchapter K of this title (relating to Petroleum Substance Waste) are not subject to classification under this subchapter.

(7) Wastes generated by the mechanical shredding of automobiles, appliances, or other items of scrap, used, or obsolete metals shall be handled according to the provisions set forth in Texas Health and Safety Code, §361.019, until the commission develops specific standards for the classification of this waste and assures adequate disposal capacity.

(8) If a nonhazardous industrial solid waste is generated as a result of commercial production of a "new chemical substance" as defined by the federal Toxic Substances Control Act, 15 United States Code §2602(9), the generator shall notify the executive director prior to the processing or disposal of the waste and shall submit documentation requested under §335.513(b) and (c) of this title for review. The waste shall be managed as a Class 1 waste, unless the generator can provide appropriate analytical data and/or process knowledge which demonstrates that the waste is Class 2 or Class 3, and the executive director concurs. If the generator has not received concurrence from the executive director within 120 days from the date of the request for review, the generator may manage the waste according to the requested classification, but not prior to giving ten working days written notice to the executive director.

(9) All nonhazardous industrial solid waste generated outside the state of Texas and transported into or through Texas for processing, storage, or disposal shall be classified as:

(A) Class 1; or

(B) may be classified as a Class 2 or Class 3 waste if:

(i) the material satisfies the Class 2 or Class 3 criteria as defined in §§335.506, 335.507 or 335.508 of this title (relating to Class 2 Waste Determination; Class 3 Waste Determination; Classification of Specific Industrial Solid Wastes); and

(ii) a request for Class 2 or Class 3 waste determination is submitted to the executive director accompanied by all supporting documentation as required by §335.513 of this title. Waste generated out-of-state may be assigned a Class 2 or Class 3 classification only after approval by the executive director.

(10) Wastes which are hazardous solely because they exhibit a hazardous characteristic, which are not considered hazardous debris as defined in 40 CFR §268.2(g), which are subsequently stabilized and no longer exhibit a hazardous characteristic and which meet the land disposal restrictions as defined in 40 CFR Part 268 may be classified according to the Class 1 or Class 2 classification criteria as defined in §§335.505, 335.506, and 335.508 of this title.

§335.509. Waste Analysis.

(a) Generators who use analytical methods to classify their waste must use methods described in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" (EPA SW-846), "Methods for Chemical Analysis of Water and Wastes" (EPA-600/4-79/020), "Standard Methods for the Examination of Water and Wastewater", American Society for Testing and Materials (ASTM) Standard Methods, or any other approved EPA methods or may request in writing that the executive

director review and approve an alternate method. The generator must also choose representative sample(s) of their waste, as described in Chapter 9 of EPA SW-846. A generator who proposes to use an alternate method must validate the alternate method by demonstrating that the method is equal to or superior in accuracy, precision, and sensitivity to the corresponding SW-846, EPA-600, Standard Method or ASTM method identified in this subsection.

(b) The generator proposing an alternate method shall provide the executive director with the following information:

(1) a full description of the proposed method including all equipment used;

(2) a description of the types of wastes and waste matrices analyzed or to be analyzed;

(3) comparative quality assurance results of the proposed method and the corresponding SW-846 method;

(4) a complete assessment of any factors which may interfere with the method; and

(5) a description of the Quality Control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(c) Upon request of the executive director, the generator shall provide additional information as necessary to enable the executive director to adequately review the alternate methods proposed by the generator.

§335.511. Use of Process Knowledge.

(a) Generators may use their existing knowledge about the process to classify or assist in classifying a waste as hazardous, Class 1, Class 2, or Class 3. Process knowledge must be documented and maintained on-site pursuant to §335.513 of this title (relating to Documentation Required). Material safety data sheets, manufacturers' literature, and other documentation generated in conjunction with a particular process may be used to classify a waste provided that the literature provides sufficient information about the waste and addresses the criteria set forth in §§335.504 - 335.508 of this title (relating to Hazardous Waste Determination, Class 1 Waste Determination, Class 2 Waste Determination, Class 3 Waste Determination, and Classification of Specific Industrial Solid Wastes). For classes other than hazardous or Class 1, a generator must be able to demonstrate requisite knowledge of his or her process by satisfying all of the following.

(1) The generator must have a full description of the process, including a list of chemical constituents that enter the process. Constituents listed in Appendix 1 of this subchapter must be addressed in this description.

(2) The generator must have a full description of the waste, including a list of chemical constituents likely to be in the waste. This list should be based on paragraph (1) of this subsection.

(3) The generator may develop a subset of Appendix 1 constituents by which to evaluate the waste utilizing the information from paragraphs (1) and (2) of this subsection.

(4) Documentation of the waste classification must be maintained and, if requested or required, provided to the executive director pursuant to §335.513 of this title.

(b) If the total concentration of the constituents demonstrates that individual analytes are not present in the waste, or that they are present but at such low concentrations that the appropriate maximum leachable concentrations could not possibly be exceeded, the TCLP extraction procedure discussed in §335.505(1) of this title need not be run. If an analysis of any one of the liquid fractions of the TCLP extract indicates that a regulated constituent is present at such high concentrations that, even after accounting for dilution from the other fractions of the extract, the concentration would be equal to or greater than the maximum leachable concentration for that constituent, then the waste is Class 1, and it is not necessary to analyze the remaining fractions of the extract.

§335.512. Executive Director Review.

(a) The executive director may review the generator's classification of any waste to determine if it is appropriately classified. If the executive director determines that a waste has been classified

incorrectly according to the standards set forth in this subchapter, or if the executive director determines that extenuating circumstances that may result in threat of harm to human health or the environment warrant an upgrading of the classification, the executive director may reclassify the waste to the more stringently regulated classification. The executive director shall provide the generator with written notice of his determination and reclassification.

(b) A person who believes that the executive director staff has inappropriately classified a waste pursuant to this section may appeal that decision. The person shall file an appeal directly with the executive director requesting a review of the waste classification. If the person is not satisfied with the decision of the executive director on the appeal, the person may request an evidentiary hearing to determine the appropriateness of the classification by filing a request for hearing with the commission.

§335.513. Documentation Required.

(a) Documentation on each waste stream is required to be maintained by the generator in accordance with the requirements of this subchapter and in accordance with §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators).

(b) The following documentation shall be submitted by the generator to the executive director prior to waste shipment or disposal and not later than 90 days of initial waste generation:

(1) description of waste;

(2) date of initial waste generation;

(3) description of process that generated the waste;

(4) hazardous waste determination;

(5) all analytical data and/or process knowledge allowed under §335.511 of this title (relating to Use of Process Knowledge) used to characterize Class 3 wastes, including quality control data; and

(6) waste classification determination.

(c) The following documentation shall be maintained by the generator on site immediately upon waste generation and for a minimum of three years after the waste is no longer generated or stored or until site closure:

(1) all information required under subsection (b) of this section;

(2) all analytical data and/or process knowledge allowed under §335.511 of this title used to characterize hazardous, Class 1, Class 2, and Class 3 wastes, including quality control data.

(d) The executive director may request that a generator submit all documentation listed in subsections (b) and (c) of this section for auditing the classification assigned. Documentation requested under this section shall be submitted within ten working days of receipt of the request.

(e) Any changes to the information required in sections (b) and (c) of this subsection shall be maintained or submitted according to the timing requirements of this section.

(f) A generator may request information provided to the agency remain confidential in accordance with the Texas Open Records Act, the Government Code, Chapter 552.

§335.514. Variance from Waste Classification Provisions.

(a) The executive director may determine on a case-by-case basis the merits of the following types of variances:

(1) appropriateness of a particular waste classification resulting from application of the classification criteria; and

(2) other matters requiring special attention by the executive director.

(b) Factors to be considered in determining whether a variance should be granted include, but are not limited to, the risk to human health and the environment that is presented by the requested

variance. In addition, such factors as circumstances which were reasonably unforeseeable and beyond the reasonable control of the generator (for the type of variance authorized by subsection (a)(1) of this section); and the results of laboratory analyses and laboratory quality assurance/quality control information (for the type of variance authorized by subsection (a)(2) of this section) shall also be considered. The burden of justifying the need for a variance is on the requestor, and the requestor must submit information sufficient to clearly indicate the issues involved, the reason(s) for the request, and both positive and negative impacts that may result from the granting of the variance. Written documentation on the description of the waste, the date of initial generation, the description of the process that generated the waste, and the analytical data on the waste shall also be submitted with each variance request for a specific waste stream. Prior approval of the variance must be obtained before any change is authorized. If a variance request is denied, the executive director shall provide an explanation of the reasons for the denial in a written response to the requestor.

(c) A person who feels that the executive director has inappropriately denied a request for variance may appeal that decision. The person shall file an appeal directly with the executive director requesting a review of the variance. If the person is not satisfied with the decision of the executive director, he or she may request an evidentiary hearing to determine the appropriateness of the variance, by filing a request for hearing with the commission.

§335.521. Appendices.

(a) Appendix 1.

(1) Table 1.

Figure: 30 TAC §335.521(a)(1)

Table 1. Constituents of Concern and

Their Maximum Leachable Concentrations.

Values are based on information contained in Federal Registers Vol. 55 / Friday, July 27, 1990; Vol. 56 / June 7, 1991; and Integrated Risk Information Systems, U.S. Environmental Protection Agency, and 40 CFR 264 Appendix 9.

Compound	**CAS No.**	**Concentration (mg/l)**
#Acenaphthene	83-32-9	210
Acetone	67-64-1	400
Acetonitrile	75-05-8	20
Acetophenone	98-86-2	400
Acrylamide	79-06-1	0.08
Acrylonitrile	107-13-1	0.6
Aniline	62-53-3	60
#Anthracene	120-12-7	1050
Antimony	7440-36-0	1
Arsenic	7440-38-2	1.8
Barium	7440-39-3	100.0
Benzene	71-43-2	0.50

Compound	CAS No.	Concentration (mg/l)
Benzidine	92-87-5	0.002
Beryllium	7440-41-7	0.08
Bis(2-chloroethyl)ether	111-44-4	0.3
Bis(2-ethylhexyl) phthalate	117-81-7	30
Bromodichloromethane	75-27-4	0.3
Bromomethane	74-83-9	5
Butylbenzyl phthalate	85-68-7	700
Cadmium	7440-43-9	0.5
Carbon disulfide	75-15-0	400
Carbon tetrachloride	56-23-5	0.50
Chlordane	57-74-9	0.03
Chlorobenzene	108-90-7	70
Chloroform	67-66-3	6.0
#Chloro-m-cresol, p	59-50-7	7000
2-Chlorophenol	95-57-8	20
Chromium	7440-47-3	5.0
m-Cresol	108-39-4	200.0*
o-Cresol	95-48-7	200.0*
p-Cresol	106-44-5	200.0*
DDD	72-54-8	1
DDE	72-55-9	1
DDT	50-29-3	1
Dibutyl phthalate	84-74-2	400
1,4-Dichlorobenzene	106-46-7	7.5

Compound	CAS No.	Concentration (mg/l)
3,3-Dichlorobenzidine	91-94-1	0.8
1,2-Dichloroethane	107-06-2	0.50
Dichlorodifluoromethane	75-71-8	700
1,1-Dichloroethylene	75-35-4	0.6
1,3-Dichloropropene	542-75-6	1
2,4-Dichlorophenol	120-83-2	10
2,4-Dichlorophenoxy-acetic acid (2,4-D)	94-75-7	10.0
Dieldrin	60-57-1	0.02
Diethyl phthalate	84-66-2	3000
Dimethoate	60-51-5	70
#2,4-Dimethylphenol	105-67-9	70
#2,6-Dimethylphenol	576-26-1	21
m-Dinitrobenzene	99-65-0	0.4
2,4-Dinitrophenol	51-28-5	7
2,4-Dinitrotoluene (and 2,6-, mixture)	602-01-7	0.13
#Dinoseb	88-85-7	3.5
1,4-Dioxane	123-91-1	30
Dioxins (Poly chlorinated dibenzo-p-dioxins)		
2,3,7,8-TCDD	1746-01-6	0.005
1,2,3,7,8-PeCDD	40321-76-4	0.010
1,2,3,4,7,8-HxCDD	57653-85-7	0.050
1,2,3,6,7,8-HxCDD	34465-46-8	0.050
1,2,3,7,8,9-HxCDD		0.050
Diphenylamine	122-39-4	90

Compound	CAS No.	Concentration (mg/l)
1,2-Diphenylhydrazine	122-66-7	0.4
Disulfoton	298-04-4	0.1
Endosulfan	959-98-8	0.2
Endrin	72-20-8	0.02
#2-Ethoxyethanol	110-80-5	1400
Ethylbenzene	100-41-4	400
Ethylene dibromide	106-93-4	0.004
#Ethylene Glycol	107-21-1	7000
#Fluoranthene	206-44-0	140
#Fluorene	86-73-7	140
Furans (Polychlorinated dibenzo furans)		
2,3,7,8-TCDF	51207-31-9	0.050
1,2,3,7,8-PeCDF		0.100
2,3,4,7,8-PeCDF		0.010
1,2,3,4,7,8-HxCDF	0.050	
1,2,3,6,7,8-HxCDF	0.050	
1,2,3,7,8,9-HxCDF	0.050	
Heptachlor (and its hydroxide)	76-44-8	0.008
Heptachlor epoxide	1024-57-3	0.04
Hexachlorobenzene	118-74-1	0.13
Hexachloro-1,3-butadiene	87-68-3	0.4
Hexachlorocyclopentadiene	77-47-4	20
Hexachloroethane	67-72-1	3.0
Hexachlorophene	70-30-4	1

Compound	CAS No.	Concentration (mg/l)
Isobutyl alcohol	78-83-1	1000
Isophorone	78-59-1	90
Lead	7439-92-1	1.5
Lindane	58-89-9	0.3
Mercury	7439-97-6	0.2
Methacrylonitrile	126-98-7	0.4
Methomyl	16752-77-5	90
Methoxychlor	72-43-5	10.0
#2-Methoxyethanol	109-86-4	14.0
Methyl ethyl ketone	78-93-3	200.0
Methyl isobutyl ketone	108-10-1	200
Methylene chloride	75-09-2	50
Methyl parathion	298-00-0	0.9
#Mirex	2385-85-5	0.7
Nickel	7440-02-0	70
Nitrobenzene	98-95-3	2.0
N-Nitroso-di-n-butylamine	924-16-3	0.06
N-Nitrosodiphenylamine	86-30-6	70
N-Nitrosomethylethylamine	10595-95-6	0.02
N-Nitroso-n-propylamine	621-64-7	0.05
N-Nitrosopyrrolidine	930-55-2	0.2
p-Phenylene diamine	106-50-3	20
Parathion	56-38-2	20
Pentachlorobenzene	608-93-5	3

Compound	CAS No.	Concentration (mg/l)
Pentachloronitrobenzene	82-68-8	10
Pentachlorophenol	87-86-5	100.0
Phenol	108-95-2	2000
Pronamide	23950-58-5	300
#Pyrene	129-00-0	5.9
Pyridine	110-86-1	4
Selenium	7782-49-2	1.0
Silver	7440-22-4	5.0
Styrene	100-42-5	700
1,1,1,2-Tetrachloroethane	630-20-6	10
1,1,2,2-Tetrachloroethane	79-34-5	2
Tetrachloroethylene	127-18-4	0.7
2,3,4,6-Tetrachlorophenol	58-90-2	100
Toluene	108-88-3	1000
Toxaphene	8001-35-2	0.3
trans-1,3-Dichloro-propene	542-75-6	1
Tribromomethane (Bromoform)	75-25-2	70
1,2,4-Trichlorobenzene	120-82-1	70
1,1,1-Trichloroethane	71-55-6	300
Trichloroethylene	79-01-6	0.5
1,1,2-Trichloroethane	79-00-5	6
Trichlorofluoromethane	75-69-4	1000
2,4,5-Trichlorophenoxy-propionic acid (2,4,5 TP or Silvex)	93-72-1	1.0
1,2,3-Trichloropropane	96-18-4	20

Compound	CAS No.	Concentration (mg/l)
2,4,5-Trichlorophenol	95-95-4	400.0
2,4,6-Trichlorophenol	88-06-2	2
Vanadium Pentoxide	1314-62-1	30
Vinyl chloride	75-01-4	0.2
Xylenes (all isomers)	1330-82-1	7000

Constituent added since original rule publication.

* If o-, m-, and p-Cresol concentrations cannot be differentiated, the total cresol concentration is used. The Maximum Concentration for total cresol is 200.0 mg/l.

(2) Table 2.

Figure: 30 TAC §335.521(a)(2)

Table 2. Examples of Ignitable Solids.

Constituents listed from Department of Transportation Regulations, 49 CFR Part 173 Subpart E, October 1, 1993. (Note: The presence of a constituent on this table in a non-hazardous waste does not automatically identify that waste as a Class 1 ignitable waste. The constituents on this table are examples of materials which could be considered Class 1 ignitable waste. The physical characteristics of the waste will be the determining factor as to whether or not a waste is ignitable. Refer to

§335.505(2) of this title (relating to Class 1 Waste Determination) for the Class 1 ignitable criteria.)

Compound or Material

Aluminum, metallic, powder

Alkali metal amalgams

Alkali metal amides

Aluminum alkyl halides

Aluminum alkyl hydrides

Aluminum alkyls

Aluminum borohydrides

Aluminum carbide

Aluminum ferrosilicon powder

Aluminum hydride

Aluminum phosphide

Aluminum resinate

Aluminum silicon powder

Ammonium picrate

2, 2'-Azodi-(2,4-dimethyl-4-methoxyvaleronitrile)

2, 2'-Azodi-(2,4-dimethylvaleronitrile)

1, 1' Azodi-(hexahydrobenzonitrile)

2,2'-Azodi (2-methyl-butyronitrile)

Azodiisobutryonitrile

Barium, metallic

Barium alloys, pyrophoric

Barium azide

Benzene-1,3-disulfohydrazide

Benzene sulfohydrazide

4-(Benzyl(ethyl)amino)-3-ethoxybenzenediazonium zinc chloride

4-(Benzyl(methyl)amino)-3-ethoxybenzenediazonium zinc chloride

Borneol

Boron trifluoride dimethyl etherate

5-tert-Butyl-2,4,6-trinitro-m-xylene

Calcium, metallic

Calcium carbide

Calcium chlorite

Calcium cyanamide

Calcium dithionite

Calcium hypochlorite

Calcium manganese silicon

Calcium silicon powder

Calcium phosphide

Calcium pyrophoric

Calcium resinate

Calcium silicide

Camphor, synthetic

Carbon, activated

Celluloid

Cerium

Cesium metal

Chromic acid or chromic acid mixture, dry

Cobalt naphthenates, powder

Cobalt resinate

Decaborane

2-Diazo-1-naphthol-4-sulpho-chloride

2-Diazo-1-naphthol-5-sulpho-chloride

2,5-Diethoxy-4-morpholinobenzenediazonium zinc chloride

Diethylzinc

4-Dimethylamino-6-(2-dimethyaminoethoxy) toluene-2-diazonium zinc chloride

Dimethylzinc

Dinitrophenolates

Dinitroresorcinol

N,N'-Dinitroso-N,N'-dimethyl terephthalamide

N,N'-Dinitrosopentamethylenetetramine

Diphenyloxide-4,4'disulfohydrazide

Dipicryl sulfide

4-Dipropylaminobenzenediazonium zinc chloride

Ferrocerium

Ferrosilicon

Ferrous metal

Hafnium powder

Hexamine

Hydrides, metal

3-(2-Hydroxyethoxy)-4-pyrrolidin-1-ylbenzenediazonium zinc chloride

Iron oxide, spent

Isosorbide dinitrate mixture

Lead phosphite, dibasic

Lithium acetylide-ethylene diamine complex

Lithium alkyls

Lithium aluminum hydride

Lithium amide, powdered

Lithium borohydride

Lithium ferro silicon

Lithium hydride

Lithium metal

Lithium nitride

Lithium silicon

Magnesium granules

Magnesium aluminum phosphide

Magnesium diamide

Magnesium phosphide

Magnesium silicide

Maneb

Manganese resinate

Methyl magnesium bromide

Methyldichlorosilane

Mono-(trichloro) tetra-(monopotassium dichloro)-penta-s-triazinetrione

–methyl-N'-nitro-Nitrosoguanidine

Naphthalene

Nitrocellulose mixtures

Nitroguanidine

p-Nitrosodimethylaniline

Paraformaldehyde

Pentaborane

Peratic acid

Phosphorous, amorphous, red

Phosphorous, white or yellow

Phosphoric anhydride

Phosphorous pentachloride

Phosphorus pentasulfide

Phosphorus sesquisulfide

Phosphorus trisulfide

Picric acid

Potassium, metallic

Potassium dichloro-s-triazine-trione

Potassium borohydride

Potassium dithionite

Potassium phosphide

Potassium sulfide, anhydrous

Rubidium metal

Silicon powder, amorphous

Silver picrate

Sodium, metallic

Sodium aluminum hydride

Sodium amide

Sodium borohydride

Sodium chlorite

Sodium 2-diazo-1-naphthol-4-sulphonate

Sodium 2-diazo-1-naphthol-5-sulphonate

Sodium dichloro-s-triazine-trione

Sodium dinitro-ortho-cresolate

Sodium hydride

Sodium hydrosulfite

Sodium methylate

Sodium nitrite and mixtures

Sodium picramate, wet

Sodium potassium alloys

Sodium sulfide, anhydrous

Stannic phosphide

Strontium phosphide

Sulfur

Titanium metal powder

Titanium hydride

Trichloroisocyanuric acid

Trichlorosilane

Trichloro-s-triazinetrione

Trinitrobenzoic acid

Trinitrophenol

Trinitrotoluene

Urea nitrate

Zinc ammonium nitrite

Zinc phosphide

Zinc powder

Zinc resinate

Zirconium hydride, powdered

Zirconium picramate

Zirconium powder

Zirconium scrap

(3) Table 3.

Figure: 30 TAC §335.521(a)(3)

Table 3. Maximum Contaminant Levels (MCLs).

Values obtained from 40 CFR Part 141, Subparts B and G, Maximum Contaminant Levels and 40 CFR Part 143, Total Dissolved Solids.

Constituent	**MCL (mg/l)**
Arsenic	0.05
Barium	1
*Benzene	0.005
Cadmium	0.005
*Carbon tetrachloride	0.005
Chlordane	0.002
*Chlorobenzene	0.1
Chromium	0.1

Constituent	MCL (mg/l)
2,4-D	0.07
*Dibromochloropropane	0.0002
*ortho-Dichlorobenzene	0.6
*para-Dichlorobenzene	0.075
*1,2-Dichloroethane	0.005
*1,1-Dichloroethylene	0.007
*trans-1,2-Dichloroethylene	0.1
*1,2-Dichloropropane	0.005
*Ethylbenzene	0.7
Heptachlor	.0004
Heptachlor epoxide	0.0002
Lead	0.05
Mercury	0.002
Methoxychlor	0.04
Pentachlorophenol	0.001
Selenium	0.05
Silver	0.05
*Styrene	0.1
*Tetrachloroethylene	0.005
*1,1,1-Trichloroethane	0.20
*Trichloroethylene	0.005
*Toluene	1
Toxaphene	0.003
2,4,5-TP (Silvex)	0.05
*Vinyl chloride	0.002

Constituent	MCL (mg/l)
*Xylenes (total)	10
Total Dissolved Solids	500

* For a class 3 waste classification, these constituents must also be evaluated using the test methods described in 40 Code of Federal Regulations Part 261, Appendix II. See 335.507(4)(A)(ii) for additional information.

(b) Appendix 2.

Figure: 30 TAC §335.521(b)

Appendix 2

Texas Natural Resource Conservation Commission

Waste Permits Division

Industrial and Hazardous Waste Permits Section

MC 130

P.O.Box 13087

Austin, Texas 78711-3087

http://home.tnrcc.state.tx.us/

(c) Appendix 3.

Figure: 30 TAC §335.521(c)

Appendix 3. FORM CODES

Code	Waste description
	LAB PACKS
	LAB PACKS - Lab packs of mixed wastes, chemicals, lab wastes
001	Lab packs of old chemicals only
002	Lab packs of debris only
003	Mixed lab packs
004	Lab packs containing acute hazardous wastes
009	Other lab packs (Specify in Comments)
	LIQUIDS
	INORGANIC LIQUIDS - Waste that is primarily inorganic and highly fluid (e.g., aqueous), with low suspended inorganic solids and low organic content
101	Aqueous waste with low solvents

102 Aqueous waste with low other toxic organics

103 Spent acid with metals

104 Spent acid without metals

105 Acidic aqueous waste

106 Caustic solution with metals but no cyanides

107 Caustic solution with metals and cyanides

108 Caustic solution with cyanides but no metals

109 Spent caustic

110 Caustic aqueous waste

111 Aqueous waste with reactive sulfides

112 Aqueous waste with other reactives (e.g., explosives)

113 Other aqueous waste with high dissolved solids

114 Other aqueous waste with low dissolved solids

115 Scrubber water

116 Leachate

117 Waste liquid mercury

119 Other inorganic liquids (Specify in Comments)

198 Nonhazardous photographic chemical wastes (inorganic)

199 Brine solution that could also bear the form code 113

ORGANIC LIQUIDS - Waste that is primarily organic and is highly fluid, with low inorganic solids content and low-to-moderate water content

201 Concentrated solvent-water solution

202 Halogenated (e.g., chlorinated) solvent

203 Non-halogenated solvent

204 Halogenated/non-halogenated solvent mixture

205 Oil-water emulsion or mixture

206 Waste oil

207 Concentrated aqueous solution of other organics

208 Concentrated phenolics

209 Organic paint, ink, lacquer, or varnish

210 Adhesives or epoxies

211 Paint thinner or petroleum distillates

212 Reactive or polymerizable organic liquids

219 Other organic liquids (Specify in Comments)

296 Ethylene glycol based antifreeze

297 Nonhazardous liquids containing greater than or equal to (≥) 50 and less than (〈) 500 ppm PCBs

298 Nonhazardous liquids containing greater than or equal to (≥) 500 ppm PCBs

299 Nonhazardous photographic chemical waste (organic)

SOLIDS

INORGANIC SOLIDS - Waste that is primarily inorganic and solid, with low organic content and low-to-moderate water content; not pumpable

301 Soil Contaminated with organics

302 Soil contaminated with inorganics only

303 Ash, slag, or other residue from incineration of wastes

304 Other "dry" ash, slag, or thermal residue

305 "Dry" lime or metal hydroxide solids chemically "fixed"

306 "Dry" lime or metal hydroxide solids not "fixed"

307 Metal scale, filings, or scrap

308 Empty or crushed metal drums or containers

309 Batteries or battery parts, casings, cores

310 Spent solid filters or adsorbents

311 Asbestos solids and debris

312 Metal-cyanide salts/chemicals

313 Reactive cyanide salts/chemicals

314 Reactive sulfide salts/chemicals

315 Other reactive salts/chemicals

316 Other metal salts/chemicals

319 Other waste inorganic solids (Specify in Comments)

388 Empty or crushed glass containers

389 Nonhazardous sandblasting waste

390 Nonhazardous concrete/cement/construction debris

391 Nonhazardous dewatered wastewater treatment sludge

392 Nonhazardous dewatered air pollution control device sludge

393 Catalyst waste

394 Nonhazardous solids containing greater than or equal to (≥) 50 ppm and less than (<) 500 ppm PCBs

395 Nonhazardous solids containing greater than or equal to (≥) 500 ppm PCBs

396 Nonhazardous electrical equipment/devices containing greater than or equal to (≥) 50 ppm and less than (<) 500 ppm PCBs.

397 Nonhazardous electrical equipment/devices containing greater than or equal to (≥) 500 ppm PCBs

398 Nonhazardous soils containing greater than or equal to (≥) 50 ppm and less than (<) 500 ppm PCBs

399 Nonhazardous soils containing greater than or equal to (≥) 500 ppm PCBs

ORGANIC SOLIDS - Waste that is primarily organic and solid, with low-to-moderate inorganic content and water content; not pumpable

401 Halogenated pesticide solid

402 Non-halogenated pesticide solid

403 Solids resins or polymerized organics

404 Spent carbon

405 Reactive organic solid

406 Empty fiber or plastic containers

407 Other halogenated organic solids (Specify in Comments)

409 Other non-halogenated organic solids (Specify in Comments)

488 Wood debris

489 Petroleum contaminated solids

490 Sand blasting waste

491 Dewatered biological treatment sludge

492 Dewatered sewage or other untreated biological sludge

493 Catalyst waste

494 Solids containing greater than or equal to (≥) 50 ppm and less than (<) 500 ppm PCBs

495 Solids containing greater than or equal to (≥) 500 ppm PCBs

496 Electrical equipment/devices containing greater than or equal to (≥) 50 ppm and less than (<) 500 ppm PCBs.

497 Electrical equipment/devices containing greater than or equal to (≥) 500 ppm PCBs

498 Soils containing greater than or equal to (≥) 50 ppm and less than (<) 500 ppm PCBs

499 Soils containing greater than or equal to (≥) 500 ppm PCBs

SLUDGES

INORGANIC SLUDGES - Waste that is primarily inorganic, with moderate-to-high water content and low organic content, and pumpable

501 Lime sludge without metals

502 Lime sludge with metals/metal hydroxide sludge

503 Wastewater treatment sludge with toxic organics

504 Other wastewater treatment sludge

505 Untreated plating sludge without cyanides

506 Untreated plating sludge with cyanides

507 Other sludge with cyanides

508 Sludge with reactive sulfides

509 Sludge with other reactives

510 Degreasing sludge with metal scale or filings

511 Air pollution control device sludge (e.g., fly ash, wet scrubber sludge)

512 Sediment or lagoon dragout contaminated with organics

513 Sediment or lagoon dragout contaminated with inorganics only

514 Drilling mud

515 Asbestos slurry or sludge

516 Chloride or other brine sludge

519 Other inorganic sludges (Specify in Comments)

597 Catalyst waste

598 Nonhazardous sludges containing greater than or equal to (≥) 50 ppm and less than (<) 500 ppm PCBs

599 Nonhazardous sludges containing greater than or equal to (≥) 500 ppm PCBs

ORGANIC SLUDGES - Waste that is primarily organic with low-to-moderate inorganic solids content and water content, and pumpable

601 Still bottoms of halogenated (e.g., chlorinated) solvents or other organic liquids

602 Still bottoms of non-halogenated solvents or other organic liquids

603 Oily sludge

604 Organic paint or ink sludge

605 Reactive or polymerizable organics

606 Resins, tars, or tarry sludge

607 Biological treatment sludge

608 Sewage or other untreated biological sludge

609 Other organic sludges (Specify in Comments)

695 Petroleum contaminated sludges other than still bottoms and oily sludges

696 Grease

697 Catalyst waste

698 Nonhazardous sludges containing greater than or equal to (≥) 50 ppm and less than (<) 500 ppm PCBs

699 Nonhazardous sludges containing greater than or equal to (≥) 500 ppm PCBs

GASES

INORGANIC GASES - Waste that is primarily inorganic with a low organic content and is a gas at

atmospheric pressure

701 Inorganic gases

ORGANIC GASES - Waste that is primarily organic with low-to-moderate inorganic content and is a gas at atmospheric pressure

801 Organic gases

PLANT TRASH

902 Supplemental plant production refuse - Class 2 waste from production, manufacturing, or laboratory operations. The total amount of the supplemental plant production refuse shall not exceed 20% of the annual average of the total plant refuse (form code 999) volume or weight, whichever is less.

999 Plant Trash - Class 2 waste originating in the facility offices or plant production area that is composed of paper, cardboard, linings, wrappings, paper and/or wooden packaging materials, food wastes, cafeteria waste, glass, aluminum foil, aluminum cans, aluminum scrap, stainless steel, steel, iron scrap, plastics, styrofoam, rope, twine, uncontaminated rubber, uncontaminated wooden materials, equipment belts, wirings, uncontaminated cloth, metal bindings, empty containers with a holding capacity of five gallons or less, uncontaminated floor

sweepings, and/or food packaging, that are produced as a result of plant production, manufacturing, laboratory, general office, cafeteria, or food services operations. Personal cosmetics generated by facility personnel, excluding those cosmetics generated as a result of manufacturing or plant production operations.

(d) Appendix 4.

Figure: 30 TAC §335.521(d)

Appendix 4. Seven-Day Distilled Water Leachate Test

This test is intended only for dry, solid wastes, i.e., waste materials without any free liquids.

1. Place a 250 gm. (dry weight) representative sample of the waste material in a 1500 ml. Erlenmeyer flask.

2. Add one liter of deionized or distilled water into the flask and mechanically stir the material at a low speed for five minutes.

3. Stopper the flask and allow to stand for seven days.

4. At the end of seven days, filter the supernatant solution through a .45-micron filter, collecting the supernatant into a separate flask.

5. Subject the filtered leachate to the appropriate analysis.

SUBCHAPTER S: RISK REDUCTION STANDARDS

§§335.559, 335.563, 335.569

STATUTORY AUTHORITY

The amendments are adopted under 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; and under 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 municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

§335.559. Medium Specific Requirements and Adjustments for Risk Reduction Standard Number 2.

(a) Numeric cleanup levels. The subsections (b) - (h) of this section specify requirements that can define or modify numeric cleanup levels such as MSCs or require non-health based criteria to be addressed.

(b) Surface water. In determining the necessity for remediation at the facility, persons shall utilize Chapter 307 of this title (relating to Texas Surface Water Quality Standards) or, if those values are not available, Maximum Contaminant Levels (MCLs) promulgated under the Safe Drinking Water Act, or if MCLs are not available or appropriate, MSCs based upon human ingestion of the water. Any

discharge or release into or adjacent to surface water, including storm water runoff, occurring during or after attainment of Risk Reduction Standard Number 2, shall be compliant with the Texas Surface Water Quality Standards of Chapter 307 of this title and may be subject to the permitting requirements of Chapter 305 of this title (relating to Consolidated Permits) or other authorization from the commission.

(c) Air. In determining the necessity for remediation at the facility, persons shall observe limitations established by the National Ambient Air Quality Standards (NAAQS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) as found in the 40 Code of Federal Regulations (CFR) Parts 50 and 61, respectively, and other applicable federal standards and guidelines of the EPA. Also, limitations established by the commission under the Texas Clean Air Act, the state implementation plan or other federal requirements must be observed. Permit requirements, limitations established by standard exemptions, or other requirements of the commission relative to atmospheric emissions and/or air quality may also apply.

(d) Groundwater. The groundwater cleanup levels shall be determined by a consideration of the following.

(1) For residential exposure, the concentration of a contaminant dissolved in groundwater must not exceed the MCL, if promulgated pursuant the Federal Safe Drinking Water Act, §141, otherwise the water MSC for ingestion determined pursuant to §335.556 of this title (relating to Determination of Cleanup Levels for Risk Reduction Standard Number 2). Phase-separated non-

aqueous liquids released from the unit that is undergoing closure or remediation must be removed or decontaminated.

(2) For nonresidential exposure, the concentration of a contaminant dissolved in groundwater must not exceed the MCL if promulgated pursuant to the Federal Safe Drinking Water Act, §141. If no MCL has been promulgated, the groundwater concentration shall not exceed the water MSC for ingestion determined pursuant to §335.556 of this title, which has been multiplied by a factor of 3.36 for carcinogens or 2.8 for systemic toxicants to account for lower ingestion rates associated with nonresidential worker exposure. Persons must be able to demonstrate that the quality of groundwater at the facility property boundary will be protective for residential exposure. Phase-separated non-aqueous liquids released from the unit that is undergoing closure or remediation must be removed or decontaminated to the extent practicable.

(3) For residential and non-residential exposure, if the groundwater at the facility or area has a naturally occurring background total dissolved solids concentration greater than 10,000 milligrams per liter, the cleanup level for a contaminant dissolved in this groundwater determined pursuant to paragraph (1) or (2) of this subsection, as appropriate, may be adjusted by multiplying by 100. The resulting value becomes the maximum concentration for groundwater for residential and non-residential exposure, respectively.

(4) The executive director may require the evaluation of additional exposure pathways or environmental receptors as part of the adjustment of paragraph (3) of this subsection.

(e) Soil. For all situations, concentrations of contaminants in soils must be protective of surface water, air, and groundwater as specified in subsections (b) - (d) of this section. No soil remaining in place shall exhibit the hazardous waste characteristics of ignitability, corrosivity, or reactivity as defined in 40 CFR Part 261, Subpart C. The sum of concentrations of the volatile organic compounds in vapor phase in soil shall not exceed 1,000 parts per million by weight or volume, as measured by EPA Test Method 8015 or calculated by using soil concentrations and Henry's Law constants.

(f) Residential soil requirements. In addition to the requirements of subsection (e) of this section, the concentration of a contaminant throughout the soil column (i.e., surface and subsurface soils) shall not exceed the lower of the soil MSC, based upon residential human ingestion of soil and inhalation of particulates and volatiles (as defined in the preceeding section), and the residential soil-to-groundwater cross-media protection concentration, a numeric value which is determined as follows:

(1) a value which is 100 times the residential groundwater cleanup level determined by the procedures of subsection (d)(1) of this section. Examples of such values are listed in Appendix II; or

(2) a concentration in soil that does not produce a leachate in excess of MCLs or MSCs for groundwater when subjected to the Synthetic Precipitation Leaching Procedure, Method 1312 of SW 846, Test Methods for Evaluating Solid Waste, United States Environmental Protection Agency. Other test methods that more accurately simulate conditions at the facility may be used in the demonstration in

place of this method, subject to prior approval of the executive director.

(g) Nonresidential soil requirements. Nonresidential soils shall conform to the requirements of subsection (e) of this section. The concentration of a contaminant in near-surface soils (i.e., within two feet of the land surface) shall not exceed the lower of the nonresidential soil MSC defined in paragraph (1) of this subsection, based upon worker ingestion of soil and inhalation of particulates and volatiles, and the nonresidential soil-to-groundwater cross-media protection concentration deficned in paragraph (2) of this subsection. In no event shall compliance be achieved with the surface soil criteria by applying two feet of clean soil onto the surface of a facility or area without prior approval from the executive director. The concentration of a contaminant in subsurface soils (i.e., greater than two feet in depth from the land surface) shall not exceed the nonresidential soil-to-groundwater cross-media protection concentration.

(1) Nonresidential soil MSC. The MSC is calculated using the equations and factors listed in subparagraphs (A) and (B) of this paragraph. The chemical-specific factors SF_o, SF_i, RfD_o, RfD_i, and VF are the same as for the soil MSCs of the preceding section. The derivation of all equations is presented in Appendix I.

(A) Carcinogenic effects equation, in units of milligram per kilogram (mg/kg):

$$MSC = \frac{286.16\ (TR)}{[((5 \times 10^{-5}) \times SF_o) + (SF_i \times [(20/VF) + (4.3 \times 10^{-9})])]}\ mg/kg \qquad \text{Equation 5}$$

(B) Systemic toxicant effects equation, in units of milligram per kilogram (mg/kg):

$$MSC = \frac{102.2}{[(5 \times 10^{-5}/RfD_o) + ((1/RfD_i) \times [(20/VF) + (4.3 \times 10^{-9})])]} \text{ mg/kg} \quad \text{Equation 6}$$

(2) Non-residential soil-to-ground water cross-media protection concentration. Persons must demonstrate that a contaminant in soil does not pose the potential for a future release of leachate in excess of the groundwater concentration considered to be protective for nonresidential worker exposure. Persons may make this demonstration by showing that a contaminant occurs in soil at less than the concentration described in either subparagraph (A) or (B) of this paragraph:

(A) a concentration which is 100 times the nonresidential groundwater cleanup level determined by the procedures of subsection(d)(2) or (3), as applicable, of this section.

(B) a concentration in soil that does not produce a leachate in excess of the groundwater concentration of this paragraph when subjected to the Synthetic Precipitation Leaching Procedure, Method 1312 of SW 846, Test Methods for Evaluating Solid Waste, U. S. Environmental Protection Agency. Other test methods that more accurately simulate conditions at the facility may be used in the demonstration in place of this method, subject to prior approval by the executive director.

(h) Other criteria. For contaminants that do not exceed standards or criteria protective of human health and environmental receptors as determined by the procedures of this section but otherwise adversely impact environmental quality, or the public welfare and safety, or present objectionable characteristics (e.g., taste, odor, etc.), or make a natural resource unfit for use, other scientifically valid published criteria may be utilized such as but not limited to threshold limit values for air and secondary maximum contaminant levels for water.

§335.563. Media Cleanup Requirements for Risk Reduction Standard Number 3.

(a) General. For closure/remediation in accordance with Risk Reduction Standard Number 3, persons shall propose media cleanup levels in accordance with the conditions set forth in subsections (b) - (j) of this section.

(b) Carcinogens. For known or suspected carcinogens, media cleanup levels shall be established at concentrations which represent an excess upperbound lifetime risk of between one in 10,000 and one in one million. The executive director will use one in one million as a goal in establishing such concentration limits. The cumulative excess risk to exposed populations (including sensitive subgroups) shall not be greater than one in 10,000.

(c) Systemic toxicants. For systemic toxicants, media cleanup levels shall represent concentrations to which the human population (including sensitive subgroups) could be exposed on a daily basis without appreciable risk of deleterious effect during a lifetime or part of a lifetime and

where:

(1) the hazard quotient, which is the ratio of a single systemic toxicant exposure level for a specified time period to a reference dose for that systemic toxicant derived from the same time period, shall not exceed one; and

(2) the hazard index shall not exceed one. The hazard index is the sum of the hazard quotients for a single or multiple systemic toxicants which affect the same target organ or act by the same method of toxicity and act through a single or multiple media exposure pathways.

(d) Additional considerations. In establishing media cleanup levels pursuant to subsections (b) and (c) of this section, the executive director may consider and may direct persons who submit plans or reports in accordance with §335.553(b) of this title (relating to Required Information) to address the following:

(1) multiple contaminants in a medium;

(2) exposure to multiple contaminated media;

(3) reasonable expected future exposure conditions at the facility; and

(4) the technical limitations, effectiveness, practicability, or other relevant features of available remedies.

(e) Standard exposure factors. In determining media cleanup levels pursuant to subsections (b) and (c) of this section, persons shall use the standard exposure factors for residential use of the facility as set forward in Table 1 (located in §335.553 of this title) unless the person documents to the satisfaction of the executive director that:

(1) site-specific data warrant deviation from the standard exposure factors; or

(2) a land use other than residential is more appropriate based on:

(A) historical, current, and probable future land use; and

(B) effectiveness of institutional or legal controls placed on the future use of the land.

(f) Air. Media cleanup levels for air will be established to meet the lowest of the values determined by the requirements of paragraphs (1) - (3) of this subsection.

(1) Concentrations of contaminants in air that emanate from a facility, area of soil contamination, or plume of contaminated groundwater shall not exceed:

(A) National Ambient Air Quality Standards (NAAQS), National Emission Standards for Hazardous Air Pollutants (NESHPAS) (as found in 40 Code of Federal Regulation Parts 50 and 61 respectively) and other applicable federal standards and guidelines of the Environmental Protection Agency; and

(B) concentrations established by the commission under the Texas Clean Air Act, the state implementation plan, or other federal requirements. Permit requirements, limitations established by standard exemptions, or other requirements relative to atmospheric emissions and/or air quality may also apply.

(2) For residential exposure conditions, concentrations of contaminants in air that emanate from a facility, area of soil contamination, or plume of contaminated ground water shall not exceed concentrations that satisfy subsections (b) - (e) of this section at exposure points located both within the contaminated area and at the property boundary.

(3) For nonresidential exposure conditions, concentrations of contaminants in air that emanate from a facility, area of soil contamination, or plume of contaminated groundwater shall not exceed either OSHA permissible exposure limits, threshold limit values or other criteria applicable to an industrial exposure setting within the facility boundaries or concentrations that satisfy subsections (b) - (e) of this section at the property boundary.

(g) Surface water. In determining the necessity for remediation at the facility, persons shall utilize Chapter 307 of this title (relating to Texas Surface Water Quality Standards) or, if those values are not available, maximum contaminant levels (MCLs) promulgated under the Safe Drinking Water Act or, if MCLs are not available or appropriate, values calculated pursuant to subsections (b) - (e) of this section based upon human ingestion of the water or other site-specific exposure pathway. Any discharge or release into or adjacent to surface water, including storm water runoff, occurring during or after attainment of Risk Reduction Standard Number 3, shall be compliant with Chapter 307 of this title and may be subject to the permitting requirements of Chapter 305 of this title (relating to Consolidated Permits) or other authorization from the commission.

(h) Groundwater. Media cleanup levels for groundwater that is a current or potential source of drinking water as defined in paragraph (1) of this subsection shall not exceed MCLs promulgated under the Safe Drinking Water Act or, if MCLs are not available, values calculated according to subsections (b) - (e) of this section based upon human ingestion of the water. Cleanup levels for groundwater may be subject to the modifications of paragraphs (2) - (4) of this subsection.

(1) Groundwater that has a background total dissolved solids (TDS) content less than or equal to 10,000 milligrams per liter (mg/L) and that occurs within a geologic zone that is sufficiently permeable to transmit water to a pumping well in usable quantities shall be considered a current or potential source of drinking water for the purpose of determining cleanup levels.

(2) The cleanup levels shall be achieved throughout the plume of contaminated groundwater, with the exception of the circumstances described in subparagraphs (A) - (C) of this paragraph:

(A) when alternate concentration limits of §335.160(b) of this title (relating to Alternate Concentration Limits) have been approved in a permit issued by the commission for a hazardous waste management facility;

(B) when the selected remedy calls for waste to be left in place and when appropriate control measures are installed or operated, the executive director may authorize the zone underlying the area encompassing the original source(s) of release to be excluded from this requirement;

(C) when the person documents to the executive director's satisfaction pursuant to subsection (e) of this section that a future land use other than residential is appropriate for the facility or area and further demonstrates that institutional or legal controls will effectively prevent use of the contaminated groundwater, the extent of plume remediation may be determined in a manner consistent with §335.160(b) of this title.

(3) The executive director may determine that remediation of groundwater to the extent required in paragraphs (1) or (2) of this subsection is not necessary if the person demonstrates to the executive director's satisfaction that:

(A) the contaminant is present in groundwater that is not a current or potential source of drinking water and the contaminated groundwater is not hydraulically connected with and is not likely to migrate to either surface water or to groundwater that is a current or potential source of drinking water; or

(B) restoration of the groundwater to these levels is technically impracticable.

(4) If a determination is made pursuant to paragraph (3) of this subsection, the executive director may require any alternative measures or cleanup levels that are necessary to protect human health and the environment. At a minimum, for all cases described in this subsection, phase-separated non-aqueous liquids shall be removed from groundwater zones to the extent practicable.

(i) Soil. Concentrations of contaminants in soil shall not exceed the following values:

(1) the values calculated pursuant to subsections (b) - (d) of this section based upon human ingestion of the soils at all points where direct contact exposure to the soils may occur; and

(2) values which will allow the air, surface water, and groundwater cleanup levels specified in subsections (f) - (h) of this section, respectively, to be maintained over time taking into account the effects of engineering controls.

(A) Such determinations shall be based on sound scientific principles including fate and transport evaluation of contaminant migration. Procedures and conclusions shall be documented to the satisfaction of the executive director.

(B) The executive director may require the evaluation of additional migration pathways beyond those listed in this section if determined necessary. Such additional pathways may include but are not limited to, food chain contamination, impairment of soil for agricultural purposes, phytotoxicity, accumulations of contaminants in sediment of surface water bodies, or other impairments of natural resources, land, or water use.

(j) Other adjustments. Cleanup levels may be adjusted according to paragraphs (1) - (3) of this subsection.

(1) If the practical quantitation limit (PQL) or the background concentration (represented by results of analyses of samples taken from media that are not affected by waste management or industrial activities) for a contaminant is greater than the cleanup level determined by procedures of this section, then the greater of the PQL or background shall become the cleanup level.

(2) Other scientifically valid published criteria, such as, but not limited to threshold limit values for air and secondary maximum contaminant levels for water, shall be utilized as cleanup levels for contaminants for which the procedures of this section are not appropriate (e.g., mixtures or substances that do not have toxicological data) or that do not exceed standards or criteria protective of

human health as determined by the procedures of this section but otherwise adversely impact environmental quality, or the public welfare and safety, or present objectionable characteristics (e.g., taste, odor, etc.), or make a natural resource unfit for use.

(3) More stringent cleanup levels may be established for a facility than are specified in this section if, by utilizing available guidance or scientific literature, the executive director determines that it is necessary to protect environmental receptors.

§335.569. Appendix III.

For the purposes of this subchapter, the following is the model deed certification language.

Figure: 30 TAC §335.569

MODEL DEED CERTIFICATION LANGUAGE

STATE OF TEXAS

( ) COUNTY

INDUSTRIAL SOLID WASTE

CERTIFICATION OF REMEDIATION

KNOW ALL MEN BY THESE PRESENTS THAT:

Pursuant to the Rules of the Texas Natural Resource Conservation Commission pertaining to Industrial Solid Waste Management, this document is hereby filed in the Deed Records of County, Texas in compliance with the recordation requirements of said rules:

I

(Company Name) has performed a remediation of the land described herein. A copy of the Notice of Registration (No.), including a description of the facility, is attached hereto and is made part of this filing. A list of the known waste constituents, including known concentrations (i.e., soil and ground water, if applicable), which have been left in place is attached hereto and is made part of this filing. Further information concerning this matter may be found by an examination of company records or in the Notice of Registration (No.) files, which are available for inspection upon request at the central office of the Texas Natural Resource Conservation Commission in Austin, Texas.

The Texas Natural Resource Conservation Commission derives its authority to review the remediation of this tract of land from Texas Health and Safety Code, §361.002, which enables the Texas Natural Resource Conservation Commission to promulgate closure and remediation standards to safeguard the health, welfare and physical property of the people of the State and to protect the environment by controlling the management of solid waste. In addition, pursuant to the Texas Water Code, §5.012 and §5.013, Texas Water Code, Annotated, Chapter 5, the Texas Natural Resource Conservation Commission is given primary responsibility for implementing the laws of the State of Texas relating to water and shall adopt any rules necessary to carry out its powers and duties under the Texas Water

Code. In accordance with this authority, the Texas Natural Resource Conservation Commission requires certain persons to provide certification and/or recordation in the real property records to notify the public of the conditions of the land and/or the occurrance of remediation. This deed certification is not a representation or warranty by the Texas Natural Resource Conservation Commission of the suitability of this land for any purpose, nor does it constitute any guarantee by the Texas Natural Resource Conservation Commission that the remediation standards specified in this certification have been met by (Company name).

II

Being a acre tract, more or less, out of the (Company Name)'s acre tract in the (Name) League (No.), Abstract (No.), recorded in Volume (No.), Page (No.) of the Deed of Records County, Texas, said acre tract being more particularly described as follows:

(Insert metes and bounds description here)

For Standard 2 cleanups: (Contaminants/contaminants and waste) deposited hereon have been remediated (to meet residential soil criteria/ to meet non-residential (i.e., industrial/commercial) soil criteria)), in accordance with a plan designed to meet the Texas Natural Resource Conservation Commission's requirements in 30 Texas Administrative Code, §335.555), which mandates that the remedy be designed to eliminate substantial present and future risk such that no post-closure care or

engineering or institutional control measures are required to protect human health and the environment. Future land use is considered suitable for (residential, non-residential (i.e.,industrial/commercial)) purposes in accordance with risk reduction standards applicable at the time of this filing. Future land use is intended to be (residential, non-residential).

For Standard 3 cleanups: (Contaminants/contaminants and waste) deposited hereon have been remediated (to meet residential soil criteria/to meet non-residential (i.e., industrial/commercial) soil criteria) in accordance with a plan designed to meet the requirements of 30 Texas Administrative Code, §335.561 (Risk Reduction Standard Number 3), which mandates that the remedy be designed to eliminate or reduce to the maximum extent practicable, substantial present or future risk. The remediation plan (does/ does not) require continued post-closure care or engineering or institutional control measures. Future use of the property is considered appropriate for (describe) in accordance with risk reduction standards applicable at the time of this filing. Institutional or legal controls placed on the property to ensure appropriate future use include (describe).

For both Standard 2 and 3 cleanups where the remedy is based upon non-residential soil criteria: The current or future owner must undertake actions as necessary to protect human health or the environment in accordance with the rules of the Texas Natural Resource Conservation Commission.

III

The owner of the site is (Company Name), a Texas corporation, and its address is (P.O. Box or Street), (City), Texas (Zip Code), where more specific information may be obtained from the (plant manager, owner).

EXECUTED this the day of , 20 .

(Company Name)

a Texas corporation

(Name)

Plant Manager

STATE OF TEXAS

( ) COUNTY

BEFORE ME, on this the day of , personally appeared (Name), (Plant Manager, Owner) of (Company Name), a Texas corporation, known to me to be the person and agent of said corporation whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and in the capacity therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this the day of , 20__.

Notary Public in and

for the State of Texas,

County of