

The Texas Natural Resource Conservation Commission (commission) proposes 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.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary purpose of the proposed 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 proposal were promulgated by the EPA in issues of the *Federal Register* from November 1996 through June 2000. In addition, an earlier federal regulation promulgated in the December 6, 1994 issue of the *Federal Register* is also addressed.

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 proposal. For example, the statutory citations involving the Solid Waste Disposal Act are inconsistent throughout Chapter 335. Citations as long and complex as the following are found in Chapter 335: "Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7." Another example is "Solid Waste Disposal Act, Health and Safety Code." Therefore, in order to bring consistency to Chapter 335 with regard to these statutory citations, the

commission proposes to amend Chapter 335 to make all the citations involving the Solid Waste Disposal Act be “Texas Health and Safety Code, Chapter 361.” Such amendments would also simplify the language and make the rules more readable. The commission also proposes to correct or delete the out-of-date references to the Texas Water Commission and the Texas Department of Health, and to correct rule references and make other administrative corrections, where appropriate.

SECTION BY SECTION DISCUSSION

Section 335.1(2), the definition of “Act,” is proposed to be amended to simplify the statutory citation by changing “The Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992)” to “Texas Health and Safety Code, Chapter 361.”

Section 335.1(7), the definition of “Ancillary equipment,” is proposed to be amended to add the phrase “solid waste or” just prior to each occurrence of the phrase “hazardous waste,” in order to clarify that ancillary equipment is not limited to hazardous waste ancillary equipment. There are also stylistic changes to simplify and clarify the definition of “Ancillary equipment.” There are a number of other such amendments proposed to clarify that the meanings are not limited in scope to definitions involving hazardous waste. These are as follows: §335.1(65), the definition of “In operation”; §335.1(69), the definition of “Individual generation site”; §335.1(79), the definition of “Land treatment facility”; §335.1(80), the definition of “Landfill”; §335.1(81), the definition of “Landfill cell”; §335.1(82), the definition of “Leachate”; §335.1(83), the definition of “Leak-detection system”; §335.1(84), the definition of “Liner”; §335.1(85), the definition of “Management or hazardous waste management”; §335.1(90), the definition of “Movement”; §335.1(104), the definition of “Personnel or facility

personnel”; §335.1(107), the definition of “Pile”; §335.1(113), the definition of “Processing”; §335.1(132), the definition of “Spill”; §335.1(135), the definition of “Sump”; §335.1(138), the definition of “Tank system”; §335.1(140), the definition of “Thermal processing”; §335.1(152), the definition of “Unfit-for-use tank system”; and §335.1(162), the definition of “Zone of engineering control.” The definition of “Unfit-for-use tank system” is also proposed to be amended to correct a typographical error by removing the extraneous phrase “Waste and Municipal Hazardous Waste except as otherwise specified in §335.261 of this title.”

Section 335.1(14), the definition of “Class 1 wastes,” is proposed to be amended to delete the sentence “Class 1 waste is also referred to throughout this chapter as Class I waste.” This proposal contains deletions of every instance of “Class I,” with “Class 1” being proposed as the replacement. Section 335.1(15), the definition of “Class 2 wastes,” is proposed to be amended to delete the sentence “Class 2 waste is also referred to throughout this chapter as Class II waste.” There are no other occurrences of “Class II” in this chapter. Section 335.1(16), the definition of “Class 3 wastes,” is proposed to be amended to delete the sentence “Class 3 waste is also referred to throughout this chapter as Class III waste.” The only other occurrence of “Class III” is found under §335.53, where it is proposed to be deleted and replaced with “Class 3.”

Section 335.1(29), (52), and (119), the definitions of “Corrective action management unit (CAMU),” “Facility,” and “Remediation waste,” respectively, are proposed to be corrected by changing “the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action)” to “Texas Water Code, §7.031 (Corrective Action Relating

to Hazardous Waste).” These proposed amendments provide the correct statutory reference, in accordance with Acts 1997, 75th Legislature, Chapter 1072, Section 2, effective September 1, 1997.

Section §335.1(32) contains the phrase “Code of Federal Regulations (CFR).” The commission proposes that every subsequent occurrence of “Code of Federal Regulations” within this section be replaced with “CFR” for the purpose of improved readability. Such amendments are proposed as necessary throughout this proposal.

New §335.1(35) is proposed to be the definition of “Dioxins and furans (D/F),” meaning “Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.” This definition would conform to the federal regulations setting standards for hazardous air pollutants for hazardous waste combustors promulgated by EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828). To account for the addition of this new proposed paragraph, the numbering in subsequent paragraphs is proposed to be increased by one.

Proposed §335.1(89) would be amended to conform to the EPA regulations concerning hazardous remediation wastes promulgated in the November 30, 1998 issue of the *Federal Register* (63 FR 65874). The commission proposes to amend the definition of “Miscellaneous unit” to add the phrase “staging pile” to the list of units excluded from this definition. Miscellaneous units are units that do not have regulatory provisions specific to that individual type of unit. Because provisions for staging piles are included in this proposal, it is appropriate to add “staging piles” to the list of units that fall outside the definition of miscellaneous unit.

Proposed §335.1(129)(A)(iv) is proposed to be amended to add punctuation marks and the word “through,” and to replace the word “in” with “, at” for internal consistency. Section 335.1(129)(A)(iv) is also proposed to be amended to state that 40 Code of Federal Regulations (CFR) §261.38 would be adopted by reference as amended through July 7, 2000, (65 FR 42292). This proposed amendment would include technical corrections and clarifications made to the comparable fuel specifications promulgated by the EPA in the September 30, 1999 and November 19, 1999 issues of the *Federal Register* (64 FR 52828) and (64 FR 63209), respectively. Also under proposed §335.1(129)(A)(iv), the references to “30 TAC §335.1(123)(A)(iv)” would be changed to “subparagraph (A)(iv) under the definition of ‘Solid Waste’ at 30 TAC §335.1.” This proposed amendment would preclude the necessity of amending the rule at a future date when the preceding paragraphs are renumbered. The same change is proposed under §335.1(129)(A)(iv)(I). Minor editing changes are also proposed under §335.1(129)(A)(iv).

New §335.1(132) is proposed to be the definition of “Staging pile,” meaning “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 at §335.152(a) of this title (relating to Standards).” This definition would conform to the EPA regulations concerning hazardous remediation wastes promulgated in the November 30, 1998 issue of the *Federal Register* (63 FR 65874). To account for the addition of this new proposed paragraph, the numbering in subsequent paragraphs is proposed to be increased by one.

New §335.1(138) is proposed to be the definition of “TEQ,” meaning “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.” This definition would conform to the federal regulations setting standards for hazardous air pollutants for hazardous waste combustors promulgated by EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828). To account for the addition of this new proposed paragraph, the numbering in subsequent paragraphs is proposed to be increased by one.

Sections 335.3, 335.118(a)(2), 335.119(a)(2), 335.303, 335.305(c), 335.407(e), 335.411(b)(3), and 335.412(3) are proposed to be amended by changing “the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7” to “Texas Health and Safety Code, Chapter 361.”

Sections 335.4, 335.45(b), 335.177(1), 335.202(13), 335.224(5)(J), 335.303, 335.402(4), 335.403, 335.406(d)(1), and 335.569 are proposed to be amended by correcting the reference to the commission’s predecessor agency “Texas Water Commission” to “Texas Natural Resource Conservation Commission.”

Section 335.6(h) is proposed to be amended to correct the typographical error “§334.24,” by changing it to “§335.24.”

Section 335.9(a)(2)(B) is proposed to be deleted because this requirement for generators to submit their Annual Waste Summary electronically for the 1997 reporting year before January 25, 1998 is out-of-

date. Subparagraph (C) is proposed to be amended to redesignate it as subparagraph (B) to account for the deletion of §335.9(a)(2)(B), and to delete the obsolete phrase “for calendar years after 1997.”

Section 335.10(a)(1) is proposed to be amended to delete the obsolete reference to Form TNRCC-0311B, so that the end of this paragraph reads: “a Texas Natural Resource Conservation Commission (TNRCC) manifest on Form TNRCC-0311 is prepared.” Section 335.10(b)(16) is proposed to be amended by deleting the obsolete reference to the Texas Department of Health’s state registration and/or permit number, because these numbers are now TNRCC numbers. Section 335.10(b)(18) is proposed to be amended to delete the last sentence, which reads: “If additional space is necessary for waste descriptions, enter these additional descriptions in Item 28 on the continuation sheet,” because this is no longer applicable. Section 335.10(d)(3) is proposed to be amended to change “§335.13(a)” to “§335.13(i),” in order to correct the rule reference.

Section 335.13(e) is proposed to be amended to remove references to maquiladora generators, because they are no longer registered at the TNRCC as generators. To this end, the third row in the table in this subsection is proposed to be deleted in its entirety. Similarly, the words “Maquiladora or” are proposed to be deleted in the fifth row of the table. For the same reason, §335.13(f) is proposed to be amended to delete paragraph (2), which includes as a registered generator “a Texas parent or a Texas sister company of a twin plant (maquiladora) who imports hazardous waste or Class 1 waste from a foreign country into or through Texas.”

Section 335.17(a)(2) is proposed to be amended by changing “the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2” to “Texas Health and Safety Code, §361.003.”

Section 335.24(h) is proposed to be amended to correct the inadvertent omission of language previously existing under this section, regarding the requirement to provide notification of recycling nonhazardous industrial solid waste. As published in the October 23, 1998 issue of the *Texas Register* (23 TexReg 10878), the following phrase was inadvertently deleted: “industrial solid wastes that are nonhazardous recyclable materials and.” This phrase is proposed to be reinserted under §335.24(h) in the second sentence just after the phrase “In addition.” Section 335.24(i) is proposed to be amended by changing “the Solid Waste Disposal Act, Health and Safety Code, §361.090” to “Texas Health and Safety Code, §361.090.” Section 335.24(l) is proposed to be corrected by changing the phrase “§335.261 of this title” to “Subchapter H, Division 5 of this chapter.”

Section 335.28 is proposed to be amended by rearranging and updating the text, and dividing the context of this section into three subsections. In addition, because the memorandum with the Texas Department of Health is currently adopted by reference under §7.118 of this title, it is proposed that this section merely refer to this adoption by reference. Under §335.28(a), the memorandum of understanding between the Attorney General and the Texas Water Commission concerning public participation is proposed to be adopted by reference, with no substantial changes to the current rule language. Under proposed §335.28(b), the adoption by reference under §7.118 of this title of the memorandum of understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission is noted, as follows: “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).” Under proposed §335.28(c), the chief clerk’s office address, where copies of the memoranda of understanding are available, is updated.

Section 335.29, relating to Adoption of Appendices by Reference is proposed to be amended to update the *Federal Register* reference date for the adoption of Appendix IX under 40 CFR Part 261, by adding the parenthetical phrase “(as amended through October 19, 1999 (64 FR 56256)).” This proposed change would update the adoption by reference of the wastes excluded by the EPA under 40 CFR §260.20 and §260.22.

Section 335.31 is proposed to be amended to update references to be consistent with 40 CFR §260.11, as amended by EPA as published in the May 14, 1999 issue of the *Federal Register* (64 FR 26315). This proposed amendment would incorporate updates to “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, Third Edition.

Section 335.43 is proposed to be amended to delete subsections (b) - (d) because they contain requirements and definitions that are either redundant with other portions of Chapter 335 or they are obsolete. Section 335.43(a) is proposed to be amended by correcting the reference to the commission’s predecessor agency “Texas Water Commission” to “Texas Natural Resource Conservation

Commission,” and by deleting the phrase “subsection (b) of this section and” because subsection (b) is proposed for deletion. Subsections (b) and (d) are proposed for deletion because they are redundant with §335.2(c). Subsection (c) is proposed for deletion because it contains obsolete language. The terms “on-site storage, processing, or disposal” and “commenced on-site storage, processing, or disposal of hazardous waste” were rendered obsolete when these phrases were deleted from subsection (b) and from §335.2(c) as published in the October 25, 1991 issue of the *Texas Register* (16 TexReg 6065), in response to Senate Bill 1099, 72nd Legislature, 1991. As a result of these terms being removed from the aforementioned rules, there is no longer a need for them to be specifically defined. Section 335.43(e) is proposed to be amended by correcting the reference to the commission’s predecessor agency “Texas Water Commission” to “Texas Natural Resource Conservation Commission,” and by redesignating the subsection as §335.43(b) in order to account for the proposed deletion of subsections (b) - (d).

Section 335.44(a) is proposed to be amended to replace the reference to §335.43(b), which is proposed to be deleted, with a reference to §335.2(c), which contains the same language relating to the application deadline specified in existing §335.43(b).

Section 335.45(b), in addition to the proposed amendment involving the name of the commission discussed earlier in this preamble, is proposed to be amended by changing “the Waste Disposal Act, Chapter 361, Texas Health & Safety Code Annotated (Vernon Pamphlet 1992)” to “Texas Health and Safety Code, Chapter 361.” Section 335.45(b) is also proposed to be amended to update the last sentence by including a reference to the section relating to solid waste permit modifications. This

proposed amendment is necessary because such permits are subject to change not only by amendment, but by modification, as well. Thus, the following phrase is proposed to be added: “or to modification under §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).”

In addition to the changes regarding the phrase “Code of Federal Regulations” and “CFR” discussed earlier in this preamble, §335.47 is proposed to be amended to delete current subsection (b)(2) and (4) because the referenced federal regulations (i.e., 40 CFR §264.72 and §264.76, respectively) are not included in the commission’s rules. In other words, 40 CFR §264.72 and §264.76 are excepted from adoption by reference under §335.152(a)(4) because the same requirements contained in these federal regulations are contained in the commission’s rules under §335.12 and §335.15, respectively. Compliance with §335.12 and §335.15 is already required under §335.47(b)(5) and (6), respectively. Subsection (b)(3) - (6) is proposed to be renumbered as subsection (b)(2) - (5) to account for the proposed deletion of current subsection (b)(2). Under proposed §335.47(b)(3), the requirement to comply with 40 CFR §264.75, concerning biennial report, is added in order to update the commission’s rule in this regard. This update is necessary due to the previous adoption of rules published in the May 14, 1999 issue of the *Texas Register* (24 TexReg 3726), which added this federal regulation concerning biennial reporting to the commission’s rules and deleted §335.154, relating to Reporting Requirements for Owners and Operators, as a streamlining measure. In other words, the federal requirements under 40 CFR §264.75 were adopted by the commission to replace the requirements under §335.154. Therefore, because compliance with §335.154 is currently required under §335.47(b)(6), it is appropriate to propose that compliance with its replacement, 40 CFR §264.75, be required, and that

any reference to §335.154 be deleted. Under proposed §335.47(b)(4), the reference to §335.15 is proposed to be deleted because it is redundant with §335.47(b)(5). Under proposed §335.47(b)(5), the reference to §335.154 is deleted.

Section 335.69(a)(1)(A) and (B) is proposed to be amended by rearranging the location of the cross-reference to 40 CFR Part 265, Subpart CC. Section 335.69(a)(4)(A) is proposed to be amended to delete the superfluous comma between “CFR” and “Part 265.” Section 335.69(f)(2) is proposed to be amended to add the phrase “and §265.178” to conform to the federal regulations published by the EPA in the December 6, 1994 issue of the *Federal Register* (59 FR 62896). This proposed amendment would revise the accumulation time provisions, for generators of greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month, by removing the requirement to comply with the air emission standards for containers of 40 CFR Part 265, Subparts AA, BB, and CC.

Sections 335.76(g) and 335.201(c) are proposed to be amended by deleting “the Solid Waste Disposal Act,” so that the statutory reference is proposed as “Texas Health and Safety Code, Chapter 361.”

Sections 335.78(c)(6), (f)(3)(G), (g)(3)(G), and 335.91(e) are proposed to be corrected by changing each occurrence of the phrase “§335.261 of this title” to “Subchapter H, Division 5 of this chapter.”

Section 335.78(j) is proposed to be amended to conform to the federal regulations as promulgated by the EPA in the July 14, 1998 issue of the *Federal Register* (63 FR 37780). This proposed amendment addresses the situation where a conditionally exempt small quantity generator’s wastes are mixed with

used oil. The proposed amendment would delete “If a conditionally exempt small quantity generator's wastes are mixed with used oil and the mixture is going to recycling, the mixture is subject to Chapter 324 of this title (relating to Used Oil) and 40 CFR Part 279” and replace it with the following wording:

“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.”

Note that the primary changes in the proposal are the addition of the phrase “if it is destined to be burned for energy recovery” and clarification of the requirements for materials produced from such mixtures.

Section 335.93(e) is proposed to be amended by replacing the general phrase “as may be required or approved by the commission” with a more specific reference to the applicable portion of the commission’s spill rules, Chapter 327, relating to Spill Prevention and Control. Thus, this subsection is proposed to be amended to read as follows: “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.”

Section 335.94(a) is proposed to be amended by adding the clarifying phrase “owned or operated by a registered transporter,” so that the subsection reads as follows: “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....”

Section 335.111(a) is proposed to be amended to conform to the federal regulations promulgated by the EPA in the December 6, 1994 issue of the *Federal Register* (59 FR 62896) and the November 30, 1998 issue of the *Federal Register* (63 FR 65874). Both of these promulgations address the applicability of the hazardous waste interim status standards. The first proposed amendment would add “Except as provided in 40 CFR §265.1080(b)” to the beginning of the second sentence under §335.111(a). This clarifies that the interim status standards under 40 CFR Part 265, Subpart CC do not apply to certain waste management units, as listed under 40 CFR §265.1080(b)(1) - (8). The second proposed amendment would add 40 CFR §264.554, relating to staging piles, to the requirements which apply to interim status facilities.

Section 335.115 is proposed to be amended to insert the following phrase for completeness of describing additional reports: “and the reports described in this subchapter.”

Section 335.164(7)(B) is proposed to be amended by adding the clarifying phrase “that exhibit statistically significant evidence of contamination” just after the phrase “all monitoring wells.” Section

335.164(7)(D)(i) is proposed to be amended in a similar fashion, adding the clarifying phrase “that exhibits statistically significant evidence of contamination” just after the phrase “each monitoring well.”

Section 335.165(7) is proposed to be amended by adding the clarifying phrase “reasonably expected to be in or derived from waste managed at the site” just after the phrase “all constituents contained in Appendix IX of 40 CFR Part 264.”

Section 335.168(b) is proposed to be amended by correcting a typographical error caused by a previous rulemaking as published in the February 13, 1996 issue of the *Texas Register* (21 TexReg 1142). At that time, the adoption of a new subsection (f) under §335.168, and the corresponding redesignations of the old subsections (f) - (i) to new subsections (g) - (j) created the need for a cross-reference change under subsection (b), which was not accomplished. Therefore, the existing cross-reference to subsection (i) under §335.168(b) needs to be changed to subsection (j), and this change is proposed.

Section 335.168(e)(1)(C) is proposed to be changed to correct the grammar by adding the word “is” at the beginning of the subparagraph.

Section 335.181 is proposed to be amended by changing “the Texas Solid Waste Disposal Act, §361.0232” to “Texas Health and Safety Code, §361.0232.”

Section 335.201(a)(3) is proposed to be amended by changing “the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §13” to “Texas Health and Safety Code, Chapter 361, Subchapter F.”

Section 335.205(a) is proposed to be amended for clarity by adding the phrase “any of the following:” and by adding paragraphs (1) - (5) which consist of the text from existing subsections (a) - (e) and (h), so that it is clear that all the prohibitions under paragraphs (1) - (5) apply. Existing §335.205(d), (f), (g), (i), and (j) are proposed to be reformatted as new subsections (b) - (f).

Section 335.206 is proposed to be amended by changing “the Texas Solid Waste Disposal Act, Texas Health & Safety Code Ann. Chapter 361 (Vernon) §361.103” to “Texas Health and Safety Code, §361.103.”

Section 335.221(a) is proposed to be amended to incorporate by reference 40 CFR Part 266, as amended through November 19, 1999 (64 FR 63209), except as noted in this section. This proposed amendment would incorporate changes promulgated in the September 30, 1999 issue of the *Federal Register* (64 FR 52828) which added language regarding integration of the MACT standards and which amended rule language regarding management prior to burning, standards to control particulate matter, and regulation of residues. The aforementioned November 19, 1999 promulgation amended 40 CFR Part 266, Appendix VIII Table by adding a note that analysis is not required for those compounds that do not have an established F039 nonwastewater concentration limit.

Section 335.221(a)(1) is proposed to be amended to correct cross-references. These proposed changes include changing “§266.100(b)” to “§266.100(c),” to account for the renumbering promulgated in the September 30, 1999 issue of the *Federal Register* (64 FR 53075); changing the incorrect reference “§266.212” to “§266.112;” and changing the reference to “the applicable requirements of subparts A

through H, BB and CC of parts 264 and 265 of this chapter” to the corresponding commission regulations under Chapter 335. Section 335.221(a)(16) is proposed to be amended to conform with EPA’s renumbering of 40 CFR §266.105(c) to §266.105(d) in the September 30, 1999 issue of the *Federal Register* (64 FR 52828). Section 335.221(a)(16) is also proposed to be amended by deleting the phrase “and except as provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities),” because §335.226 has been repealed. Section 335.221(b) is proposed to be amended by replacing the phrase “§§335.221 - 335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces)” with the phrase “this division,” for simplification purposes and because §§335.226 - 335.229 have been repealed. Thus, “this division,” as proposed in this context, refers to the following sections of Subchapter H, Division 2, relating to Hazardous Waste Burned for Energy Recovery: §§335.221 - 335.225.

Section 335.222(c) is proposed to be amended by adding the clarifying phrase “and processing.”

Section 335.225(b) is proposed to be amended to delete the word “the” and the phrase: “provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities),” because §335.226 is proposed to be deleted. The word “required” is proposed to be inserted as a clarification just before “standards” under §335.225(b), so that the subsection reads as follows: “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.”

Section 335.262(b) is proposed to be amended to delete the specific reference to paragraph (56) in the reference to “hazardous waste” as defined under §335.1(56) of this title (relating to Definitions),” so that the proposed phrase reads “hazardous waste” as defined under §335.1 of this title (relating to Definitions).” This proposed change is to minimize future rulemaking needs in instances where the paragraph number (56) changes to another paragraph number.

Section 335.303, in addition to the proposed amendments involving the statutory reference and the name of the commission discussed earlier in this preamble, is also proposed to be amended to provide the correct physical location of the commission’s library, by deleting the obsolete reference to the Stephen F. Austin Building and adding “located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.”

Section 335.323 is proposed to be amended to restore language inadvertently omitted and incorrectly edited. This amendment is necessary to clarify that both industrial solid waste and hazardous solid waste generators are subject to fees under this subchapter as required by the Texas Health and Safety Code. Texas Health and Safety Code, §361.134(a) states: “The annual generation fee prescribed by this section is imposed on each generator who generates Class 1 industrial solid waste or hazardous waste during any part of the year.” This proposed amendment would restore language adopted in the April 11, 1995 issue of the *Texas Register* (20 TexReg 2709). Proposed §335.323 would provide conformity with §335.321(a), related to Purpose, which states: “It is the purpose of this subchapter to establish an industrial solid waste and hazardous waste fee program.”

Section 335.325(j) is proposed to be amended by correcting the cross-reference to subsections (k) - (p). Because an additional subsection (q) has previously been adopted, the cross-reference is proposed to be corrected to “subsections (k) - (q).”

Section 335.326(c) is proposed to be amended by correcting the cross-reference to §335.325(p). Since the context of §335.326(c) relates to hazardous waste injection wells, this proposed amendment corrects the cross-reference to read as follows: “§335.325(q) of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment).”

Section 335.341(a) is proposed to be amended by changing “Subchapter F of the Texas Solid Waste Disposal Act, Tex. Health and Safety Code Ann. Chapter 361 (Vernon Supplement), §§361.181 et. seq. as amended” to “Texas Health and Safety Code, Chapter 361, Subchapter F.”

Section 335.346(a) is proposed to be amended to correct the sentence structure and simplify the language by replacing the phrase “without the advance” with “until” and “has been received,” and replacing the word “after” with “and” and “has been provided;” so that the proposed paragraph reads as follows: “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.” Section 335.346(b) is proposed to be amended simply by reformatting, as new paragraphs (1) - (4), the requirements for submittal to the executive director. Section 335.346(d) is proposed to be amended by

replacing the phrase “the Act” with “Texas Health and Safety Code.” Section 335.346(d) is also proposed to be amended by replacing the phrase “use money in the Hazardous and Solid Waste Remediation Fee Account for” with the word “perform.” In this regard, it should be noted that the commission has previously interpreted Texas Health and Safety Code (THSC), §361.133(c) to authorize the commission to perform removals and remedial actions. This interpretation is recognized statutorily in THSC, §361.197(d), which requires the commission to file a cost recovery action for the costs of “an action taken under Section 361.133(c)(1),(2),(3),(5), or (6) or Section 361.133(g),” and THSC, §361.133(i) which concerns notice requirements before the “commission begins cleanups or removals under Subsection (g)....” The commission specified that interpretation and delegated that authority explicitly to the executive director in §335.346(d). However, the language in §335.346(d) is internally inconsistent in its treatment of THSC, §361.133(c)(1) - (4), (5), and (g). With regard to THSC, §361.133(c)(1) - (4) and (g), the rule delegates the commission’s authority to the executive director but retains the statutory language “may use the money....” In the case of THSC, §361.133(c)(5), the rule overtly states the commission’s interpretation that the authorization to spend money inherently authorizes action, by stating “The executive director may also perform removals....” The commission believes that there is no difference in the provisions in THSC, §361.133(c)(1) - (4), (5), and (g) which would indicate that the legislature intended to treat the sections differently. The sections are qualified by the initial phrase “use the money...” at the beginning of THSC, §361.133(c) and (g). Therefore, there should be no difference between the rule provisions related to THSC, §361.133(c)(1) - (4), (5), and (g). In addition, the use of the word “also” in the rule language relating to THSC, §361.133(c)(5) indicates that the two sections were intended to be parallel in structure and authorization. To retain the differences in language between the two sections introduces uncertainty as to their intended

interpretation where no difference in authorization was intended. To make the rule internally consistent and avoid confusion, the first sentence under §335.346(d) is proposed to read as follows: “Pursuant to the 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.”

Section 335.401 is proposed to be amended by deleting the obsolete sentence “The Texas Department of Health and the Texas Water Commission agree to establish and maintain a cooperative effort with regard to providing regulation and direction for hazardous household waste collection programs so as to insure that waste aggregated as a result of such programs is properly handled and disposed of in a safe manner.” This amendment is proposed because the Texas Department of Health no longer regulates wastes under this subchapter.

Section 335.402(4) is proposed to be deleted because the reference to Texas Water Commission is outdated, and the term “Commission,” referring to Texas Natural Resource Conservation Commission, is already defined in 30 TAC Chapter 3. Section 335.402(5) is proposed to be deleted because any reference to the Texas Department of Health is inappropriate in this subchapter, as the commission now solely regulates hazardous household wastes. Section 335.402(6) is proposed to be renumbered as paragraph (4) to account for these deletions, and changed to update the definition of “division” by replacing “Division of Solid Waste Management, Texas Department of Health” with “Small Business and Environmental Assistance Division, Texas Natural Resource Conservation Commission.” Section

335.402(7) - (10) are proposed to be renumbered as §335.402(5) - (8) to account for the aforementioned proposed deletions.

The entire text of §335.403(a), concerning authority of the Texas Department of Health, is proposed to be deleted, because the commission now solely regulates non-hazardous municipal solid waste and hazardous household waste. Section 335.403(b), in addition to the proposed amendment involving the name of the commission discussed earlier in this preamble, is proposed to be revised to delete “(b) Authority of the Texas Water Commission,” because that authority was transferred to the Texas Natural Resource Conservation Commission, and because the subsection heading is not needed. Section 335.403(b) is also proposed to be amended by adding the phrase “non-hazardous municipal solid waste and” just before “hazardous waste,” in order to appropriately describe the commission’s regulatory responsibilities under this subchapter. In addition, §335.403(b) is proposed to be amended by deleting the following language because it is obsolete: “The department and the commission agree that the commission has regulatory authority over persons transporting hazardous household waste that is required when shipped to be accompanied by a manifest, and over all aspects of solid waste management conducted at a hazardous waste processing, storage or disposal facility. Accordingly, the following regulatory portions of this subchapter shall be primarily implemented and enforced by the commission:.” For the same reason, §335.403(b)(1) - (5) and §335.403(c) are proposed to be deleted.

Section 335.406(a) is proposed to be amended to update the name of the primary division implementing this subchapter by replacing “Division of Solid Waste Management, Texas Department of Health” with “Small Business and Environmental Assistance Division, Texas Natural Resource Conservation

Commission.” Section 335.406(a) is also proposed to be amended to delete the following sentence because it is obsolete: “The department may waive the requirements of this section for programs scheduled to be implemented within six months of the date these rules become effective, provided the collector or operator requests such waiver in writing.” Section 335.406(b) is proposed to be amended by deleting the obsolete reference to “department” and replacing it with “division.” This same revision of “department” to “division” is also proposed under §335.406(c)(12)(C). Section 335.406(d)(1) is proposed to be amended by changing “Texas Water Commission” to “Texas Natural Resource Conservation Commission.”

In addition to the aforementioned substitution of “Texas Health and Safety Code, Chapter 361” for “the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7,” §335.407(e) is proposed to be amended by changing the out-of-date phrase “Class I industrial solid waste” to “Class 1 waste,” in order to be consistent with §335.1.

Section 335.409(1) is proposed to be amended by changing “commission” to “executive director,” so that the rule accurately reflects the responsibilities and authority of the executive director, with regard to receiving notifications from hazardous waste transporters. Section 335.409(5) is proposed to be deleted, because the commission does not believe it is necessary for copies of completed manifests to be provided to the division. To account for this deletion, §335.409(3) and (4) are appropriately reformatted.

Section 335.411(a) is proposed to be amended by deleting the superfluous phrase “obtained from the commission,” so that the wording reads as follows: “No person shall transport any hazardous household waste required by this subchapter to be accompanied by a uniform hazardous waste manifest unless such person:.” Section 335.411(a)(1) is proposed to be amended by substituting “executive director” for “Texas Water Commission” and correcting the notification rule reference by changing “335.6(e)” to “335.6(d),” in order to update the rule and maintain consistency with the referenced notification rule. Section 335.411(b)(2) is proposed to be amended by substituting “executive director” for “division” to reflect the responsibilities and authority of the executive director.

Section 335.412 is proposed to be amended to change “processing, storage, or disposal” to “storage, processing, or disposal.”

Section 335.431(c)(1) is proposed to be amended to adopt by reference federal amendments to 40 CFR Part 268, relating to land disposal restrictions (LDR) through December 26, 2000 (65 FR 81373). The December 26, 2000 promulgation temporarily defers the requirement that polychlorinated biphenyls be considered a constituent subject to treatment in soils that exhibit the toxicity characteristic for metals. The commission also proposes to adopt the following federal amendments to the LDR regulation which occurred prior to December 26, 2000: the September 4, 1998 emergency revisions to the treatment standards for carbamate production wastes (63 FR 47410); the September 9, 1998 compliance date extension for treatment standards for certain secondary lead slags (63 FR 48124); the September 24, 1998 revisions to the treatment standards for spent aluminum potliners (63 FR 51254); the November 30, 1998 revision of the definition of “Land disposal” as applicable to 40 CFR Part 268 and revision of

40 CFR §268.50 regarding the application of storage prohibitions to staging piles (63 FR 65874); the May 11, 1999 technical amendments to five previous final rules regarding treatment standards (64 FR 25408); the October 20, 1999 correction of two typographical errors, an omission in the May 11, 1999 rule, and three other corrections to 40 CFR Part 268 (64 FR 56469); the July 6, 1999 amendment regarding the applicability of LDR to universal wastes (64 FR 36466); and the March 17, 2000 vacature of regulatory provisions for certain organobromide wastes (65 FR 14472); the June 8, 2000 promulgation (65 FR 36365) corrected errors that appeared in the previous LDR final rule; and the November 8, 2000 revisions of 40 CFR Part 268 setting prohibitions on land disposal and treatment standards for newly listed chlorinated aliphatic wastes (65 FR 67068).

Section 335.471(2) is proposed to be deleted because the Texas Natural Resource Conservation Commission predecessor agency the Texas Air Control Board no longer exists, making this paragraph obsolete. Section 335.471(3) is proposed to be deleted because the reference to Texas Water Commission is outdated, and the term "Commission," referring to Texas Natural Resource Conservation Commission, is already defined in Chapter 3. Section 335.471(4), the definition of "Committee" as the waste reduction advisory committee is proposed to be deleted because there is no reference to this committee in this subchapter. Therefore, no such definition is needed. Then, in order to account for the proposed deletion of paragraph (4), as well as the proposed deletion of paragraphs (2) and (3), paragraphs (5) - (17) are proposed to be renumbered (2) - (4). Proposed §335.471(6), would be amended by changing "the Texas Solid Waste Disposal Act, Health and Safety Code Annotated, §361.131" to "Texas Health and Safety Code, §361.131."

Section 335.473(2) is proposed to be amended by adding “Texas” just before “Health and Safety Code, §361.431(3).”

Section 335.474(1)(J)(i)(V) and (3)(A)(v) is proposed to be amended for completeness, accuracy, and clarity by adding “if applicable,” because certain persons do not have all the types of numbers requested in this subclause; by changing the references to the Texas Air Control Board or TACB and the Texas Water Commission or TWC to the TNRCC; by deleting from the list the TWC wastewater permit number; by adding to the list of numbers the Texas Pollutant Discharge Elimination System permit number and the EPA Toxics Release Inventory number; by changing “solid waste notice of registration number” to “solid waste registration number”; by changing “underground injection well code identification number” to “underground injection control well permit number”; and by rearranging the text to read as follows: “if applicable, 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.” Section 335.474(3)(C) is proposed to be amended by adding “if applicable,” because not all small quantity generators, to which this subparagraph applies, are required to report TRI releases.

Section 335.475 is proposed to be amended by replacing “commission and the board” with “executive director,” in accordance with the responsibilities and authority of the executive director, and for reasons discussed earlier in this preamble.

Section 335.476(1)(B) is proposed to be amended by changing “the Texas Solid Waste Disposal Act, the Texas Health and Safety Code Annotated, §361.433(c)” to “Texas Health and Safety Code, §361.433(c).” Section 335.476(6) is proposed to be amended by making “executive directors” singular, rather than plural, and by deleting “of the commission and the board,” because the board (i.e., Texas Air Control Board) no longer exists, and it is not necessary to have a reference to the “commission” because the definition under 30 TAC §3.2(16) makes the meaning of “executive director” sufficiently clear.

Similarly, §335.477(b) is proposed to be amended by making both references to “executive directors” singular, rather than plural, and by deleting “of the commission and the board” and “of the commission and board,” for reasons discussed earlier in this preamble.

Section 335.478 is proposed to be amended by replacing “commission or the board” with “executive director,” for reasons previously discussed in this preamble.

Under §335.480(a), the phrase “commission or board” is proposed to be deleted, for reasons previously discussed in this preamble, and changed to “agency,” because this term is used in the context of a reference to agency personnel. The commission notes that the definition of “agency” under §3.2(1) is “The commission, executive director, and their staffs.” Section 335.480(c) is proposed to be amended by replacing both occurrences of “commission or board” with “executive director” for the aforementioned reasons. Section 335.480(d) is proposed to be amended by replacing “commission or board or an employee of the commission or board” with “agency,” for the aforementioned reasons.

Section 335.480(e) is proposed to be amended by replacing the first occurrence of “commission or board” with “executive director” for the aforementioned reasons, and by replacing the second occurrence of “commission or board” with “agency” for the aforementioned reason.

Section 335.501 is proposed to be amended by replacing “commission” with “agency,” in accordance with the meaning of these terms under §3.2. The same substitution is made under proposed §335.502(a)(3) and §335.503(b) and (b)(4). Section 335.501 is also proposed to be amended by the addition of the following sentence, in order to clarify the scope of this subchapter: “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.” Section 335.501 is further proposed to be amended by deleting the word “will” just before paragraph (1); changing “provide” to “provides” and “a new” to “the” in paragraph (1); changing “establish” to “establishes” under paragraph (2); and deleting the out-of-date paragraphs (3) and (4), which relate to implementation scheduling dates in the years 1995 and 1996.

Section 335.502 is proposed to be amended by deleting from the heading the word “New” because this adjective is no longer appropriate. Section 335.502 is also proposed to be amended by deleting out-of-date subsections (a) - (f), which relate to implementation schedules involving dates in the years 1993 - 1996. As a result of these deletions, current subsection (b) is proposed to be designated as subsection (a), current subsection (d) is proposed to be designated as subsection (b), and current subsection (g) is proposed to be designated as subsection (c). Under proposed §335.502(a), the term “commission” is changed to “executive director,” in accordance with the meaning of these terms under §3.2. The same substitution is made under proposed §§335.502(a)(1), 335.503(b)(2) and (3), 335.508(8) and (9)(B)(ii),

335.509(a) and (b), 335.511(a)(4), 335.512(b), 335.513(b), and 335.514(a)(2). Current §335.502(a)(2) is proposed to be deleted because it is an out-of-date implementation requirement; and current paragraphs (3) and (4) are proposed to be changed to paragraphs (2) and (3) to account for this deletion. Proposed §335.502(a)(2) is proposed to be amended for clarity by adding the phrase “, in accordance with the requirements of §335.6 of this title (relating to Notification Requirements).” Under proposed §335.502(b), the following sentence is deleted because it is based on a subsection which would no longer exist under this proposal: “This effective date may be revised by subsection (e) of this section.” Proposed §335.502(c) contains internal reference corrections, substituting both occurrences of “(d)” with “(b).”

In addition to the proposed substitution of “agency” for “commission” discussed earlier in this preamble, §335.503(b) is proposed to be amended by deleting the following phrase relating to the aforementioned deleted implementation schedules: “As required under the schedule provided in §335.501 of this title (relating to Conversion to New Waste Notification and Classification System).”

In addition to the proposed substitution of “executive director” for “commission” discussed earlier in this preamble, §335.503(b)(2) is proposed to be amended in the fourth sentence by replacing the phrase “rather than adding” with the phrase “or choose to add,” for clarification purposes, so that this sentence reads as follows: “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.” Under §335.503(b)(3), in addition to the proposed amendment changing “commission” to “executive director,” as described earlier in this preamble, the paragraph is proposed

to be simplified by changing it into one sentence with the addition of “, which” and the deletion of “Sequence numbers provided by the commission.” Thus, the proposed paragraph reads as follows:

“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.”

Section 335.504(1) is proposed to be amended by substituting the correct commission rule reference to definitions for the federal regulatory references to 40 CFR §§261.2, 261.3, or 261.4, so that the paragraph is proposed to read as follows: “Determine if the material is excluded from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions).” Section 335.504(2) is proposed to be amended for clarity by replacing the word “your” with “the,” and by adding “solid” just before the first occurrence of the word “waste,” so that the paragraph is proposed to read as follows: “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.”

Similarly, §335.504(3) is proposed to be amended by replacing the phrase “For purposes of complying with 40 CFR Part 268 or if the waste is not listed as a hazardous waste in 40 CFR Part 261, Subpart D, he or she must then” with the phrase “If the material is a solid waste,” and by deleting an extraneous word “is,” so that the sentence reads as follows: “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.” This proposed amendment should make it clear that the generator must determine whether the waste is characteristically hazardous. Then, since the determination required under this paragraph must involve either testing in accordance with the referenced federal regulation, or the use of process knowledge in accordance with §335.511; subparagraphs (A) and (B) are proposed to be deleted for

simplification purposes, because they are superfluous. Also proposed for deletion as superfluous is paragraph (4), because, as proposed under §335.501, used oil is not subject to the provisions of this subchapter.

Section 335.507(4)(C) is proposed to be amended to add the term “executive director or the,” just prior to “commission,” in accordance with the meaning of these terms under §3.2. This amendment is proposed because either the executive director or the commission can challenge a detection level submitted by a generator.

Section 335.508(7) is proposed to be amended by replacing “Texas Solid Waste Disposal Act, the Health and Safety Code, §361.019 (Vernon Pamphlet 1992)” with “Texas Health and Safety Code, §361.019.”

Section 335.513(c) is proposed to be amended for consistency in recordkeeping requirements, by changing “five years” to “three years,” so that this proposed subsection reads as follows: “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:.”

Section 335.514(a)(1) is proposed to be deleted because it relates to the aforementioned deleted implementation schedules, and paragraphs (2) and (3) are proposed to be renumbered as paragraphs (1) and (2) to account for this proposed deletion. Section 335.514(c) is proposed to be amended by

replacing the out-of-date phrase “Chief Hearings Examiner of the Texas Water Commission” with “commission,” so that the last sentence in this subsection is proposed to read as follows: “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.”

Section 335.521(b), Appendix 2, is proposed to be amended to update the address by replacing “Industrial and Hazardous Waste Division” with “Waste Permits Division”; replacing “Waste Evaluation Section” with “Industrial and Hazardous Waste Permits Section;” replacing the number of the mail code “129” with “130”; and by adding the internet site address “<http://home.tnrcc.state.tx.us/>.”

Section 335.559(c) is proposed to be amended to change “Texas Air Control Board (TACB)” and “TACB” to “commission,” for the aforementioned reason.

Section 335.563(f)(1)(B) is proposed to be amended to change “Texas Air Control Board (TACB)” to “commission,” and to delete the phrase “of the TACB” for the aforementioned reason.

Section 335.569, as mentioned previously in this preamble, is proposed to be amended to change “Texas Water Commission” to “Texas Natural Resource Conservation Commission.” This section is also proposed to be amended to change “the Texas Solid Waste Disposal Act, §361.002, Texas Health and Safety Code, Chapter 361” to “Texas Health and Safety Code, §361.002.” In the certification

portion of Appendix III, the year is proposed to be changed from “19__” to “20__” to reflect the change to the 21st century.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, determined that for the first five-year period the proposed rules are in effect, there will be no fiscal impacts to units of state or local government as a result of implementation of the proposed rules.

The proposed rules are primarily intended to adopt federal Resource Conservation and Recovery Act (RCRA) hazardous remediation waste regulations, and revised federal standards requiring implementation of Maximum Achievable Control Technologies (MACT) for hazardous air pollutants emitted from hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These federal standards were adopted by the EPA between 1994 and 2000. This proposal is intended to revise the commission’s rules to conform to these 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. The commission is required to maintain equivalency with the federal regulations in order to maintain enforcement authority over facilities in the state affected by the regulations.

The proposed rules do not introduce additional regulatory requirements that are not currently in place. Additionally, there are no known units of state and local government that own or operate facilities

affected by the proposed rules; therefore, the commission anticipates that adoption of these federal standards into state rules will not result in increased costs to units of state and local government.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules would be continued protection of human health and the environment through the state's adoption of stricter federal emission standards for hazardous waste tanks, surface impoundments, containers, hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns.

The proposed rules are primarily intended to adopt federal RCRA hazardous remediation waste regulations, and revised federal standards requiring implementation of MACT for hazardous air pollutants emitted from hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These federal standards were adopted by the EPA between 1994 and 2000.

There are nine commercial incinerators, 26 on-site incinerators, and one waste burning kiln that are currently affected by the federal MACT standards that would continue to be affected by the proposed rules. Since the proposal does not introduce any additional regulatory requirements, there are no fiscal implications anticipated to affected owners and operators beyond what is already required by the federal standards.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There will be no adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed rules, which are intended to adopt federal RCRA regulations for hazardous waste tanks, surface impoundments, and containers.

The proposal would also adopt federal hazardous remediation waste regulations, and revised federal standards requiring implementation of MACT for hazardous air pollutants emitted from hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns. These federal standards were adopted by the EPA between 1994 and 2000.

The commission estimates that there are no hazardous waste incinerators, hazardous waste burning cement kilns, or hazardous waste burning lightweight aggregate kilns that are owned and operated by small or micro-businesses. These equipment types are primarily used by large industries to burn hazardous waste generated by company manufacturing operations or to burn waste from other companies generated offsite. Since the proposal does not introduce any additional regulatory requirements, there are no fiscal implications anticipated to affected small and micro-businesses beyond what is already required by the federal standards.

DRAFT 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 proposed 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 proposal 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 proposal 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 proposed 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 would not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation

agreement, or propose a rule solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

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 proposed rules will substantially advance this stated purpose by proposing 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 proposal 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 proposed rulemaking and found that the proposal is a rulemaking 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 Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall

be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs, and at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 et seq. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the proposed rule amendments will update and enhance the commission's rules concerning hazardous and industrial solid waste facilities. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2000-044-335-WS. Comments must be received by 5:00 p.m., July 23, 2001. For further information or questions concerning this proposal, please contact Ray Henry Austin, Policy and Regulations Division, (512) 239-6814.

STATUTORY AUTHORITY

The amendments are proposed 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.

The proposed amendments implement THSC, Chapter 361.

**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) (No change.)

(2) **Act** - [The Solid Waste Disposal Act,] Texas Health and Safety Code, Chapter 361 [(Vernon Pamphlet 1992)].

(3) - (6) (No change.)

(7) **Ancillary equipment** - Any device [including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps,] 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) - (13) (No change.)

(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). [Class 1 waste is also referred to throughout this chapter as Class I waste.]

(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). [Class 2 waste is also referred to throughout this chapter as Class II waste.]

(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). [Class 3 waste is also referred to throughout this chapter as Class III waste.]

(17) - (28) (No change.)

(29) **Corrective action management unit (CAMU) [or 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) [Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action)]. A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(30) - (31) (No change.)

(32) **Designated facility** - A Class 1 [I] 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 [Code of Federal Regulations,] Parts 270 and 124; a permit from a state authorized in accordance with 40 CFR [Code of Federal Regulations] 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 [I] 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) - (34) (No change.)

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

(36) [(35)] **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) [(36)] **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) [(37)] **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) [(38)] **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) [(39)] **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) [(40)] **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) [(41)] **Environmental Protection Agency hazardous waste number** - The number assigned by the EPA to each hazardous waste listed in 40 CFR [Code of Federal Regulations,]

Part 261, Subpart D and to each characteristic identified in 40 CFR [Code of Federal Regulations,] Part 261, Subpart C.

(43) [(42)] **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) [(43)] **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) [(44)] **Equivalent method** - Any testing or analytical method approved by the administrator under 40 CFR [Code of Federal Regulations] §260.20 and §260.21.

(46) [(45)] **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) [(46)] **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) [(47)] **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) [(48)] **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) [(49)] **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) [(50)] **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) [(51)] **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) [the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action)].

(53) [(52)] **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) [(53)] **Food-chain crops** - Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

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

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

(57) [(56)] **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 [III] wastes only shall not be considered a generator.

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

(59) [(58)] **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 [Code of Federal Regulations] 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) [(59)] **Hazardous substance** - Any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 CFR [Code of Federal Regulations,] Part 302.

(61) [(60)] **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) [(61)] **Hazardous waste constituent** - A constituent that caused the administrator to list the hazardous waste in 40 CFR [Code of Federal Regulations] Part 261, Subpart D or a constituent listed in Table 1 of 40 CFR [Code of Federal Regulations] §261.24.

(63) [(62)] **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) [(63)] **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) [(64)] **In operation** - Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

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

(67) [(66)] **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) [(67)] **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) [(68)] **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) [(69)] **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) [(70)] **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) [(71)] **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) [(72)] **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) [(73)] **Injection well** - A well into which fluids are injected. (See also "underground injection.")

(75) [(74)] **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) [(75)] **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) [(76)] **International shipment** - The transportation of hazardous waste into or out of the jurisdiction of the United States.

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

(79) [(78)] **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) [(79)] **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) [(80)] **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) [(81)] **Leachate** - Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(83) [(82)] **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) [(83)] **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) [(84)] **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) [(85)] **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) [(86)] **Manifest document number** - A number assigned to the manifest by the commission for reporting and recordkeeping purposes.

(88) [(87)] **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) [(88)] **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) [(89)] **Movement** - That solid waste or hazardous waste transported to a facility in an individual vehicle.

(91) [(90)] **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) [(91)] **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) [(92)] **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 [Code of Federal Regulations] §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR [Code of Federal Regulations] §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) [(93)] **Off-site** - Property which cannot be characterized as on-site.

(95) [(94)] **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) [(95)] **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) [(96)] **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) [(97)] **Operator** - The person responsible for the overall operation of a facility.

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

(100) [(99)] **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) [(100)] **PCBs or polychlorinated biphenyl compounds** - Compounds subject to Title 40, CFR [Code of Federal Regulations,] Part 761.

(102) [(101)] **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) [(102)] **Person** - Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

(104) [(103)] **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) [(104)] **Pesticide** - Has the definition adopted under §335.261 of this title [(relating to Universal Waste Rule)].

(106) [(105)] **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) [(106)] **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) [(107)] **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) [(108)] **Poultry** - Chickens or ducks being raised or kept on any premises in the state for profit.

(110) [(109)] **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) [(110)] **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) [(111)] **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 [Code of Federal Regulations,] 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) [(112)] **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) [(113)] **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) [(114)] **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) [(115)] **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) [(116)] **Regional administrator** - The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

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

(119) [(118)] **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 [Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action)]. 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) [(119)] **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) [(120)] **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) [(121)] **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) [(122)] **Run-off** - Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

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

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

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

(127) [(126)] **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) [(127)] **Small quantity generator** - A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

(129) [(128)] **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 [Code of Federal Regulations (CFR)] §261.4(a)(1) - (19), as amended through May 11, 1999, [in] (64 FR [FedReg] 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), [as amended June 19, 1998 at 63 FedReg 33782,] 40 CFR §261.38 is adopted by reference as amended through July 7, 2000 (65 FR 42292), and is revised as follows, with “subparagraph (A)(iv) under the definition of ‘Solid Waste’ in 30 TAC §335.1 [§335.1(123)(A)(iv)]” meaning “subparagraph (A)(iv) under the definition of ‘Solid Waste’ in §335.1 [§335.1(123)(A)(iv)] 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 [§335.1(123)(A)(iv)],” 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) [“§335.1(123)(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: 30 TAC §335.1(128)(D)(iv)]

Figure 1: 30 TAC §335.1(129)(D)(iv)

TABLE 1

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

Scrap metal other than excluded scrap metal (see

§335.17(9)) (hazardous) * * *

Scrap metal other than excluded scrap metal (see

§335.17(9)) (nonhazardous)¹ * * *

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

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

²Except as provided in 40 CFR §261.4(a)(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 [Environmental Protection Agency], as described in 40 CFR §261.2(d)(1) - 2 [§261.2(d)(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 [(relating to Waste Classification)]; 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) [(129)] **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) [(130)] **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) [(131)] **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) [(132)] **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) [(133)] **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) [(134)] **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) [(135)] **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) [(136)] **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) [(137)] **Thermostat** - Has the definition adopted under §335.261 of this title [(relating to Universal Waste Rule)].

(141) [(138)] **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) [(139)] **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) [(140)] **Transit country** - Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(144) [(141)] **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) [(142)] **Transporter** - Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(146) [(143)] **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) [(144)] **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) [(145)] **Treatment zone** - A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(149) [(146)] **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) [(147)] **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) [(148)] **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. [Waste and Municipal Hazardous Waste except as otherwise specified in §335.261 of this title.]

(152) [(149)] **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) [(150)] **Universal waste handler** - Has the definition adopted under §335.261 of this title [(relating to Universal Waste Rule)].

(154) [(151)] **Universal waste transporter** - Has the definition adopted under §335.261 of this title [(relating to Universal Waste Rule)].

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

(156) [(153)] **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) [(154)] **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) [(155)] **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) [(156)] **Water (bulk shipment)** - The bulk transportation of municipal hazardous waste or Class 1 [I] industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(160) [(157)] **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) [(158)] **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 Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7], 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 [Water] Commission;

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

§335.6. Notification Requirements.

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

(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 [(relating to Permit Required)], 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 [(relating to Permit Required)], 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) - (3) (No change.)

(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 [Code of Federal Regulations] 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) - (C) (No change.)

(D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title [(relating to Permit Required)].

(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 [(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)] and who only transport their own waste; and

(2) (No change.)

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

(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 [(relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)] 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 [§334.24] 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 [Code of Federal Regulations (CFR)] §266.108 must provide a one-time signed, written notification to the EPA [United States Environmental Protection Agency] and to the executive director indicating the following:

(1) (No change.)

(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) (No change.)

(j) (No change.)

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

§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) (No change.)

(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) (No change.)

~~(B)~~ Generators submitting their Annual Waste Summary electronically for the 1997 reporting year must do so on or before January 25, 1998.]

~~(B)~~ [(C)] Generators submitting their Annual Waste Summary electronically [for calendar years after 1997] 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) (No change.)

(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 [(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)];

(C) (No change.)

(4) Generators who are regulated under §335.78 of this title [(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)] 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 [, and, if necessary, TNRCC-0311B] 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 [(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)] or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title;

(3) - (6) (No change.)

(b) The manifest shall contain the following information.

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

(5) The manifest shall contain the generator's TNRCC [Texas Natural Resource Conservation Commission (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) - (13) (No change.)

(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 [(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)] 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) (No change.)

(16) The manifest shall contain the TNRCC [Texas Natural Resource Conservation Commission's or Texas Department of Health's state] 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 [Texas Natural Resource Conservation Commission] has added an HM [a hazardous materials (HM)] column on the manifest before the DOT [United States Department of Transportation] description. When a waste shipment consists of both federally regulated materials and state-regulated wastes, the HM [hazardous materials (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 [United States Department of Transportation] proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as

identified in 49 CFR [Code of Federal Regulations] Parts 171-177. If the shipment contains non-hazardous waste solely regulated by the TNRCC [Texas Natural Resource Conservation Commission], then the TNRCC [Texas Natural Resource Conservation Commission] waste classification code description should be used. [If additional space is needed for waste descriptions, enter these additional descriptions in Item 28 on the continuation sheet.]

(19) - (20) (No change.)

(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 [Code of Federal Regulations,] Parts 264 or 265.

(22) The manifest shall contain the TNRCC [Texas Natural Resource Conservation Commission] waste classification code assigned to the waste by the generator.

(23) - (24) (No change.)

(c) (No change.)

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

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

(3) retain one copy, in accordance with §335.13(i) [§335.123(a)] of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 [I] Waste and Primary Exporters of Hazardous Waste); and

(4) (No change.)

(e) For shipments of hazardous waste or Class 1 [I] 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 [I] 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) - (3) (No change.)

(g) No manifest is required for the shipment of Class 1 [I] 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 change.)

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

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 [I] 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 [(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste)];

(2) - (4) (No change.)

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

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

(1) (No change.)

(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 [I] Waste);

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

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

(1) (No change.)

(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 I Waste)]; and

(3) (No change.)

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

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

(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 [(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)].

(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 [I] waste from a nonrail transporter, the initial rail transporter must:

(A) - (C) (No change.)

(D) retain one copy of the manifest and rail shipping paper in accordance with §335.14(c) of this title [(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)].

(2) (No change.)

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

(A) (No change.)

(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title [(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)].

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

(A) (No change.)

(B) retain a copy of the manifest in accordance with §335.14(c) of this title [(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)].

(5) Before accepting municipal hazardous waste or Class 1 [I] 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 [I] waste out of the United States shall:

(1) indicate on the manifest the date the municipal hazardous waste or Class 1 [I] 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 [(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste)];

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

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

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

(i) (No change.)

§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 [I] Waste and Primary Exporters of Hazardous Waste), for off-site storage, processing, or disposal unless:

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

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste or Class 1 [I] 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 [I] waste covered by the manifest or the shipping paper was received;

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

(4) retain at the facility a copy of each shipping paper and 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)].

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

(1) Manifest discrepancies are differences between the quantity or type of hazardous waste or Class 1 [I] waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste or Class 1 [I] 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) - (B) (No change.)

(2) (No change.)

(d) (No change.)

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

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

(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[:]

[(1) 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 [; or]

[(2) a Texas parent or a Texas sister company of a twin plant (maquiladora) who imports hazardous waste or Class 1 waste from a foreign country into or through Texas].

(g) - (n) (No change.)

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

(a) A transporter of hazardous waste or Class 1 [I] 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 [I] Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of hazardous waste or Class 1 [I] 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 [(relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste)] for a period of three years from the date the hazardous waste or Class 1 [I] 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 [I] waste was accepted by the initial transporter.

(d) - (e) (No change.)

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

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

(1) (No change.)

(2) sludge has the same meaning used in Texas Health and Safety Code, §361.003 [the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2];

(3) - (7) (No change.)

(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) (No change.)

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

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

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title [(relating to Definitions)], under the definition of Solid Waste, §335.6 of this title (relating to Notification Requirements), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title [(relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)], and Subchapter H 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) - (b) (No change.)

(c) The following recyclable materials are not subject to regulation under Subchapters B-I or O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions);

Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property) or Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

(1) (No change.)

(2) scrap metal that is not already excluded under 40 CFR [Code of Federal Regulations] §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 [Code of Federal Regulations] §261.4(a)(12)); and

(4) (No change.)

(d) (No change.)

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits); 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 [(relating to Notification Requirements)], 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 [(relating to Notification Requirements)];

(2) (No change.)

(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 [§§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 [(relating to General Prohibitions)]. 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 [(relating to Notification Requirements)].

Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (b)(4) and subsection (c)(2) of this section may also be subject to the requirements of §§335.10 - 335.15 of this title [(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities)], as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

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

(i) Except as provided in Texas Health and Safety Code, [the Solid Waste Disposal Act, 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) - (12) (No change.)

(j) (No change.)

(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 [Code of Federal Regulations] Part 264 or Part 265, Subparts AA and BB, as adopted by reference under §335.152(a)(17) - (18) and §335.112(a)(19) - (20) 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 [Code of Federal Regulations (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 [§335.261 of this title] (relating to Universal Waste Rule).

(m) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title [(relating to Notification Requirements)], §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from

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

§335.28. Adoption of Memoranda of Understanding by Reference.

(a) The [following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Natural Resource Conservation Commission, Chief Clerk's Office, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.]

[(1) 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) [(2)] The memorandum of understanding [(effective September 1, 1987)] between the Texas Department of Health and the Texas Natural Resource Conservation [Water] 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 [the regulation and management of radioactive mixed wastes].

(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, [at] (58 FR [FedReg] 46040));
- (3) Appendix III--Chemical Analysis Test Methods (as amended through August 31, 1993, [at] (58 FR [FedReg] 46040));
- (4) Appendix VII - Basis for Listing Hazardous Waste (as amended through August 6, 1998, [at] (63 FR [FedReg] 42110));

(5) Appendix VIII - Hazardous Constituents (as amended through May 4, 1998, [at] (63 FR [FedReg] 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 [Code of Federal Regulations] through May 14, 1999 (64 FR 26315) [June 13, 1997, at 62 FedReg 32451].

SUBCHAPTER B: HAZARDOUS WASTE MANAGEMENT

GENERAL PROVISIONS

§§335.41, 335.43 - 335.47

STATUTORY AUTHORITY

The amendments are proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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 [United States Environmental Protection Agency (EPA)] in 40 Code of Federal Regulations (CFR) Part 261.

(b) (No change.)

(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 [(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)] 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 [(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)] 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 [(relating to Definitions)], 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) - (4) (No change.)

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

(1) (No change.)

(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) (No change.)

(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) - (iii) (No change.)

(B) (No change.)

(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) - (iii) (No change.)

(g) 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 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 [(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)] apply to owners or operators of all facilities which treat, store, or dispose of hazardous waste referred to in Subchapter O of this chapter [(relating to Land Disposal Restrictions)].

(i) Except as provided in §335.47 of this title [(relating to Special Requirements for Persons Eligible for a Federal Permit by Rule)], Subchapter F of this chapter [(relating to Permitting Standards for Owners and Operators of Hazardous waste Storage, Processing, or Disposal Facilities)] 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) (No change.)

§335.43. Permit Required.

(a) Except as provided in [subsection (b) of this section and] §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 [Water] Commission.

[(b) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the Texas Water Commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States

Environmental Protection Agency or commission rules relative to termination of interim status. If a solid waste facility which has been receiving waste from off-site sources has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such a facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners and operators of waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §6901 et seq., that render the facility subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than:]

[(1) six months after the date of publication of regulations by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or]

[(2) 30 days after the date they first become subject to the standards set forth in Subchapter E of this chapter (relating to Interim Standards for owners and Operators of Hazardous

Waste Storage, Processing or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); whichever first occurs; or]

[3) for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations, §270.10(e)(1)(iii).]

[(c) The following words and terms, when used in subsection (b) of this section, shall have the following meanings unless the text clearly indicates otherwise.]

[(1) "On-Site Storage, Processing, or Disposal" - On-site storage, processing, or disposal occurs when industrial solid waste is:]

[(A) Collected, handled, stored, processed, or disposed of within the property boundaries of a tract of land owned or otherwise effectively controlled by the owners or operators of the particular industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and which tract of land is within 50 miles from the plant or operation which is the source of the industrial waste; and]

[(B) The industrial solid waste is not collected, handled, stored, processed, or disposed of with solid 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 an "other source" with respect to other plants and operations owned by the same person.]

[(2) "Commenced On-Site Storage, Processing, or Disposal of Hazardous Waste" - A person has commenced on-site storage, processing, or disposal of hazardous waste if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:]

[(A) a continuous physical, on-site construction program has begun; or]

[(B) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.]

[(d) Subsection (b) of this section shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated.]

(b) [(e)] Upon receipt of federal Hazardous and Solid Waste Act (HSWA) authorization for the Texas Natural Resource Conservation [Water] Commission's [(commission)] Hazardous Waste Program, the commission shall be authorized to enforce the HSWA provisions that the EPA

[Environmental Protection Agency (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) [§335.43(b)] of this title (relating to Permit Required), an application must be submitted prior to that date which contains information defining the following:

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

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

§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 [(relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities)] 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 [Water] 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 [the Texas Solid Waste Disposal Act, Texas Health & Safety Code Annotated, Chapter 361 (Vernon Pamphlet 1992)], submittal to the executive director of a copy of the properly filed EPA [United States Environmental Protection Agency] 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 [(relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities)] 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 [Code of Federal Regulations] 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) - (3) (No change.)

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

(1) 40 CFR [Code of Federal Regulations] §264.11 (EPA identification number);

[(2) 40 Code of Federal Regulations §264.72 (manifest discrepancies);]

(2) [(3)] 40 CFR [Code of Federal Regulations] §264.73(a) and (b)(1) (operating record);

(3) [(4)] 40 CFR §264.75 (biennial report) [40 Code of Federal Regulations §264.76 (unmanifested waste report)];

(4) [(5)] §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 of Storage, Processing, or Disposal Facilities) (shipping and reporting procedures)]; and

(5) [(6)] §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) [and §335.154 of this title (relating to Reporting Requirements for Owners and Operators) (annual and monthly reports)].

(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 [Code of Federal Regulations] §264.16;

(2) (No change.)

(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 [Code of Federal Regulations] §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 [publicly owned treatment works (POTW)] which accepts hazardous waste for treatment shall:

(1) (No change.)

(2) for National Pollutant Discharge Elimination System [(NPDES)] permits issued after November 8, 1984, comply with §335.167 of this title [(relating to Corrective Action for Solid Waste Management Units)].

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

§§335.61, 335.67, 335.69, 335.76, 335.78

STATUTORY AUTHORITY

The amendments are proposed 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.

The proposed amendments implement THSC, Chapter 361.

§335.61. Purpose, Scope and Applicability.

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

(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 [I] 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 [I] 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 [(relating to Accumulation Time)] 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 [(relating to Farmers)] is not required to comply with this chapter with respect to those pesticides.

(f) - (h) (No change.)

§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 [Code of Federal Regulations]

§172.304: HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the EPA [U. S. Environmental Protection Agency].

§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 [(relating to Standards), and 40 CFR Part 265, Subpart CC]; 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 [(relating to Standards), and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200]; and/or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title [(relating to drip pads)] 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 [(relating to Standards)] 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) - (ii) (No change.)

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

(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 [(relating to Standards)];

(B) - (C) (No change.)

(b) - (e) (No change.)

(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) (No change.)

(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 [(relating to Standards)], 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 [(relating to Standards)];

(4) the generator complies with the requirements of:

(A) (No change.)

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

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

(5) (No change.)

(g) - (i) (No change.)

(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) - (3) (No change.)

(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 [(relating to Standards)], 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 [(relating to Standards)], 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 [(relating to Standards)], 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) - (II) (No change.)

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

(C) - (D) (No change.)

(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 [(relating to Standards)];

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

(iii) §335.113 of this title [(relating to Reporting of Emergency Situations by Emergency Coordinator)].

(k) (No change.)

(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 [(relating to Consolidated Permits)] 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) [April 12, 1996, at 61 FedReg 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) [April 12, 1996, at 61 FedReg 16290,] has been provided;

(2) - (4) (No change.)

(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) - (C) (No change.)

(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 [(relating to Shipping and Reporting Procedures Applicable to Generators of

Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste)]: "and conforms to the terms of the attached EPA acknowledgment of consent";

(E) (No change.)

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

(i) - (iii) (No change.)

(G) (No change.)

(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 [(relating to Shipping Requirements of Transporters of Hazardous Waste or Class I Waste)].

(c) (No change.)

(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 [(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste)] for the manifest except that:

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

(e) (No change.)

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

(g) Except to the extent that they are clearly inconsistent with [the Solid Waste Disposal Act,] 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) (No change.)

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

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

(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) - (3) (No change.)

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

(5) (No change.)

(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 [§335.261 of this title] (relating to Universal Waste Rule).

(d) - (e) (No change.)

(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) - (2) (No change.)

(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 [United States Environmental Protection Agency] under 40 CFR Part 270;

(B) - (F) (No change.)

(G) for universal waste managed under Subchapter H, Division 5 of this chapter [§335.261 of this title (relating to Universal Waste Rule)], a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter [§335.261 of this title (relating to Universal Waste Rule)].

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

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title [(relating to Hazardous Waste Determination)].

(2) (No change.)

(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 [United States Environmental Protection Agency] under 40 CFR Part 270;

(B) - (F) (No change.)

(G) for universal waste managed under Subchapter H, Division 5 of this chapter [§335.261 of this title (relating to Universal Waste Rule)], a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter [§335.261 of this title (relating to Universal Waste Rule)].

(h) - (i) (No change.)

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

The proposed amendments implement THSC, Chapter 361.

§335.91. Scope.

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

(e) A transporter of hazardous waste subject to the federal manifesting requirements of 40 Code of Federal Regulations (CFR) Part 262, or subject to state hazardous waste manifesting requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 [I] Waste), or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter [§335.261 of this title] (relating to Universal

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

(f) - (g) (No change.)

§335.93. Hazardous Waste Discharges.

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

(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 [Code of Federal Regulations] §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 [Code of Federal Regulations] §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) [may be required or approved by the commission] 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 [10] 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 [Code of Federal Regulations] §265.15 (relating to General Inspection Requirements);

(3) 40 CFR [Code of Federal Regulations] §265.16 (relating to Personnel Training);

(4) 40 CFR [Code of Federal Regulations] Part 265, Subpart C;

(5) 40 CFR [Code of Federal Regulations] 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 [Code of Federal Regulations] Part 265, Subpart I.

(b) (No change.)

**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 proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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 [This] subchapter and the standards of 40 CFR [Code of Federal Regulations] §264.552, [and] §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 [Environmental Protection Agency (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) - (2) (No change.)

(3) the waste is stored or processed in waste piles that meet the requirements of 40 CFR [Code of Federal Regulations] §264.250(c) as well as all other applicable requirements of 40 CFR [Code of Federal Regulations] 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 [Code of Federal Regulations] §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 [Code of Federal Regulations] §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 [Code of Federal Regulations,] Part 268, and the 40 CFR [Code of Federal Regulations,] 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 [Code of Federal Regulations,] §265.93 and §335.117 of this title (relating to Recordkeeping and Reporting);
 - (3) facility closure as specified in 40 CFR [Code of Federal Regulations] §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 [Code of Federal Regulations,] 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 [Code of Federal Regulations] §265.92(c) and (d), the associated groundwater surface elevations required in 40 CFR [Code of Federal Regulations] §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 [Code of Federal Regulations] §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 [Code of Federal Regulations] Part 265.

(B) quarterly, during the initial year of groundwater monitoring, concentrations or values of the parameters listed in 40 CFR [Code of Federal Regulations] §265.92(b)(2) and (3) for each groundwater monitoring well. Annually thereafter, concentrations or values of the parameters listed in 40 CFR [Code of Federal Regulations] §265.92(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under 40 CFR [Code of Federal Regulations] §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 [Code of Federal Regulations] §265.93(c)(1). In addition, concentration of the groundwater quality parameters listed in 40 CFR [Code of Federal Regulations] §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 [Code of Federal Regulations] §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 [Code of Federal Regulations] §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 [Code of Federal Regulations] §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) (No change.)

(c) - (d) (No change.)

§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) (No change.)

(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 [Texas Civil Statutes, Article 4477-7], to cease receiving wastes or close.

(b) (No change.)

§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) (No change.)

(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 [the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7], 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 [Code of Federal Regulations] §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 [Code of Federal Regulations] §§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 [Code of Federal Regulations] §265.118, the owner or operator must address the following objectives and indicate how they will be achieved:

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

(4) compliance with 40 CFR [Code of Federal Regulations] §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) - (5) (No change.)

(6) unsaturated zone monitoring information obtained under 40 CFR [Code of Federal Regulations] §265.278; and

(7) (No change.)

(c) (No change.)

(d) In addition to the requirements of 40 CFR [Code of Federal Regulations] 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) - (2) (No change.)

(3) maintain the run-off management system required under §335.121(c) of this title [(relating to General Operating Requirements (Land Treatment Facilities))]; and

(4) (No change.)

(e) For the purpose of complying with 40 CFR [Code of Federal Regulations] §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 [Code of Federal Regulations] §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) - (2) (No change.)

(3) assure that growth of food chain crops complies with 40 CFR [Code of Federal Regulations] §265.276 concerning food chain crops; and

(4) (No change.)

§335.125. Special Requirements for Bulk and Containerized Waste.

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

(c) A container holding liquid waste or waste containing free liquids must not be placed in a landfill unless:

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

(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 [Code of Federal Regulations] §260.11 and in §335.31 of this title (relating to Incorporation of References).

(e) - (f) (No change.)

§335.127. Cost Estimate for Closure.

In addition to the requirements of 40 Code of Federal Regulations §265.142 (excluding 40 CFR [Code of Federal Regulations] §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 [Code of Federal Regulations] §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) - (4) (No change.)

**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 proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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 [Code of Federal Regulations] §264.115;

(3) as otherwise required by 40 CFR [Code of Federal Regulations] 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) - (2) (No change.)

(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 [(relating to General Groundwater Monitoring
Requirements)]. 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 [(relating to General Groundwater Monitoring Requirements)].

(A) The owner or operator must comply with §335.163(7) of this title [(relating to General Groundwater Monitoring Requirements)] 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 [(relating to General Groundwater Monitoring Requirements)].

(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 [(relating to General Groundwater Monitoring Requirements)].

(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 [(relating to General Groundwater Monitoring Requirements)]. A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during detection monitoring.

(5) (No change.)

(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 [(relating to General Groundwater Monitoring Requirements)]. These method(s) must compare data collected at the compliance point(s) to the background groundwater quality data.

(B) (No change.)

(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) (No change.)

(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) (No change.)

(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 [(relating to Compliance Monitoring Program)];

(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 [(relating to Compliance Monitoring Program)]; 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 [(relating to Concentration Limits)];

(E) - (F) (No change.)

(8) (No change.)

§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) (No change.)

(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 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 [(relating to General Groundwater Monitoring Requirements)].

(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 [(relating to General Groundwater Monitoring Requirements)].

(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 [(relating to General Groundwater Monitoring Requirements)] 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 [(relating to General Groundwater Monitoring Requirements)]. 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 [(relating to General Groundwater Monitoring Requirements)].

(B) (No change.)

(5) (No change.)

(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 [(relating to General Groundwater Monitoring Requirements)]. 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 [(relating to Concentration Limits)] are being exceeded at any monitoring well at the point of compliance, he must:

(A) (No change.)

(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 [(relating to Detection Monitoring Program)]. The report must at a minimum include the following information:

(i) - (ii) (No change.)

(9) - (11) (No change.)

§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 [(relating to Closure and Post-Closure Care (Surface Impoundments))], 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) - (3) (No change.)

(b) The owner or operator will be exempted from the requirements of subsections (a) and (j) [(i)] 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) - (4) (No change.)

(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) [January 29, 1992, at 57 FedReg 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) [January 29, 1992, at 57 FedReg 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 [Code of Federal Regulations] §261.24, and is in compliance with either of the following requirements:

(1) the monofill:

(A) - (B) (No change.)

(C) is in compliance with groundwater monitoring requirements of this

subchapter; or

(2) (No change.)

(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) [of the Resource Conservation and Recovery Act]; and

(2) (No change.)

(g) - (i) (No change.)

(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 [(relating to Closure and Post-Closure Care (Surface Impoundments))] must have an additional liner to that required in subsection (a) of this section which:

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

§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) (No change.)

(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 [Code of Federal Regulations] §§264.117 - 264.120, including maintenance and monitoring throughout the post-closure care period (specified in the permit under 40 CFR [Code of Federal Regulations] §264.117).

The owner or operator must:

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

(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 [(relating to Design and Operating Requirements (Surface Impoundments))], then:

(1) the closure plan for the impoundment under 40 CFR [Code of Federal Regulations] §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 [Code of Federal Regulations] §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 [Code of Federal Regulations] §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) (No change.)

(2) continue all operations in the treatment zone to minimize run-off of hazardous constituents as required under §335.171(3) of this title [(relating to Design and Operating Requirements (Land Treatment Units))];

(3) maintain the run-on control system required under §335.171(3) of this title [(relating to Design and Operating Requirements (Land Treatment Units))];

(4) maintain the run-off management system required under §335.171(4) of this title [(relating to Design and Operating Requirements (Land Treatment Units))];

(5) control wind dispersal of hazardous waste if required under §335.171(6) of this title [(relating to Design and Operating Requirements (Land Treatment Units))];

(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 [Code of Federal Regulations] §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) (No change.)

(b) For the purpose of complying with 40 CFR [Code of Federal Regulations] §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) - (2) (No change.)

(3) maintain the run-on control system required under §335.171(3) of this title [(relating to Design and Operating Requirements (Land Treatment Units))];

(4) maintain the run-off management system required under §335.171(4) of this title [(relating to Design and Operating Requirements (Land Treatment Units))];

(5) control wind dispersal of hazardous waste if required under §335.171(6) of this title [(relating to Design and Operating Requirements (Land Treatment Units))];

(6) continue to comply with any prohibition or conditions concerning growth of food-chain crops under 40 CFR [Code of Federal Regulations] §264.276; and

(7) continue unsaturated zone monitoring in compliance with 40 CFR [Code of Federal Regulations] §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 [Code of Federal Regulations] §264.271(b).

(A) - (B) (No change.)

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

(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 [Code of Federal Regulations] §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 [Water] Commission;

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

§335.178. Cost Estimate for Closure.

In addition to the requirements of 40 Code of Federal Regulations (CFR) §264.142 (excluding 40 CFR [Code of Federal Regulations] §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 [Code of Federal Regulations] §264.141(d)). Notwithstanding [Not-withstanding] 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) - (4) (No change.)

§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 [the Texas Solid Waste Disposal Act], §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 proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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) (No change.)

(2) permit applications filed pursuant to §335.2(a) of this title [(relating to Permit Required)] 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 [the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §13].

(b) The standards contained in §335.204(a)(6) - (9), (b)(7) - (12), (c)(6) - (11), (d)(6) - (11), and (e)(8) - (13) [§§335.204(a)(6)-(9), 335.204(b)(7)-(12), 335.204(c)(6)-(11), 335.204(d)(6)-(11), 335.204(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 [(relating to Permit Required)] which were submitted in accordance with Chapter 305 of this title [(relating to Consolidated Permits)] 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 [the Solid Waste Disposal Act] 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) - (8) (No change.)

(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) (No change.)

(B) an application filed pursuant to §335.2(a) of this title [(relating to Permit Required)] 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) - (12) (No change.)

(13) **Regional aquifer** - An aquifer which has been identified by the Texas Natural Resource Conservation [Water] 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) - (15) (No change.)

(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 [United States Environmental Protection Agency]. The

Edwards Aquifer recharge zone is specifically that area delineated on maps in the offices of the executive director.

(17) - (18) (No change.)

§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) [(b) The commission shall not issue a permit for] 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) [(c) No permit shall be issued for] 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;[.]

[(d) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with subsection (c) 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.]

~~(4)~~ [(e) No permit shall be issued for] 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 [.]

[(f) The measurement of distances required in subsections (a), (c), (d), and (e) 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 subsections (a), (c), (d), and (e) 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.]

[(g) The measurement of distances required in subsections (a), (c), (d), and (e) 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.]

(5) [(h) No permit shall be issued for] 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 [United States Environmental Protection Agency] that:

(A) [(1)] 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) [(2)] 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) [(A)] 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) [(B)] 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) [(i)] 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 [(relating to Unsuitable Site Characteristics)].

(f) [(j)] 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, [the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated, Chapter 361 (Vernon)], §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 proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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 [Code of Federal Regulations] through November 19, 1999 (64 FR 63209), except as noted in this section [June 13, 1997, at 62 FedReg 32451]:

(1) §266.100 -- Applicability, except §266.100(c) [§266.100(b)];

(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) - (15) (No change.)

(16) §266.105 - Standards to Control Particulate Matter, except §266.105(d) [§266.105(c) and except as provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities)];

(17) - (23) (No change.)

(b) The following hazardous wastes and facilities are not regulated under this division [§§335.221-335.229 of this title (relating to Hazardous Waste Burned in Boilers and Industrial Furnaces)]:

(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 [United States Environmental Protection Agency] 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) - (4) (No change.)

§335.222. Management Prior To Burning.

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

(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) - (2) (No change.)

§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 [(relating to Consolidated Permits)] and 40 CFR §270.72.

(2) The requirements of this section and §335.221(a)(7) - (14) of this title [(relating to Applicability and Standards)] 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) - (4) (No change.)

(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 [Code of Federal Regulations] §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 [Code of Federal Regulations] §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) - (B) (No change.)

(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 [(relating to Applicability and Standards)], and 40 CFR §266.103, including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl₂;

(D) - (J) (No change.)

(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 [266.105, 266.106, and 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 [Code of Federal Regulations (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) - (13) (No change.)

(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 [Code of Federal Regulations] §266.103(l), and hazardous waste burning may not resume except under an operating permit issued under Chapter 305 of this title [(relating to Consolidated Permits)]. For purposes of compliance with the closure provisions of paragraph (4) of this subsection and 40 CFR [Code of Federal Regulations] §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) (No change.)

§335.225. Additional Standards for Direct Transfer.

(a) (No change.)

(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 [the] standards [provided by §335.226 of this title (relating to Standards for Burning Hazardous Waste in Commercial Combustion Facilities)].

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

§335.241

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements THSC, Chapter 361.

§335.241. Applicability and Requirements.

(a) (No change.)

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

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

(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 [I] Industrial Solid Waste; Shipping Requirements for Transporters of Municipal Hazardous Waste or Class 1 [I] Industrial Solid Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), for generators, transporters, or persons who store, as applicable; and

(4) (No change.)

(c) - (d) (No change.)

DIVISION 5: UNIVERSAL WASTE RULE

§335.262

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements THSC, Chapter 361.

§335.262. Standards for Management of Paint and Paint-Related Waste.

(a) (No change.)

(b) Paint and paint-related waste is used or unused paint and paint-related material which is “hazardous waste” as defined under §335.1 [§335.1(56)] 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) - (d) (No change.)

SUBCHAPTER I: PROHIBITION ON OPEN DUMPS

§§335.303 - 335.305, 335.307

STATUTORY AUTHORITY

The amendments are proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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 [the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7], 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 [Code of Federal Regulations,] Part 257 and adopted by reference herein. The regulations may be examined in the library of the Texas Natural

Resource Conservation [Water] Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas [Stephen F. Austin Building, 1700 North Congress, Austin].

§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 [Code of Federal Regulations,] 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 [U.S. Environmental Protection Agency] 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) - (b) (No change.)

(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 [the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7], 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 [U. S. Environmental Protection Agency]. 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 [Code of Federal Regulations,] 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 [U.S. Environmental Protection Agency] for publication in the *Federal Register*. The commission may delete the name of a facility from the list to be forwarded to the EPA [U. S. Environmental Protection Agency] 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 [Code of Federal Regulations,] 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 [U. S. Environmental Protection Agency].

**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 proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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 [I] industrial solid waste or hazardous waste;

(2) an annual fee on each facility which either holds a Class 1 [I] industrial solid waste or hazardous waste permit or operates Class 1 [I] 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 [I] industrial waste which is disposed on site by the facility;

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

(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) - (B) (No change.)

(C) hazardous waste management fees and Class 1 [I] 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 [(relating to Application Fees)]; and

(E) (No change.)

(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) - (B) (No change.)

(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) - (E) (No change.)

(2) The fund shall consist of:

(A) hazardous waste management fees and Class 1 [I] industrial waste disposal fees assessed and apportioned under §335.325 of this title [(relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)];

(B) (No change.)

(C) money paid by a person liable for facility cleanup and maintenance under provisions of the Texas Health and Safety Code, §361.197;

(D) (No change.)

(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 [(relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)] shall be credited to the funds of the state as follows.

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

§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) (No change.)

(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 [(relating to Permit Required)] or §335.43(b) of this title [(relating to Permit Required)].

(3) (No change.)

(4) **Class 1 [I] waste** - Any industrial solid waste or mixture of industrial solid wastes meeting the definition of Class 1 [I] waste under §335.1 of this title (relating to Definitions).

(5) **Class 1 [I] nonhazardous waste** - Any Class 1 [I] waste which is not a hazardous waste as defined in this section.

(6) - (10) (No change.)

(11) **Hazardous waste** - Those solid wastes not otherwise exempted which have been identified or listed as hazardous wastes by the administrator of the EPA [United States Environmental Protection Agency] pursuant to the federal Solid Waste Disposal Act, 42 United States Code §§6901 et seq., as amended.

(12) - (13) (No change.)

(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 [(relating to Permit Required)] or §335.43(b) of this title [(relating to Permit Required)].

(16) **Land disposal facility** - Any landfill, surface impoundment (excluding an impoundment treating, processing, or storing waste that is disposed pursuant to TWC [Texas Water Code], 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) (No change.)

(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 [(relating to Definitions)].

(19) **Processing** - For the purposes of this subchapter, the term "processing" has the same meaning as defined in §335.1 of this title [(relating to Definitions)].

(20) (No change.)

§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 [which has notified] 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 [(relating to Permit Required)] or §335.41 of this title [(relating to Purpose, Scope, and Applicability)] and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

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

(c) - (f) (No change.)

§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 [I] 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) - (i) (No change.)

(j) Except as provided in subsections (k) - (q) [(k) - (p)] of this section, waste management fees shall be assessed according to the following schedule.

(1) (No change.)

(2) Class 1 [I] non-hazardous waste.

Figure: 30 TAC §335.325(j)(2)

<u>Disposition</u>	<u>Noncommercial</u>		<u>Commercial</u>	
	<u>In State</u>	<u>Imported</u>	<u>In State</u>	<u>Imported</u>
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) - (l) (No change.)

(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 [(relating to Accumulation Time)].

(n) - (o) (No change.)

(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 [(relating to Dry Weight Determination)] 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) - (2) (No change.)

(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) (No change.)

(B) the method specified in Appendix II in §335.332 of this title [(relating to Appendices I and II)].

(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) (No change.)

(B) the method specified in Appendix II in §335.332 of this title [(relating to Appendices I and II)]; or

(C) (No change.)

(5) The method for calculating the dry weight shall be that method specified in Appendix I in §335.332 of this title [(relating to Appendices I and II)] 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) (No change.)

(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) [§335.325(p)] of this title [(relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)]. 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) - (2) (No change.)

(d) For purposes of a fee assessed under §335.325 of this title [(relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)], 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 [I] 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) - (c) (No change.)

§335.329. Records and Reports.

(a) Generators are required to:

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

(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 [I] 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 [(relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators)];

(2) - (4) (No change.)

(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 [(relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment)] 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) - (d) (No change.)

**SUBCHAPTER K: HAZARDOUS SUBSTANCE FACILITIES ASSESSMENT AND
REMEDATION**

§§335.341, 335.342, 335.346

STATUTORY AUTHORITY

The amendments are proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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 [of the

Texas Solid Waste Disposal Act, Tex. Health and Safety Code Ann. Chapter 361 (Vernon Supplement), §§361.181 et. seq. as amended], herein referred to as the Act.

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

§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) - (5) (No change.)

(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 [Act], §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 [Code of Federal Regulations] §1910 and §1926.

(9) - (13) (No change.)

(14) **Potentially responsible party (PRP)** - A person potentially responsible for solid waste as defined in Texas Health and Safety Code [the Act], §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 [(relating to General Requirements for Remedial Investigations)].

(16) - (19) (No change.)

(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 [(relating to General Requirements for Remedial Investigations)].

(21) **Responsible party (RP)** - A person responsible for solid waste as defined in Texas Health and Safety Code [the Act], §361.271 and §361.275(g).

(22) - (25) (No change.)

§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 [without the advance] written authorization of the executive director has been received and [after] 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 [the Act], §361.276.

(d) Pursuant to Texas Health and Safety Code [the Act], §361.133(c)(1) - (4) and (g), the executive director may perform [use money in the Hazardous and Solid Waste Remediation Fee Account for] 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 [the Act], §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 proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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. [The Texas Department of Health and the Texas Water Commission agree to establish and maintain a cooperative effort with regard to providing regulation and direction for hazardous household waste collection programs so as to

insure that waste aggregated as a result of such programs is properly handled and disposed of in a safe manner.]

§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) - (3) (No change.)

[(4) **Commission** - The Texas Water Commission.]

[(5) **Department** - The Texas Department of Health.]

(4) [(6)] **Division** - The Small Business and Environmental Assistance Division, Texas Natural Resource Conservation Commission [Division of Solid Waste Management, Texas Department of Health].

(5) [(7)] **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 [Code of Federal Regulations,] Part 261.

(6) [(8)] **Hazardous waste processing, storage, or disposal facility** - A hazardous waste processing, storage, or disposal facility that has received an EPA [Environmental Protection Agency (EPA)] permit (or a facility with interim status) in accordance with the requirements of 40 CFR [Code of Federal Regulations] Parts 270 and 124, or that has received a permit from a state authorized in accordance with 40 CFR [Code of Federal Regulations] Part 271.

(7) [(9)] **Household** - Single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreational areas.

(8) [(10)] **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.

[(a) Authority of the Texas Department of Health. The Texas Department of Health (the department) is the state agency having responsibility for regulation of nonhazardous municipal solid waste. The department and the commission agree that the department has primary regulatory authority over hazardous household waste; persons who provide point of generation pick-up of hazardous household waste; and persons who establish and operate hazardous household waste collection centers, other than those located at established hazardous waste processing, storage, or disposal facilities which are regulated by the Texas Water Commission (the commission). The following regulatory portions of this subchapter shall be primarily implemented and enforced by the department:]

[(1) §335.406(a) - (c) of this title (relating to General Requirements for Collectors and Operators);]

[(2) §335.407(a)-(f) of this title (relating to Operation of Collection Centers);]

[(3) §335.408 of this title (relating to Household Pick-Up);]

[(4) §335.410 of this title (relating to Reuse of Collected Material), except in those cases where the collector or operator determining the reuse suitability of the collected material is the owner/operator of a hazardous waste processing, storage, or disposal facility; and]

[(5) §335.411(b) of this title (relating to General Requirements for Transporters).]

[(b) Authority of the Texas Water Commission.] The Texas Natural Resource Conservation [Water] Commission is the state agency having responsibility for regulating non-hazardous municipal solid waste and hazardous waste as defined by the EPA [United States Environmental Protection Agency] 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. [The department and the commission agree that the commission has regulatory authority over persons transporting hazardous

household waste that is required when shipped to be accompanied by a manifest, and over all aspects of solid waste management conducted at a hazardous waste processing, storage, or disposal facility.

Accordingly, the following regulatory portions of this subchapter shall be primarily implemented and enforced by the commission:]

[(1) §335.406(d) of this title (relating to General Requirements for Collectors and Operators);]

[(2) §335.407(g) of this title (relating to Operation of Collection Centers);]

[(3) §335.410 of this title (relating to Reuse of Collected Material), except in those cases where the collector or operator determining the reuse suitability of the collected material is subject to the requirements of §335.406(a) - (c) of this title (relating to General Requirements for Collectors and Operators);]

[(4) §335.411(a) of this title (relating to General Requirements for Transporters); and]

[(5) §335.412 of this title (relating to General Requirements for Processing, Storage, or Disposal Facilities).]

[(c) Joint authority. The department and commission shall jointly implement, and each may enforce as appropriate, the requirements contained in §335.409 of this title (relating to General Shipping, Manifesting, Recordkeeping, and Reporting Requirements).]

§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 of Solid Waste Management, Texas Department of Health] (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. [The department may waive the requirements of this section for programs scheduled to be implemented within six months of the date these rules become effective, provided the collector or operator requests such waiver in writing.]

(b) The notification shall be submitted 90 days prior to the expected collection date, by letter or on a form provided by the division [department]. It shall include the following information:

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

(c) The collector or operator shall submit to the division a complete operational plan not less than 45 days.

(1) - (8) (No change.)

(9) The following operational concepts shall be discussed in detail:

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

(E) procedures to ensure that unauthorized waste, i.e., hazardous waste (or Class 1 [I] industrial solid waste) from industries, businesses, or institutions subject to regulations of the commission, is not accepted as hazardous household waste;

(F) - (K) (No change.)

(10) The operator shall provide information on the planned disposal of the waste collected, to include the transporter's name and the EPA [United States Environmental Protection Agency] identification number, and the name, location, and the EPA [United States Environmental Protection Agency] 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) - (E) (No change.)

(11) (No change.)

(12) The plan shall include the following attachments:

(A) - (B) (No change.)

(C) Attachment 3 - evidence of financial responsibility. Collectors or operators other than governmental entities shall submit evidence of financial responsibility which assures the division [department] 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) - (E) (No change.)

(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 [of the Texas Water Commission] in writing concerning their intention to accept such waste, and in the notification indicate:

(1) their Texas Natural Resource Conservation [Water] Commission registration number and EPA [Environmental Protection Agency] identification number;

(2) - (8) (No change.)

§335.407. Operation of Collection Centers.

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

(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 [the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7]; or as Class 1 [I industrial solid] waste by the commission. Other requirements related to acceptance or exclusion of wastes are as follows:

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

(f) - (g) (No change.)

§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 [commission] with respect to transportation of hazardous waste, who have notified the EPA [United States Environmental Protection Agency] of their involvement in transporting hazardous waste, and who have been issued an EPA [Environmental Protection Agency] identification number;

(2) (No change.)

(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 [I] 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. [; and]

[(5) provide, within 30 days of receiving the completed copy of such manifests showing the signature of the receiver and date of receipt, a copy of the completed manifest to the division, or in those cases where the person shipping the waste is the owner or operator of a hazardous waste processing, storage, or disposal facility, to the commission.]

§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 [obtained from the commission], unless such person:

(1) has notified the executive director [Texas Water Commission] with respect to such transportation activities in accordance with the requirements contained in 335.6(d) [§335.6(e)] of this title (relating to Notification Requirements);

(2) has notified the EPA [United States Environmental Protection Agency] as to his or her transporter status, and has been issued an EPA [Environmental Protection Agency] 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 [I] 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 [I] Industrial Solid Waste) with respect to all manifested household waste; and

(5) (No change.)

(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) (No change.)

(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 [division].

(3) All hazardous household waste accumulated by the transporter shall be kept separate and apart from hazardous waste or Class 1 [I] industrial solid waste as defined in Texas Health and Safety Code, Chapter 361 [the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7], which may be accumulated at a transporter's facilities.

(4) (No change.)

§335.412. General Requirements for Storage, Processing, [Storage,] or Disposal Facilities.

Owners or operators of hazardous waste storage, processing, [storage,] or disposal facilities may receive manifested shipments of hazardous household waste or other household waste provided they:

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

(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 [the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7];

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

SUBCHAPTER O: LAND DISPOSAL RESTRICTIONS

§335.431

STATUTORY AUTHORITY

The amendment is proposed 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.

The proposed amendment implements THSC, Chapter 361.

§335.431. Purpose, Scope, and Applicability.

(a) (No change.)

(b) Scope and Applicability.

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

(3) Universal waste handlers and universal waste transporters, as defined in and subject to regulation under Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule) are exempt from 40 CFR [Code of Federal Regulations] §268.7 and §268.50.

(c) Adoption by Reference.

(1) except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR[,] Part 268, as amended through December 26, 2000 (65 FR 81373) [August 31, 1998, in 63 FedReg 46332] are adopted by reference.

(2) (No change.)

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

(d) (No change.)

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

§§335.471, 335.473 - 335.478, 335.480

STATUTORY AUTHORITY

The amendments are proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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 [United States Environmental Protection Agency] 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) **Board** - The Texas Air Control Board.]

[(3) **Commission** - The Texas Water Commission.]

[(4) **Committee** - The waste reduction advisory committee established by the Texas Solid Waste Disposal Act, the Health and Safety Code Annotated, §361.0215.]

(2) [(5)] **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) [(6)] **Environment** - Water, air, and land and the interrelationship that exists among and between water, air, land, and all living things.

(4) [(7)] **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) [(8)] **Generator and generator of hazardous waste** - Have the meaning assigned by Texas Health and Safety Code [the Texas Solid Waste Disposal Act, the Health and Safety Code Annotated], §361.131.

(6) [(9)] **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) [(10)] **Media and medium** - Air, water, and land into which waste is emitted, released, discharged, or disposed.

(8) [(11)] **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) [(12)] **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) [(13)] **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) [(14)] **Source reduction** - Has the meaning assigned by the federal Pollution Prevention Act of 1990, Publication Law 101-508, §6603, 104 Stat. 1388.

(12) [(15)] **Tons** - 2,000 pounds, also referred to as short tons.

(13) [(16)] **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 [Environmental Protection Agency (EPA)].

(14) [(17)] **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) (No change.)

(2) all generators other than large quantity generators and conditionally exempt small quantity generators as defined by [the] Texas Health and Safety Code, §361.431(3);

(3) (No change.)

§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 [(relating to Applicability)], activities that generate hazardous waste; and

(ii) for facilities described in §335.473(3) of this title [(relating to Applicability)], activities that result in the release of pollutants or contaminants designated under §335.472 of this title (relating to Pollutants and Contaminants);

(B) - (I) (No change.)

(J) an executive summary of the plan which shall include at a minimum:

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

(I) - (IV) (No change.)

(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. [Texas Air Control Board (TACB) account number, Texas Water Commission (TWC) solid waste notice of registration number, TWC wastewater permit number, Environmental Protection Agency (EPA) identification number (RCRA number), National Pollutant Discharge Elimination System (NPDES) permit number, and underground injection well code identification number;]

(ii) - (ix) (No change.)

(2) (No change.)

(3) The plans of small quantity generators shall include, at a minimum:

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

(i) - (iv) (No change.)

(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. [TACB account number, TWC solid waste notice of registration number, TWC wastewater permit number, EPA identification number (RCRA number), NPDES permit number, and underground injection well code identification number;]

(B) (No change.)

(C) if applicable, a list of all reportable TRI releases and the volume of each;

(D) - (K) (No change.)

(4) (No change.)

§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 [commission and the board] on the date the plan is required to be in place. Plan implementation will be according to the following schedule:

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

§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) [(1),

(2), and (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 [(relating to Applicability)] 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 [(relating to Source Reduction and Waste Minimization Plans)].

(1) The report shall detail the facility's progress in implementing the source reduction and waste minimization plan and include:

(A) (No change.)

(B) a statement to include, for facilities described in §335.473(1) of this title [(relating to Applicability)], 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 [the Texas Solid Waste Disposal Act, the Health and Safety Code Annotated], §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) (No change.)

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

(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 [(relating to Implementation Dates)], 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) (No change.)

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

§335.477. Exemptions.

(a) (No change.)

(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 [directors of the commission and the board] for an exemption from this subchapter. The executive director [directors of the commission and board] 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 [directors'] decision will be based upon the following standards and criteria for determining practical economic and technical completion of the plan:

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

§335.478. Administrative Completeness.

The executive director [commission or the board] 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 [commission or board] 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 Statutes, Article 6252-17a).

(b) (No change.)

(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 [commission or board] 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 [commission or board] 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 [commission or board or an employee of the commission or board] does not affect its status as a trade secret.

(e) Information classified by the executive director [commission or board] 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 [commission or board] 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 proposed 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.

The proposed amendments implement THSC, Chapter 361.

§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 [commission] 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 [will]:

(1) provides [provide] a procedure [and time schedule] for implementation of [a new] Texas waste notification system; and

(2) establishes [establish] standards for classification of industrial solid waste and municipal hazardous waste managed in Texas. [,]

[(3) after June 7, 1995, apply to all classifications involving new waste streams and existing unclassified waste streams; and]

[(4) on January 1, 1996, require the completion of all existing waste stream notifications in accordance with the classification requirements of this subchapter.]

§335.502. Conversion to [New] Waste Notification and Classification System.

[(a) These rules relating to waste classification are effective as outlined below. The rules shall be implemented as defined in subsections (b)-(g) of this section, which are summarized as follows.]

[(1) January 1, 1993 - On and after this date all waste classifications involving new waste streams and existing unclassified waste streams shall be classified and coded according to the requirements of this subchapter.]

[(2) July 1, 1994 - This is the completion deadline for updating all hazardous and nonhazardous waste stream notifications.]

[(3) October 1, 1994 - This date is the deadline for the commission to provide notice in the Texas Register concerning final implementation of rules.]

[(4) January 1, 1995 - The rules shall be fully implemented on or before this date. All waste must be managed according to the classification assigned under this subchapter.]

(a) [(b)] 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 [I] Waste and

Primary Exporters of Hazardous Waste) shall be assigned by the generator and provided to the executive director [commission] as provided by this chapter.

(1) All waste notification information provided [to the commission] in accordance with the schedule set forth in this subchapter shall be provided in a format defined by the executive director [commission].

[(2) All existing waste notification information on file with the commission shall be updated to the new format by the generator no later than July 1, 1994.]

(2) [(3)] 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) [(4)] Forms and format information for submitting notice of registration information on paper or by electronic means may be obtained by contacting the agency [commission] at the address listed in Appendix 2 of this subchapter.

[(c) All industrial solid waste and municipal hazardous waste managed in the state shall be classified by the generator according to the provisions of this subchapter.]

[(1) After January 1, 1993, all new waste streams and waste streams not previously classified shall be classified and managed pursuant to the provisions of this subchapter.]

[(2) All generators that have existing waste streams classified as Class 1, Class 2, or Class 3 under any previous system are required to reevaluate the waste under the provisions of this subchapter and to submit the updated information to the commission pursuant to subsection (b) of this section. However, generators of waste classified under a previous waste classification system may continue to manage and dispose of that waste under the existing classification until the effective management date provided in subsection (d) of this section. If a generator chooses to continue to manage waste under a previous waste classification system the existing waste code shall be used when shipping, storing, disposing, or otherwise managing the waste. The generator shall use the new waste code when the waste is to be managed under the new classification designation. Once a waste is reclassified and the waste is managed based on the new classification and using the new waste code, the generator may not return to managing the waste under the old classification system.]

(b) [(d)] 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. [This effective date may be revised by subsection (e) of this section.]

[(e) Not later than October 1, 1994, the commission shall assess the impact of the implementation of this subchapter. The commission shall evaluate waste capacity issues, costs to the regulated community and the state, personnel and staffing levels of the commission, and review the applicability of the rules themselves. The commission may use information from any source necessary

to assess the impact. Based on this evaluation, by October 1, 1994, the commission shall give public notice in the Texas Register that either:]

[(1) these waste classification requirements take full force and effect on January 1, 1995; or]

[(2) implementation of these waste classification requirements shall be delayed. If implementation is delayed, the commission shall provide a revised implementation date and give additional information as necessary to guide the regulated community until the revised effective date.]

[(f) If the commission fails to give public notice in the Texas Register as required in subsection (e) of this section, this subchapter takes full force and effect on January 1, 1995.]

(c) [(g)] After the effective management date as provided in subsection (b) [(d)] 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) [(d)] 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) - (4) (No change.)

§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) - (3) (No change.)

(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 [(relating to Class 1 Waste Determination, Class 2 Waste Determination, and Class 3 Waste Determination)];

(B) - (D) (No change.)

(b) All [As required under the schedule provided in §335.501 of this title (relating to Conversion to New Waste Notification and Classification System), 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 [commission] at the address listed in §335.521(b) of this title (relating to Appendix 2).

(1) (No change.)

(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 [commission] 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 [rather than adding] that waste to the regular sequence numbers on a notice of registration. Sequence numbers provided by the executive director [commission] may be a combination of alpha and numeric characters.

(3) The executive director will provide in-state [In-state] unregistered generators [will be provided] a four-digit sequence number [by the commission] for each regulated waste it generates, which [. Sequence numbers provided by the commission] 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 [commission]'s Emergency Response Section.

(5) - (7) (No change.)

(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 [(relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste)] and is going to a facility described in §335.10(g) 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)]. 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) [40 Code of Federal Regulations §§261.2, 261.3, or 261.4].

(2) If the [your] 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. [For purposes of complying with 40 CFR Part 268 or if the waste is not listed as a hazardous waste in 40 CFR Part 261, Subpart D, he or she must then] determine whether the waste exhibits any characteristics of a hazardous waste as [is] identified in 40 CFR Part 261, Subpart C_ [, by either:]

[(A) Testing the waste according to methods set forth in 40 CFR Part 261, Subpart C, or according to an equivalent method approved by the administrator under 40 CFR §260.21; or]

[(B) Applying knowledge of the hazardous characteristic of the waste in light of the materials and/or process used to generate the waste, pursuant to §335.511 of this title (relating to Use of Process Knowledge)].

[(4) For purposes of complying with Chapter 324 of this title (relating to Used Oil), if the waste is a used oil, determine whether used oil is a listed hazardous waste per 40 Code of Federal Regulations §261.3(a)(2)(v). Used oil made hazardous by mixing with listed or characteristically hazardous waste is regulated as hazardous waste under this chapter. Other used oil that is to be recycled is managed per Chapter 324 of this title.]

§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) - (3) (No change.)

(4) is essentially insoluble.

(A) Essential insolubility is established:

(i) (No change.)

(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) - (iv) (No change.)

(B) (No change.)

(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) - (5) (No change.)

(6) Wastes which are petroleum substances or contain contamination from petroleum substances, as defined in §335.1 of this title [(relating to Definitions)] 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 [Texas Solid Waste Disposal Act, the 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 [commission] prior to the processing or disposal of the waste and shall submit documentation requested under §335.513 (b) and (c) of this title [(relating to Documentation Required)] for [commission] 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 [commission] concurs. If the generator has not received concurrence from the executive director [commission] 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 [10] working days written notice to the executive director [commission].

(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) (No change.)

(B) may be classified as a Class 2 or Class 3 waste if:

(i) (No change.)

(ii) a request for Class 2 or Class 3 waste determination is submitted to the executive director [commission] accompanied by all supporting documentation as required by §335.513 of this title [(relating to Document Required)]. Waste generated out-of-state may be assigned a Class 2 or Class 3 classification only after approval by the executive director [commission].

(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 [(relating to Class 1 Waste Determination; Class 2 Waste Determination; and Classification of Specific Industrial Solid Wastes)].

§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 [commission] 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 [commission] with the following information:

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

(c) (No change.)

§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) - (3) (No change.)

(4) Documentation of the waste classification must be maintained and, if requested or required, provided to the executive director [commission] pursuant to §335.513 of this title [(relating to Documentation Required)].

(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 [(relating to Class 1 Waste Determination)] 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) (No change.)

(b) A person who believes that the executive director [commission] 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) (No change.)

(b) The following documentation shall be submitted by the generator to the executive director [commission] prior to waste shipment or disposal and not later than 90 days of initial waste generation:

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

(c) The following documentation shall be maintained by the generator on site immediately upon waste generation and for a minimum of three [five] years after the waste is no longer generated or stored or until site closure:

(1) (No change.)

(2) all analytical data and/or process knowledge allowed under §335.511 of this title [(relating to Use of Process Knowledge)] 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 [10] working days of receipt of the request.

(e) - (f) (No change.)

§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) compliance with timing requirements under §335.502 of this title (relating to Conversion to New Waste Notification and Classification System);]

(1) [(2)] appropriateness of a particular waste classification resulting from application of the classification criteria; and

(2) [(3)] other matters requiring special attention by the executive director [commission].

(b) (No change.)

(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 [chief hearings examiner of the Texas Water Commission].

§335.521. Appendices.

(a) (No change.)

(b) Appendix 2.

Figure: 30 TAC §335.521(b)

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) - (d) (No change.)

SUBCHAPTER S: RISK REDUCTION STANDARDS

§§335.559, 335.563, 335.569

STATUTORY AUTHORITY

The amendments are proposed 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.

The proposed amendments implement THSC, Chapter 361.

§335.559. Medium Specific Requirements and Adjustments for Risk Reduction Standard

Number 2.

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

(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 [United States Environmental Protection Agency]. Also, limitations established by the commission [Texas Air Control Board (TACB)] 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 [TACB] 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) (No change.)

(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 [(relating to Determination of Cleanup Levels for Risk Reduction Standard Number 2)], 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) - (4) (No change.)

(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) [(b), (c) and (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 [Code of Federal Regulations] 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) - (h) (No change.)

§335.563. Media Cleanup Requirements for Risk Reduction Standard Number 3.

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

(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 [(relating to Required Information)]) unless the person documents to the satisfaction of the executive director that:

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

(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) (No change.)

(B) concentrations established by the commission [Texas Air Control Board (TACB)] under the Texas Clean Air Act, the state implementation plan, or other federal requirements. Permit requirements, limitations established by standard exemptions, or other requirements [of the TACB] relative to atmospheric emissions and/or air quality may also apply.

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

(g) (No change.)

(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) (No change.)

(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) - (B) (No change.)

(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 [(relating to Alternate Concentration Limits)].

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

(i) Soil. Concentrations of contaminants in soil shall not exceed the following values:

(1) (No change.)

(2) values which will allow the air, surface water, and groundwater cleanup levels specified in subsections (f) - (h) [(f), (g), and (h)] of this section, respectively, to be maintained over time taking into account the effects of engineering controls.

(A) - (B) (No change.)

(j) (No change.)

§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 occurrence 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.

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

My Commission Expires

(END OF APPENDIX III)