

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §335.112, Standards, and §335.152, Standards. Sections 335.112 and 335.152 are adopted *with changes* to the proposed text as published in the August 24, 2001 issue of the *Texas Register* (26 TexReg 6270).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The primary purpose of the adopted amendments is to revise the commission's rules to conform to certain federal regulations, either by incorporating the federal regulations by reference or by introducing language into the commission's rules which corresponds to the federal regulations.

Establishing equivalency with federal regulations will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA). The federal regulations being addressed in this adoption were promulgated by the EPA in issues of the *Federal Register* from December 1994 through September 1999. These adopted amendments also incorporate administrative corrections.

SECTION BY SECTION DISCUSSION

Adopted §335.112(a) is amended to update the adoption of EPA regulations under 40 Code of Federal Regulations (CFR) Part 265, relating to interim status standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. Adopted §335.112(b) is amended by adding new citation substitutions and by rearranging the subparagraphs in ascending federal regulation citation numerical order for readability. These substitutions are necessary in order to reflect the appropriate commission rules which correspond to certain federal regulations.

Adopted §335.152(a) is amended to update the adoption of EPA regulations under 40 CFR Part 264, relating to standards for owners and operators of hazardous waste treatment, storage, and disposal facilities. Adopted §335.152(c) is amended by adding a new citation substitution and by rearranging the subparagraphs in ascending federal regulation citation numerical order for readability. This substitution is necessary in order to reflect the appropriate commission rule which corresponds to the federal regulation.

The adopted sections contain punctuation and minor grammatical changes to conform with *Texas Register* formatting and style requirements.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

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

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

Although these rules are adopted to protect the environment and reduce the risk to human health from environmental exposure, they are not a major environmental rule because they do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because 42 United States Code (USC), §6926(g), immediately imposes on the regulated community any new requirements and prohibitions under the Hazardous and Solid

Waste Amendments of 1984 that are more stringent than state rules, on the effective date of the federal regulation. In other words, under federal law, the regulated community must comply with such new requirements and prohibitions that are more stringent, beginning on the effective date of the federal regulation. Since these more stringent rules are the ones which could have an adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state; since the portions of this adoption which are more stringent than previously existing rules are imposed by the Hazardous and Solid Waste Amendments of 1984; and since the regulated community is already required to comply with these more stringent rules, there is no such adverse effect caused by the adoption of these state rules. The reason there is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state is because these 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 do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these adopted rules in accordance with 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. The rules will substantially advance this stated purpose by adopting federal regulations by reference or by introducing

language intended to ensure that state rules are equivalent to the corresponding federal regulations. 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. There is no burden on private real property because 42 USC, §6926(g), immediately imposes on the regulated community any new requirements and prohibitions under the Hazardous and Solid Waste Amendments of 1984 that are more stringent than state rules, on the effective date of the federal regulation. In other words, under federal law, the regulated community must comply with such new requirements and prohibitions that are more stringent, beginning on the effective date of the federal regulation. Since these more stringent rules are the ones which could present a burden on private real property; since the portions of this adoption which are more stringent than previously existing rules are imposed by the Hazardous and Solid Waste Amendments of 1984; and since the regulated community is already required to comply with these more stringent rules, there is no such burden. The subject regulations do not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that it 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 prepared a consistency determination for the rules in accordance with 31

TAC §505.22 and found the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 USC, §§6901 et seq. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the adopted rule amendments will update and enhance the commission's rules concerning hazardous and industrial solid waste facilities. In addition, the adopted rules do not violate any applicable provisions of the CMP's stated goals and policies.

HEARING AND COMMENTERS

The commission did not hold a public hearing on the proposed rulemaking. No commenters submitted written comments during the comment period which closed at 5:00 p.m. on September 24, 2001.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate

industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

**SUBCHAPTER E: INTERIM STANDARDS FOR OWNERS AND
OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING,
OR DISPOSAL FACILITIES**

§335.112

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR 22685) and as further amended as indicated in each paragraph of this subsection:

(1) Subpart B--General Facility Standards (as amended through December 8, 1997 (62 FR 64636));

(2) Subpart C--Preparedness and Prevention;

(3) Subpart D--Contingency Plan and Emergency Procedures, except 40 CFR §265.56(d);

(4) Subpart E--Manifest System, Recordkeeping and Reporting (as amended through December 8, 1997 (62 FR 64636)), except 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77;

(5) Subpart F--Groundwater Monitoring (as amended through December 23, 1991 (56 FR 66369)), except 40 CFR §265.90 and §265.94;

(6) Subpart G--Closure and Post-Closure (as amended through August 18, 1992 (57 FR 37194)); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H--Financial Requirements (as amended through September 16, 1992 (57 FR 42832)); except 40 CFR §§265.140, 265.141, 265.142(a)(2), 265.142(b) - (c), 265.143(a) - (g), 265.144(b) - (c), 265.145(a) - (g), 264.146, 265.147(a) - (d), 265.147(f) - (k), 265.148, 265.149, and 265.150;

(8) Subpart I--Use and Management of Containers (as amended through November 25, 1996 (61 FR 59932));

(9) Subpart J--Tank Systems (as amended through November 25, 1996 (61 FR 59932));

(10) Subpart K--Surface Impoundments (as amended through November 25, 1996 (61 FR 59932));

(11) Subpart L--Waste Piles (as amended through January 29, 1992 (57 FR 3493)),
except 40 CFR §265.253;

(12) Subpart M--Land Treatment, except 40 CFR §§265.272, 265.279, and 265.280;

(13) Subpart N--Landfills (as amended through July 10, 1992 (57 FR 30658)), except 40 CFR §§265.301(f) - 265.301(i), 265.314, and 265.315;

(14) Subpart O--Incinerators (as amended through September 30, 1999 (64 FR 52828));

(15) Subpart P--Thermal Treatment (as amended through July 17, 1991 (56 FR 32692));

(16) Subpart Q--Chemical, Physical, and Biological Treatment;

(17) Subpart R--Underground Injection;

(18) Subpart W--Drip Pads (as amended through December 24, 1992 (57 FR 61492));

(19) Subpart AA--Air Emission Standards for Process Vents (as amended through December 8, 1997 (62 FR 64636));

(20) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through December 8, 1997 (62 FR 64636));

(21) Subpart CC--Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through January 21, 1999 (64 FR 33820));

(22) Subpart DD--Containment Buildings (as amended through August 18, 1992 (57 FR 37194));

(23) Subpart EE--Hazardous Waste Munitions and Explosives Storage (as amended through February 12, 1997 (62 FR 6622)); and

(24) the following appendices contained in 40 CFR Part 265:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix III--EPA Interim Primary Drinking Water Standards;

(C) Appendix IV--Tests for Significance;

(D) Appendix V--Examples of Potentially Incompatible Waste; and

(E) Appendix VI--Compounds With Henry's Law Constant Less Than 0.1

Y/X.

(b) The regulations of the EPA that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Natural Resource Conservation Commission or to the commission, consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) Reference to RCRA, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(C) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(D) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(E) 40 CFR §265.1 is changed to §335.111 of this title (relating to Purpose, Scope, and Applicability);

(F) 40 CFR §265.90 is changed to §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements);

(G) 40 CFR §265.94 is changed to §335.117 of this title (relating to Recordkeeping and Reporting);

(H) 40 CFR §265.314 is changed to §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste);

(I) 40 CFR §270.1 is changed to §335.2 of this title (relating to Permit Required);

(J) 40 CFR §270.28 is changed to §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit);

(K) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendment); and

(L) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) is changed to §335.112(a)(3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) Reference to 40 CFR §§265.71, 265.72, 265.76, and 265.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.12(c)(1) and (2) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 and §335.117 of this title, in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Natural Resource Conservation Commission.

(c) A copy of 40 CFR, Part 265 is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

**SUBCHAPTER F: PERMITTING STANDARDS FOR OWNERS AND
OPERATORS OF HAZARDOUS WASTE STORAGE, PROCESSING, OR
DISPOSAL FACILITIES**

§335.152

STATUTORY AUTHORITY

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

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the CFR through June 1, 1990 (55 FR 22685) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) Subpart B--General Facility Standards (as amended through December 8, 1997 (62 FR 64636)); in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C--Preparedness and Prevention;

(3) Subpart D--Contingency Plan and Emergency Procedures, except 40 CFR

§264.56(d);

(4) Subpart E--Manifest System, Recordkeeping, and Reporting (as amended through December 8, 1997 (62 FR 64636)), except 40 CFR §§264.71, 264.72, 264.76 and 264.77; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G--Closure and Post-Closure (as amended through August 18, 1992 (57 FR 37194)); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H--Financial Requirements (as amended through June 10, 1994 (59 FR 29958)); except 40 CFR §§264.140, 264.141, 264.142(a)(2), 264.142(b) - (c), 264.143(a) - (h), 264.144(b) - (c), 264.145(a) - (h), 264.146, 264.147(a) - (d), 264.147(f) - (k), 264.148, 264.149, 264.150, and 264.151; and subject to the following limitations: facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.142(a), 264.144(a), and 37.6031(c) of this title (relating to Financial Assurance Requirements for Liability);

(7) Subpart I--Use and Management of Containers (as amended through November 25, 1996 (61 FR 59932));

(8) Subpart J--Tank Systems (as amended through November 25, 1996 (61 FR 59932));

(9) Subpart K--Surface Impoundments (as amended through November 25, 1996 (61 FR 59932)), except 40 CFR §264.221 and §264.228:

(A) reference to 40 CFR §264.221 is changed to §335.168 of this title (relating to Design and Operating Requirements (Surface Impoundments));

(B) reference to 40 CFR §264.228 is changed to §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments));

(10) Subpart L--Waste Piles (as amended and adopted through January 29, 1992 (57 FR 3462)), except 40 CFR §264.251;

(11) Subpart M--Land Treatment, except 40 CFR §264.273 and §264.280;

(12) Subpart N--Landfills (as amended through November 18, 1992 (57 FR 54452)), except 40 CFR §§264.301, 264.310, 264.314, and 264.315;

- (13) Subpart O--Incinerators (as amended through September 30, 1999 (64 FR 52828));
- (14) Subpart S--Corrective Action for Solid Waste Management Units (as amended through February 16, 1993 (58 FR 8683)), and 40 CFR §264.554 (as amended through November 30, 1998 (63 FR 65874));
- (15) Subpart W--Drip Pads (as amended through December 24, 1992 (57 FR 61492));
- (16) Subpart X--Miscellaneous Units (as amended through September 30, 1999 (64 FR 52828));
- (17) Subpart AA--Air Emission Standards for Process Vents (as amended through January 21, 1999 (64 FR 3382));
- (18) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through December 8, 1997 (62 FR 64636));
- (19) Subpart CC--Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through January 21, 1999 (64 FR 3382));

(20) Subpart DD--Containment Buildings (as amended through August 18, 1992 (57 FR 37194));

(21) Subpart EE--Hazardous Waste Munitions and Explosives Storage (as amended through February 12, 1997 (62 FR 6622)); and

(22) the following appendices contained in 40 CFR Part 264:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891));

(B) Appendix IV--Cochron's Approximation to the Behrens-Fisher Students' T-Test;

(C) Appendix V--Examples of Potentially Incompatible Waste;

(D) Appendix VI--Political Jurisdictions in Which Compliance With §264.18(a) Must Be Demonstrated; and

(E) Appendix IX--Ground-Water Monitoring List (as amended through June 13, 1997 (62 FR 32451)).

(b) The provisions of 40 CFR §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201 - 335.206 of this title (relating to Location Standards for Hazardous Waste Storage, Processing, or Disposal). A copy of 40 CFR §264.18(b) is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(c) The regulations of the EPA that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Natural Resource Conservation Commission or to the commission, consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) Reference to RCRA, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (relating to Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.1 is changed to §335.151 of this title (relating to Purpose, Scope, and Applicability);

(C) 40 CFR §264.280 is changed to §335.172 of this title (relating to Closure and Post-Closure Care (Land Treatment Units));

(D) 40 CFR §264.90 is changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(E) 40 CFR §264.101 is changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(F) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(G) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendment); and

(H) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 264, Subpart D is changed to §335.152(a)(3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(7) Reference to 40 CFR §§264.71, 264.72, 264.76, and 264.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.12(c)(1) and (2) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and §335.155 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165

of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 of this title (relating Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Natural Resource Conservation Commission.

(d) A copy of 40 CFR Part 264 is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin.

