

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §335.112, Standards, and §335.152, Standards.

#### 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). The federal regulations being addressed in this proposal were promulgated by the EPA in issues of the *Federal Register* from December 1994 through September 1999. These proposed amendments would also incorporate administrative corrections.

#### SECTION BY SECTION DISCUSSION

Section 335.112(a)(1) is proposed to be amended to update the adoption of the EPA regulations under 40 Code of Federal Regulations (CFR) Part 265, Subpart B, relating to general facility standards, as promulgated by the EPA in the December 8, 1997 issue of the *Federal Register* (62 FR 64636).

Adoption of the general inspection requirements at 40 CFR §265.15(b)(4) would be changed to correct the reference to the inspection requirements for floating roof tanks and to correct previous omissions.

Section 335.112(a)(4) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 265, Subpart E, relating to manifest system, recordkeeping and reporting, as promulgated

by the EPA in the December 8, 1997 issue of the *Federal Register* (62 FR 64636). Adoption of the operating record requirements at 40 CFR §265.73(b)(6) is proposed to correct the reference to the inspection requirements for floating roof tanks and to correct previous omissions.

Section 335.112(a)(8) - (10) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 265, Subpart I, relating to use and management of containers; 40 CFR Part 265, Subpart J, relating to tank systems; and 40 CFR Part 265, Subpart K, relating to surface impoundments, respectively, as promulgated by the EPA in the November 25, 1996 issue of the *Federal Register* (61 FR 59932). Adoption of this amendment would require owners and operators of interim status hazardous waste containers, tanks, and surface impoundments to comply with the applicable requirements of 40 CFR Part 265, Subparts AA, BB, and CC, relating to air emission standards for process vents; air emission standards for equipment leaks; and air emission standards for tanks, surface impoundments, and containers, respectively.

Section 335.112(a)(14) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 265, Subpart O, relating to incinerators, as promulgated by the EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828). This proposed amendment would include the adoption by reference of 40 CFR §265.340(b) which provides that the air emission standards for incinerators of 40 CFR Part 265, Subpart O no longer apply when compliance with maximum achievable control technology (MACT) standards is demonstrated as specified.

Section 335.112(a)(19) and (20) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 265, Subparts AA and BB, relating to air emission standards for process vents and air emission standards for equipment leaks, respectively, as promulgated by the EPA in the December 8, 1997 issue of the *Federal Register* (62 FR 64636). This proposed amendment would include the adoption by reference of 40 CFR §265.1030(b)(3) and §265.1050(b)(3) which clarify that the 40 CFR Part 265, Subparts AA and BB requirements apply to 90-day accumulation time units that are not recycling units. Read together with 40 CFR §265.1030(b)(2) and §265.1050(b)(2), this proposed amendment clarifies that the aforementioned Subparts AA and BB requirements apply to recycling units if some other unit at the facility is subject to hazardous waste permitting requirements. This proposed amendment would also include the adoption by reference of 40 CFR §265.1030(d) which states that a process vent is not subject to the Subpart AA standards provided the owner or operator certifies that all Subpart AA-regulated process vents at the facility are equipped with operating air emission controls in accordance with the requirements of an applicable Texas Clean Air Act (TCAA) regulation codified in 40 CFR Part 60, 61, or 63. This exemption avoids unnecessary duplication with TCAA requirements. Finally, this proposed amendment to §335.112(a)(19) and §335.112(a)(20) would also include the adoption by reference of 40 CFR §265.1033(a)(2) and §265.1060(a) and (b) which clarify that units which become newly subject to these subparts as a result of a regulatory or statutory change, are provided a 30-month implementation schedule. The provision also clarifies that units which become newly subject to these subparts due to any reason other than a regulatory or statutory amendment are not allowed to comply using an implementation schedule; they must be in compliance on the date that the unit first becomes subject to Subparts AA and/or BB.

Section 335.112(a) is proposed to be amended by inserting paragraph (21) which would adopt by reference the EPA regulations under 40 CFR Part 265, Subpart CC, relating to air emission standards for tanks, surface impoundments, and containers, as promulgated by the EPA through the January 21, 1999 issue of the *Federal Register* (64 FR 3382). This proposed amendment would incorporate certain provisions and requirements relating to applicability, definitions, implementation schedules, general standards, inspection, monitoring, recordkeeping, and waste determination procedures, as well as technical standards necessary to control organic emissions from certain tanks, containers, surface impoundments, and closed-vent systems.

To account for the proposed insertion of new paragraph (21), paragraphs (21), (22), and (23) are proposed to be renumbered as paragraphs (22), (23), and (24).

Proposed §335.112(a)(24) would update the adoption of the 40 CFR Part 265 appendices by adding subparagraph (E) which would adopt by reference 40 CFR Part 265, Appendix VI, entitled “Compounds With Henry’s Law Constant Less Than 0.1 Y/X,” as promulgated by the EPA through the December 8, 1997 issue of the *Federal Register* (62 FR 64636).

Section 335.112(b)(4) is proposed to be amended by adding new citation substitutions and by rearranging the subparagraphs in ascending federal regulation citation numerical order for readability. The new substitutions are proposed under §335.112(b)(4)(F) - (I) as follows: 40 CFR §265.90 is changed to §335.116; 40 CFR §265.94 is changed to §335.117; 40 CFR §265.314 is changed to §335.125; and 40 CFR §270.1 is changed to §335.2, respectively. These proposed substitutions are

necessary in order to reflect the appropriate commission rule which corresponds to certain of the federal regulations.

Section 335.152(a)(1) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 264, Subpart B, relating to general facility standards, as promulgated by the EPA in the December 8, 1997 issue of the *Federal Register* (62 FR 64636). Adoption of the general inspection requirements at 40 CFR §264.15(b)(4) would be changed to correct the reference to the inspection requirements for floating roof tanks and to correct previous omissions.

Section 335.152(a)(4) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 264, Subpart E, relating to manifest system, recordkeeping and reporting, as promulgated by the EPA in the December 8, 1997 issue of the *Federal Register* (62 FR 64636). Adoption of the operating record requirements at 40 CFR §264.73(b)(6) is proposed to correct the reference to the inspection requirements for floating roof tanks and to correct previous omissions.

Section 335.152(a)(7) - (9) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 264, Subpart I, relating to use and management of containers; 40 CFR Part 264, Subpart J, relating to tank systems; and 40 CFR Part 264, Subpart K, relating to surface impoundments, respectively, as promulgated by the EPA in the November 25, 1996 issue of the *Federal Register* (61 FR 59932). Adoption of this amendment would require owners and operators of permitted hazardous waste containers, tanks, and surface impoundments to comply with the applicable requirements of 40 CFR Part 264, Subparts AA, BB, and CC, relating to air emission standards for

process vents; air emission standards for equipment leaks; and air emission standards for tanks, surface impoundments, and containers, respectively.

Section 335.152(a)(13) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 264, Subpart O, relating to incinerators, as promulgated by the EPA in the September 30, 1999 issue of the *Federal Register* (64 FR 52828). This proposed amendment would include the adoption by reference of 40 CFR §264.340(b) which provides that the air emission standards for incinerators of 40 CFR Part 264, Subpart O no longer apply when compliance with MACT standards is demonstrated as specified.

Section 335.152(a)(14) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 264, Subpart S, relating to corrective action for solid waste management units, as promulgated by the EPA in the November 30, 1998 issue of the *Federal Register* (63 FR 65874). This proposed amendment would incorporate new §264.554, relating to staging piles. The proposed requirement regarding staging piles would allow short-term storage to occur under circumstances that are protective of human health and the environment, without the extensive set of standards required for units in long-term use. The proposed allowance for the use of staging piles is intended to facilitate short-term storage of remediation wastes so that sufficient volumes can be accumulated for shipment to an off-site treatment facility, or for on-site treatment.

Section 335.152(a)(16) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 264, Subpart X, relating to miscellaneous units, as promulgated by the EPA through the

September 30, 1999 issue of the *Federal Register* (64 FR 52828). This proposed amendment would incorporate the changes made by the EPA to the introductory text under 40 CFR §264.601 which refers to MACT standards within the permit terms and provisions applicable to miscellaneous units. Proposed §335.152(a)(16) would also adopt by reference changes promulgated by the EPA in the December 6, 1994 issue of the *Federal Register* (59 FR 62896), which amended 40 CFR §264.601 to indicate the applicability of 40 CFR Part 264, Subparts AA, BB, and CC to miscellaneous units.

Section 335.152(a)(17) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 264, Subpart AA, relating to air emission standards for process vents, as promulgated by the EPA through the January 21, 1999 issue of the *Federal Register* (64 FR 3382). This proposed amendment would also include amendments promulgated on December 8, 1997 (62 FR 64636), incorporating changes to 40 CFR §264.1030(b)(3) clarifying that the Subpart AA standards apply to hazardous waste generators' 90-day accumulation units that are not recycling units; 40 CFR §264.1030(c), clarifying that a facility permitted prior to the effective date of December 6, 1996 is subject to 40 CFR Part 265, Subpart AA until the requirements of 40 CFR Part 264, Subpart AA are incorporated into the permit; 40 CFR §264.1030(e), stating that a process vent is not subject to the Subpart AA standards provided the owner or operator certifies that all Subpart AA-regulated process vents at the facility are equipped with operating air emission controls in accordance with the requirements of an applicable TCAA regulation codified in Part 60, 61, or 63; 40 CFR §264.1031, revising the definition of "In light liquid service"; and 40 CFR §264.1033(a)(2), clarifying the conditions under which a 30-month implementation schedule applies. This proposed amendment would also incorporate from the aforementioned January 21, 1999 promulgation revised definitions of

“Equipment” and “Open-ended valve or line” and a new definition for the term “Sampling connection system.”

Section 335.152(a)(18) is proposed to be amended to update the adoption of the EPA regulations under 40 CFR Part 264, Subpart BB, relating to air emission standards for equipment leaks, as promulgated by the EPA through the December 8, 1997 issue of the *Federal Register* (62 FR 64636). This proposed amendment would incorporate changes to 40 CFR §264.1050(b)(3), clarifying that the Subpart BB standards apply to hazardous waste generators' 90-day accumulation units that are not recycling units; 40 CFR §264.1050(c), clarifying that a facility permitted prior to the effective date of December 6, 1996 is subject to 40 CFR Part 265, Subpart BB until the requirements of 40 CFR Part 264, Subpart BB are incorporated into the permit; and 40 CFR §264.1060(a) and (b), clarifying the conditions under which a 30-month implementation schedule applies.

Section 335.152(a) is proposed to be amended by inserting paragraph (19) which would adopt by reference the EPA regulations under 40 CFR Part 264, Subpart CC, relating to air emission standards for tanks, surface impoundments, and containers, as promulgated by the EPA through the January 21, 1999 issue of the *Federal Register* (64 FR 3382). This proposed amendment would incorporate certain provisions and requirements relating to applicability, definitions, general standards, inspection, monitoring, recordkeeping, reporting, and waste determination procedures, as well as technical standards necessary to control organic emissions from certain tanks, containers, surface impoundments, and closed-vent systems.

To account for the proposed insertion of new paragraph (19), paragraphs (19), (20), and (21) are proposed to be renumbered as paragraphs (20), (21), and (22).

Section 335.152(c)(4) is proposed to be amended by adding a new citation substitution and by rearranging the subparagraphs in ascending federal regulation citation numerical order for readability. The new substitution is proposed under §335.152(c)(4)(C) as follows: 40 CFR §264.80 is changed to §335.172 of this title (relating to Closure and Post-Closure Care (Land Treatment Units)). This proposed substitution is necessary in order to reflect the appropriate commission rule which corresponds to the federal regulation.

#### 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 amendments are in effect, there will be no fiscal impacts to units of state or local government as a result of implementation of the proposed amendments.

The proposed amendments are intended to adopt revised federal standards requiring implementation of air emission standards for tanks, surface impoundments, and containers; 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. Additionally, the proposal would require facilities to remove redundant permit requirements from Resource Conservation Recovery Act (RCRA) permits following compliance with the MACT standards. These federal standards were adopted by the EPA between 1994 and 1999. 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 amendments 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 amendments; 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 BENEFITS AND COSTS

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

The proposed amendments are intended to adopt revised federal standards requiring implementation of air emission standards for tanks, surface impoundments, and containers; 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. Additionally, the proposal would require facilities to remove redundant permit requirements from RCRA permits following compliance with the MACT standards. These federal standards were adopted by the EPA between 1994 and 1999.

There are approximately 8,000 hazardous waste generators and 200 permitted facilities that would continue to be subject to the amended standards. Also, 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 amendments. 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 amendments, which are intended to adopt federal RCRA regulations for hazardous waste tanks, surface impoundments, and containers. These federal standards were adopted by the EPA between 1994 and 1999.

There are approximately 8,000 hazardous waste generators and 200 permitted facilities that would continue to be subject to the amended standards, some of which are small or micro-businesses. 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. Small or micro-businesses that utilize hazardous waste storage tanks, surface impoundments, or containers will have to continue to abide by federal standards that would be adopted by the commission.

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 proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these proposed 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 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. 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 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 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 prepared a consistency determination for the proposed rules in accordance with 31 TAC §505.22 and 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 Lola Brown, 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 2000-044A-335-WS. Comments must be received by 5:00 p.m., September 24, 2001. For further information or questions concerning this proposal, please contact Ray Henry Austin, Policy and Regulations Division, (512) 239-6814.

#### 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.

**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) [, at 55 FedReg 22685] and as further amended as indicated in each paragraph of this subsection [section]:

(1) Subpart B--General Facility Standards (as amended through December 8, 1997 (62 FR 64636) [April 12, 1996, at 61 FedReg 16290]);

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

(4) Subpart E--Manifest System, Recordkeeping and Reporting (as amended through December 8, 1997 (62 FR 64636) [February 12, 1997 at 62 FedReg 6622]), 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) [, at 56 FedReg 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) [, at 57 FedReg 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) [, at 57 FedReg 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) [August 31, 1993, at 58 FedReg 46040]);

(10) Subpart K--Surface Impoundments (as amended through November 25, 1996 (61 FR 59932) [August 18, 1992, at 57 FedReg 37194-37282]);

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

(12) (No change.)

(13) Subpart N--Landfills (as amended through July 10, 1992 (57 FR 30658) [, at 57 FedReg 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) [February 21, 1991, at 56 FedReg 7208]);

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

(16) - (17) (No change.)

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

(19) Subpart AA--Air Emission Standards for Process Vents (as amended through December 8, 1997 (62 FR 64636) [June 13, 1997, at 62 FedReg 32451]);

(20) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through December 8, 1997 (62 FR 64636) [June 13, 1997, at 62 FedReg 32451]);

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

(22) [(21)] Subpart DD--Containment Buildings (as amended through August 18, 1992 (57 FR 37194) [, at 57 FedReg 37194]);

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

(24) [(23)] The following appendices contained in 40 CFR Part 265:

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

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

(C) Appendix IV--Tests for Significance; [and]

(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 [United States Environmental Protection Agency (EPA)] that are adopted by reference in this section are adopted subject to the following changes:

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

(3) Reference to [References] the RCRA [Resource Conservation and Recovery Act], [to] §3008(h) are changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste) [the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action)];

(4) Reference [References] to:

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

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

(C) 40 CFR §264.101 is [are] 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)) [40 CFR §270.41 are changed to §305.62 of this title (relating to Amendment)];

(E) 40 CFR §265.1 is changed to §335.111 of this title (relating to Purpose, Scope, and Applicability) [40 CFR §270.42 are changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee)];

(F) 40 CFR §265.90 is changed to §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements) [40 CFR §265.1 are changed to §335.111 of this title (relating to Purpose, Scope and Applicability)];

(G) 40 CFR §265.94 is changed to §335.117 of this title (relating to Recordkeeping and Reporting); [40 CFR Parts 260 - 270 means the commission's rules including, but not limited, to Chapter 50 of this title (relating to Action on Applications and Other Authorizations), Chapter 305 of this title (relating to Consolidated Permits), Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), as applicable; and]

(H) 40 CFR §265.314 is changed to §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste); [40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post Closure Care (Landfills)).]

(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 [(5) References] to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) is [are] 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 [(6) References] to 40 CFR §§265.71, 265.72, 265.76, and 265.77 is [are] 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 [(7) References] to 40 CFR Part 264, Subpart F is [are] 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 [(8) References] to 40 CFR Part 265, Subpart F is [are] changed to include §335.116 [of this title (relating to 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; and

(10) Reference [(9) References] to the EPA is [are] changed to the Texas Natural Resource Conservation Commission.

(c) (No change.)

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

**§335.152**

**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.

**§335.152. 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 [Code of Federal Regulations] through June 1, 1990 (55 FR 22685) [, at 55 FedReg 22685] and as further amended and adopted as indicated in each paragraph of this subsection [section]:

(1) Subpart B--General Facility Standards (as amended through December 8, 1997 (62 FR 64636) [April 12, 1996, at 61 FedReg 16290]); 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) - (3) (No change.)

(4) Subpart E--Manifest System, Recordkeeping, and Reporting (as amended through December 8, 1997 (62 FR 64636)) [February 12, 1997 at 62 FedReg 6622], 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) [, at 57 FedReg 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) [, in 59 FedReg 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 [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) [August 31, 1993, at 58 FedReg 46040]);

(9) Subpart K--Surface Impoundments (as amended [and adopted] through November 25, 1996 (61 FR 59932) [January 29, 1992, at 57 FedReg 3462]), except 40 CFR §264.221 and §264.228:

(A) Reference [References] to 40 CFR §264.221 is [are] changed to §335.168 of this title (relating to Design and Operating Requirements (Surface Impoundments));

(B) Reference [References] to 40 CFR §264.228 is [are] changed to §335.169 of this title (relating to Closure and Post-Closure [Post Closure] Care (Surface Impoundments));

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

(11) (No change.)

(12) Subpart N--Landfills (as amended through November 18, 1992 (57 FR 54452) [, at 57 FedReg 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) [February 21, 1991 at 54 FedReg 7207]); [and]

(14) Subpart S--Corrective Action for Solid Waste Management Units (as amended through February 16, 1993 (58 FR 8683), [at 58 FedReg 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) [at 57 Federal Regulations 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) [June 13, 1997, at 62 FedReg 32451]);

(18) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through December 8, 1997 (62 FR 64636) [June 13, 1997, at 62 FedReg 32451]);

(19) Subpart CC--Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through January 21, 1999 (64 FR 3382));

(20) [(19)] Subpart DD--Containment Buildings (as amended through August 18, 1992 (57 FR 37194) [, at 57 FedReg 37194]); [and]

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

(22) [(21)] The following appendices contained in 40 CFR Part 264:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 13891) [, at 59 FedReg 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) [, at 62 FedReg 32451]).

(b) (No change.)

(c) The regulations of the EPA [United States Environmental Protection Agency (EPA)] that are adopted by reference in this section are adopted subject to the following changes.

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

(3) References to RCRA, §3008(h) [of the Resource Conservation and Recovery Act] are changed to Texas Water Code, §7.031(c) - (e) (relating to Corrective Action Relating to Hazardous Waste) [the Texas Solid Waste Disposal Act, Texas Health and Safety Code (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action)].

(4) Reference [References] to:

(A) 40 CFR §260.10 is [are] 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 §264.80 is changed to §335.172 of this title (relating to Closure and Post-Closure Care (Land Treatment Units));

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

(E) [(C)] 40 CFR §264.101 is [are] 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) [(D)] 40 CFR §270.41 is [are] changed to §305.62 of this title (relating to Amendment); and

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

[(F) 40 CFR §264.1 are changed to §335.151 of this title (relating to Purpose, Scope and Applicability);]

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

[(H) 40 CFR §264.310 are changed to §335.174 of this title (relating to Closure and Post Closure Care (Landfills)).]

(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 [(5) References] to 40 CFR Part 264, Subpart D is [are] 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 [(6) References] to 40 CFR §§264.71, 264.72, 264.76, and 264.77 is [are] 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 [(7) References] to 40 CFR Part 264, Subpart F is [are] changed to §335.156 of this title [(relating to Applicability of Groundwater Monitoring and Response)], §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 [(relating to Corrective Action for Solid Waste Management Units)].

(9) Reference [(8) References] to 40 CFR Part 265, Subpart F is [are] 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 [(9) References] to the EPA is [are] changed to the Texas Natural Resource Conservation Commission.

(d) A copy of 40 CFR [Code of Federal Regulations] 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.

