

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §335.69, Accumulation Time.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The primary purpose of the proposed amendment is to revise the commission's rules to conform to changes under Title 40 Code of Federal Regulations (CFR) §262.34, Accumulation Time, promulgated by the United States Environmental Protection Agency (EPA) on January 21, 1999 at 64 FedReg 3382 and March 8, 2000 at 65 FedReg 12378. The January 21, 1999 changes correct rule language concerning requirements to comply with certain air emission standards in order to qualify under the accumulation time exemption. The March 8, 2000 changes allow large quantity generators of certain sludges from the treatment of electroplating wastewaters (i.e., EPA hazardous waste number F006) up to 180 days (or 270 days, as applicable) to accumulate F006 waste without a hazardous waste permit or interim status, provided that these generators recycle the F006 waste through metals recovery and meet certain other conditions.

The commission proposes this accumulation time rule primarily to address existing economic barriers to the recycling of F006 waste through metals recovery and to provide large quantity generators of F006 waste with an incentive to choose metals recovery instead of treatment and land disposal. By this proposal, the revisions would further the public policy concerning hazardous waste under Texas Health and Safety Code (THSC), §261.023 by encouraging recycling, which is a method of hazardous waste management preferred over land disposal. Also, the proposed amendment includes conforming changes that are needed to establish equivalency with the federal regulations, which will enable the State of Texas to increase its level of authorization to implement hazardous waste regulations in lieu of the EPA. Finally, in addition to the

aforementioned rule language corrections concerning air emission standards, the proposed amendment includes administrative and formatting changes, and cross-reference corrections.

Currently, under §335.69(a) generators may accumulate hazardous waste on-site for up to 90 days without a permit or interim status, if certain conditions are met. Certain of these conditions are related to air emission standards, which were mistakenly removed in EPA's November 25, 1996 issue of the *Federal Register*, at 61 FedReg 59950. The conditional requirements were put back into the federal regulations in EPA's January 21, 1999 issue of the *Federal Register*, at 64 FedReg 3382, with references to 40 CFR Part 265, Subparts AA, BB, and CC.

The March 8, 2000 issue of the *Federal Register*, at 65 FedReg 12378 provided changes to allow large quantity generators of certain sludges from the treatment of electroplating wastewaters (i.e., EPA hazardous waste number F006) longer periods of time to accumulate F006 waste without a hazardous waste storage permit or interim status, provided that these generators recycle the F006 waste through metals recovery and meet certain conditions. The EPA found, through research associated with the Common Sense Initiative for the Metal Finishing Industry, that the 90-day accumulation limit does not allow accumulation of a large enough volume of F006 sludge to make recycling economically feasible when compared to treatment and land disposal. This disincentive to recycling is principally due to the relatively high cost of transporting partial truckloads of the hazardous sludge from a generator's establishment to a recycling or smelting facility. Because there are more landfills than metals recovery facilities that handle F006 wastes, the distances from generators' sites to metals recovery facilities are generally greater than to landfills. Generators minimize shipping costs by finding the nearest authorized hazardous waste treatment, storage,

or disposal facility, which is most often a landfill.

The requirements of this proposal are designed to minimize releases of hazardous waste to the environment. Furthermore, the commission believes that having larger amounts of F006 waste on-site under the accumulation time exemption will not result in increased risks of release of F006 waste into the environment. EPA's research indicates that most generators dewater F006 waste into a cake-like material to remove free liquids and to decrease the costs of accumulation, shipping, recycling and/or disposal. In the event of a spill of dewatered F006 sludge, the potential risk of harm to human health and the environment would be low compared to a spill of a free liquid or dust. Due to the cake-like consistency of dewatered F006 waste, a spill of this waste could be contained relatively easily. Spilled dewatered F006 sludge is not likely to run off as a free liquid or disperse in the wind like a dust. In addition, with this proposal, workers will be required to handle the F006 waste less often (because transfers will occur less often), thereby decreasing their potential exposure to the F006 waste. With these conditions in place, the commission concurs with EPA that allowing large quantity generators of F006 waste to accumulate this waste for 180 days (or 270 days as applicable) does not pose any significantly increased potential harm to human health or the environment.

SECTION BY SECTION DISCUSSION

Section 335.69(a) is proposed to be amended to correct the cross-reference to "subsections (f) - (h)" by changing this cross-reference to "subsections (f) - (k)," to account for the proposed addition of exceptions to the 90-day accumulation time limit under new subsections (j) and (k).

Section 335.69(a)(1)(A) and (B) are proposed to be amended to reinstate the references to 40 CFR Part 265, Subparts AA, BB, and CC, as discussed earlier in this preamble. Section 335.69(a)(1)(B) is proposed to be amended to replace “Code of Federal Regulations” with “CFR.” Because §335.69(a) contains the phrase “Code of Federal Regulations (CFR),” each subsequent occurrence of this phrase within this section is proposed to be replaced with “CFR,” for the purpose of improved readability. Such revisions are also proposed under §§335.69(a)(4), 335.69(d), 335.69(d)(1), 335.69(e), and 335.69(f)(2) - (4). Section 335.69(a)(1)(A) - (C) is proposed to be amended by the addition of “and/” just prior to the word “or” ending each subparagraph to make it clear that any combination of the options under subparagraphs (A) - (D) are allowable under the accumulation time exemption. Section 335.69(a)(1)(D) is proposed to be amended to delete the superfluous comma between “CFR” and “Part 265,” and to reformat the reference to 40 CFR Part 265, Subpart DD, for consistency with the rest of the section. Similar reformatting amendments are also proposed under §§335.69(a)(4)(i) and (ii), 335.69(d)(1), and 335.69(f)(2) - (4).

Section 335.69(a)(4) is also proposed to be amended to split the list of referenced requirements into clauses (i) - (iii) for readability and to replace the word “incorporated” with “adopted” in clause (i) for consistency. Proposed clause (ii) contains a correction of the cross-reference to “§268.7(a)(4)” by changing it to “§268.7(a)(5).” This proposed correction reflects the corresponding correction made in the aforementioned EPA regulation promulgated March 8, 2000 at 64 FedReg 12397. Section 335.69(f)(4) is also proposed to be amended to correct this cross-reference.

Section 335.69(b) is proposed to be amended to add the reference to 30 TAC Chapter 305, relating to Consolidated Permits, to conform to the corresponding federal regulation at 40 CFR §262.34(b), which

references the permit requirements of 40 CFR Part 270. Section 335.69(b) is also proposed to be amended to change “commission” to “executive director,” to appropriately state that the executive director, rather than the commission, grants any accumulation time storage extensions under this subsection.

Section 335.69(c) is proposed to be amended to correct the designations of “I” in “Class I” to “1.”

Section 335.69(f)(5)(A) is proposed to be amended to correct the reference to subsection (f)(3)(D), changing it to a reference to subsection (f)(5)(D) with the phrase “subparagraph (D) of this paragraph.”

Section 335.69(h) is proposed to be amended by replacing the reference to “Texas Water Commission” with “executive director.” Thus, the sentence is proposed to read “Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances.” The commission considers the proposed amendment to be a correction to appropriately state that the executive director grants any accumulation time storage extensions under this subsection, as well as to remove the out-of-date reference to the Texas Water Commission.

New §335.69(j) - (l) is proposed to reflect the aforementioned EPA regulation promulgated March 8, 2000 at 64 FedReg 12397. The commission proposes to allow large quantity generators of F006 electroplating sludge to accumulate F006 waste on-site for up to 180 days (or 270 days, if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more) in tanks, containers, or containment buildings without a permit or interim status, if certain conditions are met. Under proposed

§335.69(j)(1), the generator must have implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants or contaminants entering the F006 waste or otherwise released to the environment prior to its recycling. Under proposed §335.69(j)(2), the F006 waste must be legitimately recycled through metals recovery. Under proposed §335.69(j)(3), no more than 20,000 kilograms of F006 waste can be accumulated on-site at any one time. In addition to the aforementioned conditions, under proposed §335.69(j)(4), the F006 waste must be placed in containers, tanks, or containment buildings and the generator must comply with a specified set of hazardous waste rules relating to these types of units, including unit specific standards and any applicable air emission standards, and the generator must comply with certain standards for marking and labeling, preparedness and prevention, contingency plan and emergency procedures, personnel training, and land disposal restrictions.

Proposed new §335.69(k) extends the accumulation time to 270 days, if the generator must transport the waste, or offer the waste for transportation, over a distance of 200 miles or more for off-site metals recovery. In such a case, the generator must also comply with the requirements under proposed §335.69(j)(1) - (4) discussed earlier in this preamble.

Proposed new §335.69(l) states that a generator accumulating F006 waste in accordance with §335.69(j) or (k), but who exceeds the 180- or 270-day limit limitation, or who exceeds the 20,000 kilogram limit, is a hazardous waste storage facility subject to the requirements of Chapter 335, relating to Industrial Solid Waste and Municipal Hazardous Waste and 30 TAC Chapter 305, relating to Consolidated Permits, applicable to such owners and operators, unless the generator has been granted an extension to the time limit or exception to the weight limitation by the executive director. Proposed §335.69(l) allows the

executive director to grant such extensions and exceptions if F006 waste must remain on-site for longer than 180 or 270 days or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. Finally, proposed §335.69(l) states that 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal impacts to units of state or local government as a result of implementation of the proposed amendment because there are no large quantity generators of wastewater sludge that are owned or operated by units of state or local government. The proposed amendment would increase the number of days affected large quantity generators can store wastewater sludge without requiring a hazardous waste storage permit. Current regulations allow large quantity generators to store wastewater sludge onsite for 90 days while the proposed amendment will allow them to store wastewater sludge onsite for 180 days, and up to 270 days under certain circumstances, without requiring a hazardous waste storage permit.

Affected large quantity generators are facilities that produce over 13 tons of F006 wastewater sludge annually. F006 sludge, which will be referred to as the affected waste in this fiscal note, is the wastewater by-product of electroplating. Electroplating includes a wide range of production processes, including common and precious metal electroplating, anodizing, chemical conversion coating, electroless plating, chemical etching and milling, and printed circuit board manufacturing. Electroplating is the application

of a metal surface coating which is intended to increase wear or erosion resistance, or simply provide decoration.

PUBLIC BENEFIT AND COSTS

Mr. Davis also determined that for each year of the first five years the proposal is in effect, the public benefit anticipated from enforcement of and compliance with the proposed revisions will be the potential increased recycling of affected waste associated with primary metal extraction and conservation of land through decreased landfill use.

The proposed amendment is intended to comply with changes to federal regulations, implemented by the EPA on March 8, 2000, regarding affected waste accumulation periods for large quantity generators (facilities that generate more than 13 tons of affected waste annually). The proposed amendment contains voluntary provisions which will allow large quantity generators to accumulate up to 20,000 kg (22 tons) of affected waste onsite for up to 180 days (up to 270 days in certain situations) without requiring a hazardous waste storage permit. This extension period only applies to facilities that intend to recycle their accumulated affected waste.

Current regulations allow large quantity generators to store the affected waste onsite for 90 days without a hazardous waste storage permit. In order to store the affected waste for the extended period, a facility must meet the following qualifications: 1) must have implemented pollution prevention practices that reduce the amount of any hazardous substance, pollutant or contaminant entering the affected waste or otherwise released into the environment prior to its recycling; 2) recycle the affected waste by metals

recovery; 3) accumulate no more than 20,000 kg of the affected waste on site at any one time; and 4) comply with the applicable management standards, such as accumulation in tanks, containers, or containment buildings, labeling and marking accumulation units, preparedness and prevention, contingency plan and emergency procedures, personnel training, and waste analysis and record keeping. The proposed amendment would also allow large quantity generators to accumulate the sludge up to 270 days without a hazardous waste storage permit, provided that the generator complies with the conditions stated above, and if they must ship their affected waste off site to a metals recovery facility that is located more than 200 miles away.

There are an estimated 124 facilities in Texas that would be affected by the proposed amendment. The commission estimates that large quantity generators that generate less than 80 tons of the affected waste annually will benefit the most due to implementation of the proposed amendments. By extending the accumulation period to 180 days, generators can send larger shipments of the affected waste offsite less often, which is anticipated to reduce overall transportation costs since only two instead of four shipments are required annually. The anticipated cost savings does decrease; however, as the distance to recyclers increases. The commission anticipates that larger generators (60 tons of affected waste annually) will probably continue to landfill if the nearest recycler is 1,000 or more miles from the generator.

Potential cost savings due to implementation of the proposed amendment is provided in Figure: 30 TAC Chapter 335 - Preamble 1 and Figure: 30 TAC Chapter 335 - Preamble 2, which are based on data provided by the EPA contained in the January 14, 2000 *“Regulatory Impact Analysis of the Final Rule for a 180-Day Accumulation Time for F006 Wastewater Treatment Sludges.”* Table 1 compares the cost

between recycling the affected waste based on the 90 and 180 day accumulation periods. Table 2 compares the cost between landfilling and recycling based on distance from landfills and recyclers. Based on the EPA data, a large quantity generator that currently recycles 50 tons of affected waste annually, would save approximately \$2,225 annually if it continued to recycle and the accumulation period is extended to 180 days. A similar generator that landfills the affected waste would save approximately \$2,311 annually if it chose to recycle instead of landfilling under the proposed amendments.

Figure: 30 TAC Chapter 335 - Preamble 1

Preamble 1 depicts pre and post amendment recycling costs:

| Preamble 1: Generator Incremental Savings: Post-Regulatory vs. Baseline Recycling costs | | | | |
|--|------------------------------|--------------------------|---------------------------------|-------------------|
| Generator Size (tons/year) | Distance to Recycler (Miles) | Baseline Recycling costs | Post-Regulatory Recycling Costs | Savings |
| 5-30 | <200 | \$8,376 - \$12,176 | \$4,208 - \$10,708 | \$1,468 - \$4,168 |
| | 300 | \$8,376 - \$12,176 | \$2,819 - \$10,241 | \$1,935 - \$5,557 |
| | 600 | \$10,592 - \$14,392 | \$3,557 - \$10,996 | \$3,396 - \$7,035 |
| | 1000 | \$13,480 - \$17,280 | \$4,520 - \$11,981 | \$5,299 - \$8,960 |
| 40-80 | <200 | \$15,256 - \$27,336 | \$13,788 - \$27,309 | \$27 - \$1,468 |
| | 300 | \$15,256 - \$27,336 | \$13,655 - \$27,309 | \$27 - \$1,601 |
| | 600 | \$17,472 - \$29,552 | \$14,662 - \$29,324 | \$228 - \$2,810 |
| | 1000 | \$20,360 - \$32,440 | \$15,975 - \$31,949 | \$491 - \$4,385 |

Figure: 30 TAC Chapter 335 - Preamble 2

Preamble 2 depicts the cost to landfill the affected waste compared to post amendment recycling.

| Preamble 2: Generator Incremental Savings: Post-Regulatory Recycling vs. Baseline Landfilling Costs | | | | | | | | | | |
|---|------------------|----------------|----------------------|-----------|----------------------|-----------|---------------------|-----------|----------------------|----------|
| Generator Size (tons/year) | | | Recycler < 200 Miles | | Recycler 300 Miles | | Recycler 600 Miles | | Recycler 1,000 Miles | |
| | Landfill (Miles) | Landfill Costs | Post-Reg. Rec. Costs | Savings | Post-Reg. Rec. Costs | Savings | Post-Reg. Rec Costs | Savings | Post-Reg. Rec Costs | Savings |
| 5-30 | 100 | \$12,176- | \$4,208- | \$2,518- | \$2,819- | \$2,985- | \$3,557- | \$2,230- | \$4,520- | \$1,245- |
| | | \$13,226 | \$10,708 | \$7,968 | \$10,241 | \$9,357 | \$10,996 | \$8,619 | \$11,981 | \$7,656 |
| | 200 | \$12,176- | \$4,208- | \$2,518- | \$2,819- | \$2,985- | \$3,557- | \$2,230- | \$4,520- | \$1,245- |
| \$13,226 | | \$10,708 | \$7,968 | \$10,241 | 9,357 | \$10,996 | \$8,619 | \$11,981 | \$7,656 | |
| 400 | \$12,728- | \$4,208- | \$3,070- | \$2,819- | \$3,357- | \$3,557- | \$2,782- | \$4,520- | \$1,797- | |
| | \$13,778 | \$10,708 | \$8,520 | \$10,241 | \$9,909 | \$10,996 | \$9,171 | \$11,981 | \$8,208 | |
| 40-80 | 100 | \$16,656- | \$13,788- | \$2,827- | \$13,655- | \$2,827- | \$14,662- | \$812- | \$15,975- | \$681- |
| | | \$30,136 | \$27,309 | \$2,868 | \$27,309 | \$3,001 | \$29,324 | \$1,994 | \$31,949 | **** |
| | 200 | \$16,656- | \$13,788- | \$2,827- | \$13,655- | \$2,827- | \$14,662- | \$812- | \$15,975- | \$681- |
| \$30,136 | | \$27,309 | \$2,868 | \$27,309 | \$3,001 | \$29,324 | \$1,994 | \$31,949 | **** | |
| 400 | \$17,208- | \$13,788- | \$3,379- | \$13,655- | \$3,379- | \$14,662- | \$1,364- | \$15,975- | \$1,233- | |
| | \$30,688 | \$27,309 | \$3,420 | \$27,309 | \$3,553 | \$29,324 | \$2,546 | \$31,949 | **** | |

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 amendment. The proposed amendment would increase the number of days affected large quantity generators can store the affected waste without requiring a hazardous waste storage permit, which could result in positive fiscal impacts for affected facilities. Current regulations allow large quantity generators to store affected waste onsite for 90 days while the proposed amendment will allow them to store affected waste onsite for 180 days (up to 270 days under certain circumstances), without requiring a

hazardous waste storage permit. There are 124 sites affected by the proposed amendment, some of which the commission estimates will be small or micro-businesses. Although the number of employees per affected business in Texas is undetermined, data provided by the EPA in the January 14, 2000 *Regulatory Impact Analysis of the Final Rule for a 180-Day Accumulation Time for F006 Wastewater Treatment Sludges* indicates that many of the 124 affected generators may be small or micro-businesses. The EPA study determined that approximately 98% of the 3,296 affected waste generators in business in 1992 nationwide were businesses that employed 100 or fewer employees.

The EPA's study showed that a large quantity generator that currently recycles 20 tons of the affected waste annually, would save approximately \$3,345 annually if the accumulation period is extended to 180 days. A similar generator that landfills the waste would save approximately \$4,971 annually if it chose to recycle instead of landfilling under the proposed amendment.

REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed 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 any of the four applicability requirements listed in §2001.0225(a). The proposed rule does not exceed a standard set by federal law because the purpose of this proposal is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in this rule are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because there is no express requirement in state law concerning F006 wastes. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or

representative of the federal government to implement a state and federal program. The state is proposing the rule to maintain EPA authorization of its RCRA program and accordingly is conforming its rules to fit the framework of the corresponding federal regulations. See 40 CFR §271.21, relating to procedures for revision of state programs and 40 CFR §262.34, relating to accumulation time. Finally, the proposal would adopt a rule under specific state law (i.e., THSC, Solid Waste Disposal Act, §361.017 and §361.024).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for the proposed rule pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rule is to facilitate recycling by providing regulatory flexibility for large quantity generators of certain sludges. The proposed rule would substantially advance this stated purpose by adopting an extension to the current accumulation time limit up to 180 days (or 270 days, as applicable) to accumulate these sludges (i.e., F006 waste that is destined for legitimate recycling through metal recovery). This additional time would allow the accumulation and shipment of a full truckload of F006 waste, enabling a reduction in transportation costs per unit over a partial truckload. Promulgation and enforcement of the proposed rule would not affect private real property which is the subject of the rules because the proposed rule language provides regulatory flexibility to large quantity generators of F006 waste who choose metals recovery in lieu of other more stringent hazardous waste regulations (e.g., the 90-day accumulation time limit). The proposed standards are not considered to be more stringent than existing standards. In addition, this reduction of regulatory requirements may be taken only at the initiative of certain persons managing F006 waste. For these reasons, this action is not considered a burden to private real property and does not constitute a taking under Texas Government Code, Chapter 2007. The

subject proposed regulations do not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking for consistency with Coastal Management Program (CMP) goals and policies in accordance with the rules of the Coastal Coordination Council. The commission has found that the proposal is a rulemaking which relates to an action or actions subject to the CMP, in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code §33.201 et seq.), and the commission's rules at 30 TAC Chapter 281, Subchapter B, relating to Consistency with the Texas CMP. Therefore, as required by 30 TAC §281.45(a)(3) and 31 TAC §505.11(b)(2) relating to actions and rules subject to the CMP, this proposal must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this proposed rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals 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 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this proposed rule would be consistent with the applicable CMP goals and policies because the proposed rule would facilitate the environmentally sound recycling of F006 waste and reduce the quantity of these wastes going to hazardous waste landfills. Thus, the proposed rule would

serve to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also serve to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are 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 United States Code Annotated, §§6901 et seq. The commission has determined that the specific actions detailed in this section and earlier in this preamble under the sections concerning background and summary of the factual basis for the proposed rules, public benefit and costs, small business and micro-business assessment, regulatory impact analysis determination, and takings impact assessment will comply with the goals and policies of the CMP. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposal with the CMP.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Patricia Duron, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received by 5:00 p.m. on January 2, 2001, and should reference Rule Log No. 2000-045-335-WS. Comments received by the deadline will be considered by the commission prior to any final action on the proposal. For further information, please contact Ray Henry Austin at (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 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 Act.

The proposed amendment implements THSC, Chapter 361.

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

§335.69

§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) [(f) - (h)] 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, as adopted by reference under §335.112(a) of this title (relating to Standards), and 40 CFR Part 265, Subpart CC [provisions adopted by reference in §335.112(a)(8) of this title (relating to Standards)]; and/or

(B) 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 [requirements adopted by reference in §335.112(a)(9) of this

title (relating to Standards)], except 40 CFR [Code of Federal Regulations] §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 [Subpart DD of] 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 [contained] in 40 CFR [Code of

Federal Regulations], Part 265, Subparts C and D and with 40 CFR §265.16, as adopted [incorporated] by reference in §335.112(a) [§335.112] of this title (relating to Standards); [, with 40 Code of Federal Regulations §265.16, with]

(B) 40 CFR [Code of Federal Regulations,] §268.7(a)(5) [§268.7(a)(4)], as adopted by reference under §335.431(c) of this title (relating to Purpose, Scope, and Applicability); and

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

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

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

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

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

(2) (No change.)

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

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

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

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

(2) the generator complies with the requirements of [Subpart I of] 40 CFR [Code of Federal Regulations] Part 265, Subpart I, as adopted by reference under §335.112(a) of this title (relating to Standards), except 40 CFR [Code of Federal Regulations] §265.176;

(3) the generator complies with the requirements of 40 CFR [Code of Federal Regulations] §265.201, as adopted by reference under §335.112(a) of this title (relating to Standards) [in Subpart J of 40 Code of Federal Regulations Part 265];

(4) the generator complies with the requirements of:

(A) subsections (a)(2) and (3) of this section; [and the requirements of]

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

(C) 40 CFR [Code of Federal Regulations,] 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title (relating to Purpose, Scope, and Applicability) [§268.7(a)(4)]; and

(5) the generator complies with the following requirements:

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

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

(g) (No change.)

(h) A generator who generates greater than 100 kilograms but less than 1000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6000 kg or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste), and Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the executive director [Texas Water Commission] if hazardous wastes must remain on-site for longer than

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

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

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

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

and

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

(A) the F006 waste is placed:

(i) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, as adopted by reference under §335.112(a) of this title (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) a written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

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

days;

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

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

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

(E) the generator complies with the following:

(i) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D, and 40 CFR §265.16, as adopted by reference under §335.112(a) of this title (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) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of subsection (j)(1) - (4) of this section.

(l) A generator accumulating F006 waste in accordance with subsection (j) or (k) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title (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.