

The Texas Commission on Environmental Quality (commission) proposes amendments to §335.2 and §335.41.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Senate Bill (SB) 1281, 79th Legislature, 2005, added Texas Health and Safety Code (THSC), §361.0901, which requires commercial industrial solid waste facilities that receive solid waste for discharge to a publicly owned treatment works (POTW) to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act, or under Texas Water Code (TWC), Chapter 26, Texas Water Quality Control.

The commission recognizes that there are a small number of commercial industrial solid waste facilities that receive industrial solid waste for discharge to POTWs that currently are not required to obtain an industrial solid waste permit because of the wastewater treatment exemptions under §335.2 and §335.41. The proposed rules will require these facilities to obtain a permit and, at a minimum, meet certain requirements related to tank engineering and design, waste analysis, facility operations, personnel training, quality assurance, closure, and for new facilities, siting requirements. Financial assurance for closure will be required. Facilities will also be required to keep on-site appropriate plans and operating records that document compliance with these requirements. The proposed amendments will require the facility to obtain a solid waste permit issued under this chapter or an interim general permit issued under 30 TAC Chapter 205 in order to continue operations. Authorization under the general permit would be for a period not to exceed 15 months, but may be extended at the discretion of the commission in one-year increments.

## SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout the proposed rules to be consistent with Texas Register requirements and agency guidelines.

The commission proposes an amendment to §335.2, Permit Required. The proposed revision to §335.2(d)(3) will remove the reference to wastewater treatment units. SB 1281 removes the exemption from permitting for wastewater treatment units that process or store industrial solid waste received on a commercial basis for discharge to a POTW. The different types of exemptions from permitting for facilities that operate wastewater treatment units currently covered under §335.2(d)(3) are now proposed to be covered under new §335.2(d)(7) - (9).

Proposed new §335.2(d)(7) exempts from permitting units that store or process nonhazardous industrial solid waste if the wastewater is discharged under a Texas Pollutant Discharge Elimination System authorization issued under TWC, Chapter 26. These units are currently covered under §335.2(d)(3).

Proposed new §335.2(d)(8) exempts from permitting units located at noncommercial solid waste management facilities that store or process nonhazardous industrial waste if the wastewater is discharged to a POTW. These units are currently covered under §335.2(d)(3).

Proposed new §335.2(d)(9) is added as a result of the implementation of THSC, §361.0901(c), which exempts from permitting certain wastewater treatment units at municipal solid waste facilities or commercial industrial solid waste landfill facilities. This exemption from permitting covers wastewater

treatment units that process or store liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at a municipal solid waste or commercial industrial solid waste landfill facility if the waste is discharged to a POTW. These units are currently covered under §335.2(d)(3).

Proposed new §335.2(n) is added as a result of the implementation of THSC, §361.0901(b). This section will require owners or operators of commercial industrial solid waste management facilities that receive industrial solid waste for treatment and/or storage for discharge to a POTW to acquire a permit issued under §335.2. Existing facilities may obtain authorization under an interim general permit issued under Chapter 205 in order to continue operations until the issuance of the solid waste permit. The general permit will authorize operation of the facility for a maximum term of 15 months in order to continue operations. Authorization may be extended at the discretion of the commission on an individual basis in one-year increments. The facility must be authorized to continue operations under the general permit or an individual solid waste permit by June 1, 2006. Facilities that apply for a general permit to continue operations must also submit to the commission appropriate information to demonstrate compliance with the financial assurance requirements for closure of industrial solid waste facilities in accordance with 30 TAC Chapter 37, Subchapter P, Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities, by June 1, 2006. All owners or operators of facilities that are operating under a Chapter 205 general permit shall submit an application for an individual solid waste permit by September 1, 2006.

The commission proposes an amendment to §335.41, Purpose, Scope and Applicability. The proposed revision to §335.41(d)(1) will remove the reference to wastewater treatment units. SB 1281 removes the exemption from permitting for wastewater treatment units that process or store industrial solid waste received on a commercial basis for discharge to a POTW. The exemptions from permitting for facilities that operate hazardous wastewater treatment units currently covered under §335.41(d)(1) are now proposed to be covered under new §335.41(d)(5) - (8).

Proposed new §335.41(d)(5) exempts from permitting units that store or process hazardous industrial solid waste that is discharged under a Texas Pollutant Discharge Elimination System authorization issued under TWC, Chapter 26. These units are currently covered under §335.41(d)(1).

Proposed new §335.41(d)(6) exempts from permitting units located at noncommercial solid waste management facilities that store or process hazardous industrial waste that is discharged to a POTW. These units are currently covered under §335.41(d)(1).

Proposed new §335.41(d)(7) is added as a result of the implementation of THSC, §361.0901(c), which exempts from permitting certain wastewater treatment units at municipal solid waste facilities or commercial industrial solid waste landfill facilities. This exemption from permitting covers wastewater treatment units that process or store hazardous industrial liquid wastes that are incidental to the handling, processing, storage, or disposal of solid waste and discharged to a POTW. These units are currently covered under §335.41(d)(1).

Proposed new §335.41(d)(8) is added as a result of the implementation of THSC, §361.0901(b) and exempts owners or operators of commercial industrial solid waste management facilities that receive hazardous waste for discharge to a POTW from the permitting requirements of Subchapters E and F of this chapter, but will require these facilities to acquire a permit issued under §335.2 or Chapter 205. These units are currently covered under §335.41(d)(1).

#### FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management Section, determined that for the first five-year period the proposed rules are in effect, minor fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will be required to implement a new permit program and perform additional inspection duties for a small number of commercial industrial solid waste facilities. Agency revenue is anticipated to increase, though not by a significant amount. The implementation of the permit program will be accomplished using current agency resources, thus no cost increases are anticipated. No fiscal implications are anticipated for other units of state or local governments.

The proposed rules implement the provisions of SB 1281 and will require commercial industrial solid waste facilities that receive solid waste for discharge to a POTW to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act, or an interim general permit under TWC, Chapter 26, Water Quality Control, until a decision is made on whether to issue an individual solid waste permit. It is known that the proposed rules will affect at least one, and perhaps as many as five, commercial industrial solid waste facilities.

Currently, a general permit issued under Chapter 205 costs \$100 per application and an annual fee of \$100. The proposed rules would limit the time a commercial industrial solid waste facility may operate under a general permit to 15 months. Extensions may be granted on a case-by-case basis at the discretion of the commission in increments not to exceed one year. The facility would pay \$200 for the general permit application and annual fee for the first year. If granted an extension for subsequent years, the facility would pay a \$100 annual fee.

Facilities operating under a general permit will be required to obtain financial assurance to cover the costs of properly closing an industrial solid waste facility. These costs can vary widely depending on the facility and the wastes stored, but they could be as much as \$200,000. The costs of obtaining financial assurance from a third party are estimated to range between 1% and 5% of estimated closing costs per year. Therefore, the costs of obtaining financial assurance could be as much as \$10,000 per year per facility.

An individual permit issued under §335.2 costs \$100 per application plus a \$50 notice fee. In addition, facilities with a permit issued under §335.2 for Class 1 industrial and hazardous solid wastes will be assessed annual facility fees. These fees would range from \$500 to \$5,000 per year, depending on the number of waste management units subject to permit authorization.

Agency revenue in the Waste Management Account 549 may increase by as much as \$150 to \$25,750 in the first year the rules are implemented depending on the type of permit applied for and the number of entities that will be subject to the rules. Revenue increases in the second year of implementation will be

\$100 per permit if a general permit is granted under Chapter 205 and from \$500 to \$25,000 per year if an individual permit is issued under §335.2.

Given the small number of facilities anticipated to be affected by the proposed rules, the agency does not anticipate a significant increase in operating costs when implementing the rules. Any cost increases associated with this rulemaking are expected to be paid from the agency's existing budget. If, in the future, there is a significant increase in the number of facilities subject to the proposed rules, operating costs may increase by a significant amount.

#### PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and the continued protection of the public health and the environment.

The proposed rules may affect large businesses that own or operate commercial industrial solid waste facilities that receive solid waste for discharge to a POTW. If a large business decided to apply for a permit as proposed by the rules, it could expect to incur application costs of \$100 and a \$100 annual fee for a general permit under Chapter 205 for the first year of operation. If granted an extension for subsequent years of operation under the general permit, the business would have to pay a \$100 annual fee. The business would have to obtain a permit issued under §335.2 to operate and would incur the costs associated with a §335.2 permit. The cost of completing the application for an individual permit could range from \$25,000 to \$50,000 depending on the size and complexity of the facility.

For a permit under §335.2, the application costs are \$100 per application with a \$50 notice fee. If an individual permit is issued under §335.2 for the management of Class 1 or hazardous wastes, then an annual facility fee will be assessed. The fee could range from \$500 to \$5,000 per year. Individual permits issued under §335.2 would require a business to publish notice of the permit application in a newspaper. A general permit issued under Chapter 205 would require the agency to publish notice of the proposed permit in a newspaper. Publication costs could be as much as \$1,000 per notice, depending on which newspaper is chosen.

For an individual permit under Chapter 335, there may be costs associated with a contested case hearing. The costs associated with a contested case hearing could range from as much as \$30,000 to \$50,000.

Financial assurance for closure will be required for existing facilities that will continue to operate under a general permit issued under Chapter 205. Owners and operators would need to obtain sufficient financial assurance to cover the costs of properly closing the facility. Owners and operators would need to calculate the costs of properly closing the facility in order to determine how much financial assurance they would need to have in place. Financial assurance costs will vary depending upon the specific facility, as well as the financial strength and size of the owners/operators. If affected owners and operators do not meet the qualifications of the financial test, they could obtain financial assurance in the form of a surety bond, letter of credit, trust, or the purchase of an insurance policy. These costs are estimated to range between 1% and 5% per year of the cost of closing the facility.

Costs to properly close commercial industrial solid waste facilities that receive waste for discharge to a POTW are estimated to range up to \$200,000 depending upon the amount and type of material that would need to be disposed of, and the method of disposal. For the purposes of this fiscal note, it is assumed that for the estimated one to five affected facilities, costs to properly close the facility could range up to \$200,000. Further, the cost to obtain proper financial assurance is estimated to be 5% of the closure costs, and therefore is estimated to be up to \$10,000 per year for each of the estimated affected facilities.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications, which could be significant depending on the type of permit sought, are anticipated for small or micro-businesses. It is known that at least one, and perhaps as many as five, small or micro-businesses will be subject to the proposed rules. A small business is defined as having fewer than 100 employees or less than \$1 million in annual gross receipts. A micro-business is defined as having no more than 20 employees.

Application costs for a general permit issued under Chapter 205 are estimated to be \$100 per application, plus \$100 per year for an annual fee. The general permit would be limited to 15 months but extensions may be granted at the discretion of the commission in increments not exceeding one year. A facility would be required to obtain a §335.2 permit. Costs per employee could be as much as \$2.00 in the first year of implementation of a general permit. Costs per employee are estimated to be \$1.00 per employee per year during subsequent years of implementation for a general permit. Financial assurance costs, which could be as high as \$10,000 per year, could be as much as \$100 per employee.

Costs to complete an application for an individual permit, which range from \$25,000 to \$50,000, could cost as much as \$250 to \$500 per employee.

Application costs under §335.2 are estimated to be \$100 per application with a \$50 notice fee.

Publication costs for publishing the required public notice could be as much as \$1,000. Costs associated with contested case hearings could range from \$30,000 to \$50,000. Annual facility fees for individual permits issued under §335.2 could range from \$500 to \$5,000 per year. For a small business applying for this type of permit, the cost per employee, if such a contested case hearing is required, could be as much as \$307 to \$552 during the first year of implementation. Annual facility fees for individual permits issued under §335.2 could range from \$5.00 to \$50 per employee per year during the second through the fifth years of implementation.

For a micro-business, the cost to apply for a permit under Chapter 205 is estimated to be \$10 per employee during the first year of implementation and \$5.00 per employee per year in the second year if an extension is granted. Financial assurance costs could cost \$500 per employee, and the costs to apply for an individual permit could cost from \$1,250 to \$2,500 per employee.

The costs for a micro-business to apply for a permit under §335.2 may range from as much as \$1,533 to \$2,758 per employee during the first year of implementation if a contested case hearing is required. Annual facility fees for individual permits issued under §335.2 could range from \$25 to \$250 per employee per year during the second through the fifth years of implementation.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute.

A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may 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.

The specific intent of the proposed rules is to require commercial industrial solid waste facilities that receive solid waste for discharge to a POTW to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act. Therefore, it is not anticipated that the proposed rules will 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. The commission concludes that these proposed rules do not meet the definition of a major environmental rule.

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) 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; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the proposed rules do not meet any of these requirements. First, while these rules may exceed a standard set by federal law by requiring a permit for commercial industrial solid waste facilities that receive waste for discharge to a POTW, they are specifically required by state law. Second, the proposed rules do not exceed an express requirement of state law but instead implement statutory requirements for commercial industrial solid waste facilities that receive solid waste for discharge to a POTW. Third, there is no delegation agreement that would be exceeded by these proposed rules because no agreement relates to this subject matter area. Fourth, the commission proposes these rules under the rulemaking direction of SB 1281 and not solely under the commission's general powers.

The commission evaluated these rules and performed an assessment of whether the rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to require commercial industrial solid waste facilities that receive industrial solid waste for discharge to a POTW to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act. The proposed rules would substantially advance this stated purpose by removing an existing exemption from permitting for wastewater treatment units that process or store industrial solid waste received on a commercial basis for discharge to a POTW. Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property because the proposed rules do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed rules would improve the commission's ability to ensure proper management of industrial solid waste. Because the proposed rules do not affect real property, they do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance

with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include the goals to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal waters and to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing coastal natural resource areas, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone.

CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities. The agency shall comply with the policies of 31 TAC §501.19 when issuing permits and adopting rules under THSC, Chapter 361.

The rules are consistent with and comply with the policies of 31 TAC §501.19 when issuing permits and adopting rules under THSC, Chapter 361.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

#### ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin, Texas, on November 21, 2005, at 2:00 p.m. at the Texas Commission on Environmental Quality complex in Building F, Room 2210, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown at (512) 239-0348. Requests should be made as far in advance as possible.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-045-335-PR. Comments must be received by 5:00 p.m. on December 12, 2005. Copies of the proposed rules can be obtained from the commission's Web Site at [http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For

further information, please contact Lynn Bell, Industrial and Hazardous Waste Permits Section, at (512) 239-6603.

**SUBCHAPTER A: INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS  
WASTE IN GENERAL**

**§335.2**

**STATUTORY AUTHORITY**

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; and THSC, §361.011, which provides the commission with the authority to manage municipal waste; §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; §361.017, which provides the commission with powers and duties necessary or convenient to manage industrial solid waste activities; §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and §361.0901, as added by SB 1281, which requires commercial industrial solid waste facilities that receive solid waste

for discharge to a POTW to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act, or under TWC, Chapter 26, Water Quality Control.

The proposed amendment implements SB 1281.

**§335.2. Permit Required.**

(a) Except with regard to storage, processing, or disposal to which subsections (c) - (h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the [Texas] Department of State Health Services (DSHS) [(TDH)], or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) (No change.)

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency (EPA) [EPA] or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities that [which] satisfied this requirement by filing an application on or before November 19, 1980, with the EPA are not required to submit a separate application with the DSHS [TDH]. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Texas Solid Waste Disposal Act [TSWDA] (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act (RCRA) [RCRA], 42 United States Code, §§6901 *et seq.*, that render the facilities [facility] subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the EPA under RCRA, which first

require them to comply with the standards [set forth] in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards [set forth] in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

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

(d) No permit shall be required for:

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

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit[, or a wastewater treatment unit];

(4) (No change.)

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten [10] days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment; [or]

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly [publically] owned treatment works with discharges subject to regulation under the Clean Waste Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit; [.]

(7) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater unit and is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26;

(8) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater treatment unit that discharges to a publicly owned treatment works and the units are located at a noncommercial solid waste management facility; or

(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities.

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

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that [which] is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in [set out at] 40 CFR §261.4(e) and (f), as amended and adopted in the CFR through February 18, 1994, as published in the *Federal Register* (59 FR 8362), which are adopted [herein] by reference.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill that [which] has qualified for interim status in accordance with 40 CFR Part 270, Subpart G, and that [which] has complied with the standards [set forth] in Subchapter E of this chapter, by complying with the notification and information requirements [as set forth] in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions, which may include, without limitation, public notice[,] and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is

suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of 40 CFR §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) (No change.)

(2) polychlorinated [Polychlorinated] biphenyl compounds wastes subject to regulation by 40 CFR Part 761;

(3) - (8) (No change.)

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under 40 CFR §270.1(c)(5) and (6), or obtain an order in lieu of a post-closure permit, as provided in subsection (m) of this section. If a post-closure permit is required, the permit must address applicable provisions of 40

CFR Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) provisions concerning groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements [relating to Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements]. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) - (l) (No change.)

(m) [Order in lieu of a post-closure permit.] At the discretion of the commission, an owner or operator may obtain a post-closure order in lieu of a post-closure permit for interim status units, a corrective action management unit unless authorized by a permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units. The post-closure order must address the facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and groundwater monitoring requirements of §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response).

(n) Except as provided in subsection (d)(9) of this section, owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works are required to obtain a permit under this subchapter. By June 1, 2006, owners or

operators of existing commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works must have a permit issued under this subchapter or obtain a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges) to continue operating. A general permit issued under Chapter 205 of this title will authorize operations until a final decision is made on the application for an individual permit. The general permit shall authorize operations for a maximum period of 15 months except that authorization may be extended on an individual basis in one-year increments at the discretion of the commission. Should an application for a general permit issued under Chapter 205 of this title be submitted, the applicant shall also submit to the commission, by June 1, 2006, the appropriate information to demonstrate compliance with financial assurance requirements for closure of industrial solid waste facilities in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities). Owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works operating under a general permit issued under Chapter 205 of this title shall submit an application for a permit issued under this subchapter prior to September 1, 2006.

## **SUBCHAPTER B: HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS**

### **§335.41**

#### **STATUTORY AUTHORITY**

The amendment is proposed under the authority granted to the commission by the Texas Legislature in TWC, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; §5.103 and §5.105, which establish the commission's general authority to adopt rules; §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; and THSC, §361.011, which provides the commission with the authority to manage municipal waste; §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; §361.017, which provides the commission with powers and duties necessary or convenient to manage industrial solid waste activities; §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste; and §361.0901, as added by SB 1281, which requires commercial industrial solid waste facilities that receive solid waste for discharge to a POTW to obtain a permit under THSC, Chapter 361, Solid Waste Disposal Act, or under TWC, Chapter 26, Water Quality Control.

The proposed amendment implements SB 1281.

**§335.41. Purpose, Scope, and Applicability.**

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

(b) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities); [and] Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste[, ] Storage, Processing, or Disposal Facilities); [and] §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities); and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) do not apply to an owner or operator of a totally enclosed treatment facility, as defined in §335.1 of this title (relating to Definitions).

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

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

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

(2) persons engaged in processing or containment activities during immediate response to a discharge of a hazardous waste; an imminent and substantial threat of discharge of hazardous waste; a discharge of a material which, when discharged, becomes a hazardous waste; or an immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in §335.1 of this title, except that:

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

(C) any person who continues or initiates hazardous waste processing or containment activities after the immediate response is over is subject to all applicable requirements of

Subchapters E and [Subchapter E of this chapter, Subchapter] F of this chapter and Chapter 305 of this title (relating to Consolidated Permits); and

(D) (No change.)

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

(4) a [A] farmer disposing of waste pesticides from the farmer's [his] own use in compliance with §335.77 of this title (relating to Farmers); [.]

(5) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, provided that the wastewater is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26, and if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b);

(6) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, located at a noncommercial solid waste management facility that discharges to a publicly owned treatment works, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b);

(7) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, located at a municipal solid waste facility or commercial industrial solid waste landfill disposal facility that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b); or

(8) the owner or operator of a wastewater treatment unit, as defined in §335.1 of this title, located at a commercial industrial solid waste facility that receives waste for discharge to a publicly owned treatment works, provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory as defined in 40 CFR §268.40) or reactive (D003) waste to remove the characteristic before land disposal, must comply with the requirements in 40 CFR §264.17(b), but is subject to the permitting requirements of §335.2(n) of this title (relating to Permit Required).

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

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

(2) (No change.)

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

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

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

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

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

(ii) (No change.)

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

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

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

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

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

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

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

(i) - (j) (No change.)