

The Texas Commission on Environmental Quality (TCEQ or commission) proposes to amend §§335.1, 335.10 - 335.12, 335.15, 335.41, 335.67 - 335.69, 335.76, 335.112, and 335.152.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed rules is to implement the United States Environmental Protection Agency's (EPA) new Uniform Hazardous Waste Manifest form, continuation sheet, and instructions for completing the form as published in the March 4, 2005, issue of the *Federal Register* (70 FR 10776) and amended in the June 16, 2005, issue of the *Federal Register* (70 FR 35034). The proposed rules would also add three definitions, change when a container is empty, and modify placarding requirements. Manifesting requirements for Texas Class 1 wastes are proposed to conform to the new hazardous waste manifest requirements. The key component of this manifest system is the Uniform Hazardous Waste Manifest, which is a form prepared by all generators who transport, or offer for transport, hazardous waste for off-site treatment, recycling, storage, or disposal. Currently, the manifest is a paper document containing multiple copies of a single form. When completed, it contains information on the type and quantity of the waste being transported, instructions for handling the waste, and signature lines for all parties involved in the disposal process. The manifest is required by the Department of Transportation (DOT), the EPA, and the State of Texas. Manifests are required for both hazardous waste and Texas Class 1 waste. Each party that handles the waste signs the manifest and retains a copy for themselves. This ensures critical accountability in the transportation and disposal processes. Once the waste reaches its destination, the receiving facility returns a signed copy of the manifest to the generator, confirming that the waste has been received by the designated facility.

The EPA has established new requirements revising the Uniform Hazardous Waste Manifest and the requirements for completing the form, as well as adding three definitions, changing when a container is empty, and modifying placarding requirements. Manifesting requirements for Texas Class 1 wastes are proposed to continue to conform to the new hazardous waste manifest requirements. The revisions will standardize the content and appearance of the Uniform Hazardous Waste Manifest, EPA Form 8700-22, and continuation sheet, EPA Form 8700-22A; make the forms available from a greater number of sources; and adopt new procedures for tracking certain types of waste shipments with the manifest. These types of shipments include hazardous wastes that destination facilities reject, wastes consisting of residues from non-empty hazardous waste containers, and wastes entering or leaving the United States.

The State of Texas requires a manifest for Texas Class 1 wastes under specific circumstances. Texas Class 1 wastes are not regulated by the EPA as hazardous wastes. This proposal does not affect when a manifest is required for Class 1 wastes; however, it does propose to change the manifest requirements for Texas Class 1 waste to conform with federal requirements. This is being proposed to avoid any possible confusion between two different manifest systems.

The EPA has established an 18-month transition to the new form. During this 18-month period, handlers will only use the old form. The old forms may still be obtained from existing sources. The 18-month period ends on September 5, 2006. On that date, for hazardous waste shipments, federal manifest requirements will trump state manifest requirements where the state requirements do not conform with the federal requirements and only the new Uniform Hazardous Waste Manifest may be

used. Therefore, the commission is proposing these rules so that the Texas manifest requirements mirror federal requirements. The commission is proposing that the rules be effective on September 5, 2006. This includes the proposed revisions to the Texas Class 1 manifest requirements.

Handlers can obtain new forms from any source that has registered with EPA to print and distribute the form. The EPA will not distribute forms; rather, the EPA will oversee the printing requirements and ensure that registered printers follow them. The EPA will maintain a list of entities that have been approved to print/distribute the form, so that the public may acquire the forms from one of the approved printers. States may register to print the new form, but state rules cannot establish the state as the exclusive source of forms. The TCEQ is not planning to register to print forms, but will provide free manifests to those individuals that need 50 or less in a given year. This will be accomplished by the TCEQ purchasing a minimum supply of the Uniform Hazardous Waste Manifest from a registered printer.

SECTION BY SECTION DISCUSSION

The commission proposes administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual*, November 2004.

The commission proposes to amend Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste, to incorporate the new EPA Uniform Hazardous Waste Manifest, EPA Form 8700-22, the continuation sheet, EPA Form 8700-22A, and instructions for completing the form as published in the

March 4, 2005, issue of the *Federal Register* (70 FR 10776) and amended in the June 16, 2005, issue of the *Federal Register* (70 FR 35034). The proposed rules would also add three definitions, change when a container is empty, modify placarding requirements, and change manifesting requirements for Texas Class 1 wastes to conform to the federal requirements.

Subchapter A - Industrial Solid Waste and Municipal Hazardous Waste In General

§335.1. Definitions.

Section 335.1 is proposed to be amended by adding paragraph (13) “Captive facility,” a facility that accepts wastes from only related (within the same corporation) off-site generators; paragraph (14) “Captured facility,” a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex; and paragraph (15) “Captured receiver,” a receiver which is located within the property boundaries of the generators from which it receives waste. “Captured facility” is being removed from paragraph (20) and placed into its own paragraph. “Captive facility” and “Captured receiver” are proposed to be added to define the terms used by the TCEQ for the regulated community. These new definitions are consistent with the commission’s interpretation of these words in the past. 40 Code of Federal Regulations (CFR) §260.10 removes the definition of “Manifest document number,” revises the definitions of “Designated facility” and “Manifest,” and adds the definition of “Manifest tracking number.” The commission proposes mirroring these removals and additions in this section and renumbering the definitions appropriately. These additions and amendments are necessary to accurately reflect EPA’s definitions, terms, and use for regulating hazardous waste.

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

Section 335.10 sets forth the procedures related to generators of hazardous or Class 1 waste and primary exporters of hazardous waste consigned to a foreign country and is proposed to be amended by incorporating the EPA changes regarding the manifest document format, instructions, and the special provisions for Class 1 waste. Under the statutory authorities of both the Resource Conservation and Recovery Act (RCRA) and DOT, all states will implement the new (nationally uniform) RCRA Hazardous Waste Manifest (EPA Form 8700-22) and if necessary the continuation sheet (EPA Form 8700-22A). Generators must ensure that all hazardous and Class 1 wastes offered for transportation are accompanied by a manifest as required in this section. All manifests for hazardous waste must be completed according to the instructions found in the Appendix of 40 CFR Part 262. Itemized instructions for completing the manifest are proposed to be removed from the rules and replaced by references to the Appendix of 40 CFR Part 262. The Uniform Hazardous Waste Manifest may be obtained from any source that has received approval from and registered with the EPA as a supplier of the manifest as mandated in 40 CFR §262.21(g)(1). Treatment, storage, and disposal facilities that offer for transport a rejected hazardous waste load are included in the rules requiring manifests by 40 CFR §262.20(a)(1) and (2). The commission proposes to amend this section to conform with these requirements. Texas tracks hazardous and Class 1 wastes by the Texas Waste Code and therefore, it is proposed that all manifests contain the Texas Waste Code for each waste listed. The proposed rules would require that all manifests for Class 1 waste be completed according to the instructions found in the Appendix of 40 CFR Part 262 with the following modifications: in accordance with the instructions, it is proposed that the Texas Waste Codes be used in lieu of the EPA waste code and the

TCEQ generator, transporter, and treatment, storage, and disposal facility identification numbers be used when EPA identification numbers are not required. The proposed changes would require a generator to ensure interstate and intrastate shipments of hazardous waste are designated for delivery and, in the case of intrastate shipments, are delivered to facilities that are authorized to operate under an approved state program or the federal program.

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

Section 335.11 sets forth the procedures related to transporters of hazardous or Class 1 waste for which a manifest is required and is proposed to be amended to be consistent with 40 CFR Part 263. Specific instructions are proposed to be replaced with references to the Appendix of 40 CFR Part 262. In the case of hazardous waste exports, it is proposed that the transporter must ensure that the shipment conforms to the requirements set forth in the regulations contained in 40 CFR §263.20(a). The proposal would require that transporters who transport hazardous waste or Class 1 waste out of the United States will comply with manifest requirements as set forth in §335.10. If the transporter cannot deliver the waste because of an emergency condition other than rejection of the waste by the designated facility, the new rules would require the transporter to contact the generator for further directions and revise the manifest according to the generator's instructions. If hazardous waste is partially rejected by the designated facility while the transporter is on the facility's premises, it is proposed that the transporter obtain a copy of the original manifest that includes the facility's date and signature, the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or container residue on the manifest. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the

generator, or if the original manifest is not used, the proposed rules call for the transporter to obtain a new manifest to accompany the shipment.

§335.12. Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities.

Section 335.12 sets forth the procedures related to treatment, storage, and disposal facilities and is proposed to be amended by changing the section title to be consistent with the term “treatment” as used by the TCEQ and by 40 CFR Part 264. The amendment is proposed to conform with EPA manifest requirements. The EPA new rules change the manifest to incorporate specific areas and instructions for rejected wastes. Upon rejecting waste or identifying a container residue that exceeds the quantity limits for “empty” containers, the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste. The facility must send the waste to the alternate facility or back to the generator within 60 days of the rejection or the container residue identification. While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest. A new manifest is required for full or partial load rejections and residues that are to be sent off-site to an alternate facility or back to the generator. For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility, and the new manifest must include all required information. When a rejected full load is taken to an alternate facility or returned to the generator, a copy of the original manifest will be annotated with the rejecting facility’s signature, date, description

of the rejection, the name, address, phone number, and EPA identification number for the alternate facility or generator to whom the shipment must be delivered. If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for “empty” containers after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify the information as amended. These amendments are proposed to conform to EPA rules and establish manifest discrepancies as a significant difference between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives; rejected wastes, which may be a full or partial shipment that the treatment, storage, and disposal facility cannot accept; or container residues, which are residues that exceed the quantity limits for “empty” containers set forth in 40 CFR §261.7(b). Significant differences in quantity for bulk weight are variations greater than 10% in weight and for batch waste are any variation in piece count. Significant differences in type are obvious differences which can be discovered by inspection or waste analysis. Upon discovering a significant difference in quantity or type, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to the manifest being amended. It is further proposed that a facility that receives hazardous or Class 1 waste from a rail or water transporter be required to retain at the facility a copy of each shipping paper and manifest. It is proposed that if a facility receives waste imported from a foreign source, the

receiving facility mails a copy of the manifest to the International Compliance Assurance Division, OFA/OECA, EPA. This section is proposed to be consistent with the EPA changes listed in this paragraph.

§335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities.

Section 335.15 sets forth procedures for owners and operators who receive hazardous or Class 1 waste from off-site sources or who have notified that they intend to receive hazardous or Class 1 waste from off-site sources. This section is proposed to be amended by changing the section title to be consistent with the term “treatment” as used by the agency and by outlining that if a facility accepts for treatment, storage, or disposal any hazardous waste or Class 1 waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper, and if the waste is not excluded from the manifest requirement, that the owner or operator must prepare and submit a letter to the executive director within 15 days after receiving the waste and include all required information.

Subchapter B - Hazardous Waste Management General Provisions

§335.41. Purpose, Scope and Applicability.

Section 335.41 sets forth procedures implementing the Texas hazardous waste program, which controls from point of generation to ultimate disposal, those wastes that have been identified by the administrator of the EPA in 40 CFR Part 261. This section is proposed to be amended by adjusting the number of gallons that determine whether a container is “empty ” from 110 to 119 gallons. The term

“processing” is proposed to be replaced with “treatment” for consistency of use by the TCEQ and by 40 CFR Part 264.

Subchapter C - Standards Applicable to Generators of Hazardous Waste

§335.67. Marking.

Section 335.67 sets forth provisions relating to the marking of packages or containers of hazardous waste and is proposed to be amended by changing the number of gallons used to determine the markings on the containers. The commission is proposing to change the number of gallons from 110 to 119 and how the container is to be marked. It is proposed that a generator must mark each container of 119 gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR §172.304: “HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency.” Markings are also proposed to include the generator’s name and address, the generator EPA identification number, and the manifest tracking number.

§335.68. Placarding.

Section 335.68 sets forth provisions for placarding according to the DOT regulations and is proposed to be amended with added verbiage to be used in instances where placards are not required. If placards are not required, the proposed rules would require a generator to mark each motor vehicle according to 49 CFR §171.3(b)(1), which states that no person may accept for transportation, transport, or deliver a hazardous waste for which a manifest is required unless that person has marked each motor vehicle

used to transport hazardous waste in accordance with §390.21 or §1058.2 even though placards may not be required.

§335.69. Accumulation Time.

Section 335.69 sets forth provisions for generators accumulating waste on-site and is proposed to be amended by adding subsection (m). The proposal would allow a generator to send a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste, and later receive that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10, to accumulate the returned waste on-site depending on the amount of hazardous waste on-site in that calendar month.

§335.76. Additional Requirements Applicable to International Shipments.

Section 335.76 sets forth provisions for international shipments including primary exporters and is proposed to be amended by having importers and exporters obtain the Uniform Hazardous Waste Manifest from any source that is registered with the EPA as a supplier of manifests. In accordance with EPA requirements, it is proposed that the primary exporter must comply with manifest regulations of §335.10 except that the primary exporter must attach to the manifest, which accompanies the hazardous waste shipment, a copy of the EPA acknowledgment of consent for the shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but need not be attached to the manifest. For exports by water (bulk shipment) the primary exporter would attach the copy of the EPA acknowledgment of consent to the shipping paper.

Subchapter E - Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities

§335.112. Standards.

Subchapter E sets forth provisions for interim standards for TSDFs and is proposed to be amended by changing the title to be consistent with the term “treatment” as used by the agency. This section sets forth provisions for adoption by reference regulations contained in 40 CFR Part 265. Paragraph (4) is proposed to be amended to reference all applicable federal manifest requirements, which includes the addition of 40 CFR §260.10 and §365.70, and to update the date of the last *Federal Register* affecting the incorporated rules.

Subchapter F - Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities

§335.152. Standards.

Subchapter F sets forth provisions for the permitting standards for TSDFs and is proposed to be amended by changing the title to be consistent with the term “treatment” as used by the agency. This section sets forth provisions for adoption by reference regulations contained in 40 CFR Part 264. Paragraph (4) is proposed to be amended to reference all applicable federal manifest requirements found in Subpart E of 40 CFR Part 265.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Walter Perry, Analyst, Strategic Planning and Assessment Section, determined that, for the first five-year period the proposed amendments are in effect, no significant fiscal implications are

anticipated for the agency or other units of state or local government. Industries or businesses that ship or transport hazardous waste may realize cost savings due to the implementation of the proposed rules, depending upon the amount of waste shipped or transported.

The proposed rules implement the EPA's new Uniform Hazardous Waste Manifest for all hazardous waste generators that transport, or offer for transport, hazardous waste for off-site treatment, recycling, storage, or disposal. The proposed rules would also revise the manifest requirements for Texas Class 1 wastes to conform with federal requirements and allow for its inclusion on the Uniform Hazardous Waste Manifest.

Under the existing rules, hazardous waste generators transporting waste to another state for treatment, recycling, storage, or disposal are required to prepare the destination states manifest form. The proposed rulemaking would adopt the EPA's Uniform Hazardous Waste Manifest that will be required to be used by all states beginning September 5, 2006. Generators of hazardous waste would then prepare one form regardless of the final destination. The Uniform Hazardous Waste Manifests are available from any source that has registered with the EPA to print and distribute the form. The cost for forms from a registered printer is unknown at this time, but is not expected to be significant. The TCEQ does not plan to register as a printer of the new forms but will obtain a limited quantity to provide the forms free of charge for any generator requiring 50 or less per year. Waste generators requiring more Uniform Hazardous Waste Manifests will have to obtain them from a registered printer for a fee.

Currently, the agency spends approximately \$20,000 a year to print the current manifest form. These costs are recovered through fees collected from waste generators. The reduction in fee revenue and costs is not expected to be significant. Other units of state and local government are not expected to be affected by the proposed rules as they are not typically hazardous waste generators.

PUBLIC BENEFITS AND COSTS

Mr. Perry 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 increased efficiency for shipping and transporting hazardous waste.

The proposed rules are expected to result in cost savings for those industries and businesses that ship or transport large amounts of hazardous waste. Under the existing rules, hazardous waste generators transporting waste for treatment, recycling, storage, or disposal are required to prepare the destination states manifest form. The proposed rulemaking would adopt the EPA's Uniform Hazardous Waste Manifest that will be required to be used by all states beginning September 5, 2006. Generators of hazardous waste would then prepare one form regardless of the final destination. The Uniform Hazardous Waste Manifests are available from any source which has registered with the EPA to print and distribute the form. The cost for forms from a registered printer is unknown at this time, but is not expected to be significant. Some businesses may elect to register to print their own forms. The TCEQ does not plan to register as a printer of the new forms but will obtain a limited quantity to provide the forms free of charge for any generator requiring 50 or less per year.

Generators of hazardous waste may realize a cost savings as a result of the increased efficiency for the shipment and transportation of hazardous waste. Savings may be realized as reduced administrative costs required to obtain and prepare regulatory forms required by the receiving state(s). In Texas, there are 998 large quantity generators who would be affected by the proposed rulemaking. The cost savings realized by the generators would be dependent upon how much waste was shipped. According to the EPA, there are more than 139,000 businesses in approximately 45 industries nationwide that may receive regulatory relief from the proposed rules. These businesses ship approximately 12 million tons of hazardous waste annually, and use between two and five million hazardous waste manifests. The EPA estimates that the annual change in paperwork burden resulting from these rules will save states and industry between \$12 and \$20 million.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rulemaking. The proposed rulemaking would result in no additional costs for small and micro-businesses. Small and micro-businesses would experience the same potential cost savings as industry. Small or micro-businesses who used 50 or fewer Uniform Hazardous Waste Manifests per year would continue to receive their forms free of charge from TCEQ.

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 has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Because these rules are not proposed to protect the environment or to reduce the risk to human health from environmental exposure, this is not a major environmental rule. Also, because the proposed rules do not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state the proposed rules are not a major environmental rule. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because the hazardous waste manifest changes will be implemented by the EPA on September 5, 2006, and these proposed changes conform state rules to the federal changes, and the Texas Class 1 waste manifest changes are not proposed to be more stringent, but to conform with federal requirements. Because the additional definitions define words consistent with prior agency practice, they do not result in more stringent regulation. Since these proposed rules are not more stringent there should be no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state. In addition, these rules would not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose a rule solely under the general powers of the agency. The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules in accordance with Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of these proposed rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program. The proposed rules will substantially advance this stated purpose by proposing federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the rule language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations. There is no burden on private real property because the hazardous waste manifest changes will be implemented by the EPA on September 5, 2006, and these proposed changes conform state rules to the federal changes, and the Texas Class 1 waste manifest changes are not proposed to be more stringent, but to conform with federal requirements. Also, the new definitions define words consistent with prior agency practice, and do not result in more stringent regulation. The subject regulations do not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) relating to rules subject

to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

The commission prepared a consistency determination for the rules under 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. The CMP policy applicable to the rulemaking is governing emissions of air pollutants to protect and enhance air quality in the coastal area so as to protect coastal natural resource areas and promote the public health, safety, and welfare. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies.

SUBMITTAL OF COMMENTS

Comments may be submitted to Holly Vierk, MC 205, Texas Register Team, Office of Legal Services, P. O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-060-335-PR. Comments must be received by 5:00 p.m., April 24, 2006. 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. For further information or questions concerning this proposal, please contact Ellette Vinyard, Permitting and Remediation Support, at (512) 239-6085.

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

§§335.1, 335.10 - 335.12, 335.15

STATUTORY AUTHORITY

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

The proposed amendments implement THSC, Chapter 361.

§335.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings.

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

(5) Activities associated with the exploration, development, and protection of oil or gas or geothermal resources--Activities associated with:

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

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency [EPA] in accordance with the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 *et seq.*).

(6) Administrator--The administrator of the United States Environmental Protection Agency [EPA] or his designee.

(7) - (11) (No change.)

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(12) Boiler--An enclosed device using controlled flame combustion and having the following characteristics:

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

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler [Variance to be Classified as a Boiler]).

(13) Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(14) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(15) Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(16) [(13)] Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(17) [(14)] Certification--A statement of professional opinion based upon knowledge and belief.

(18) [(15)] Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(19) [(16)] Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous [Hazardous], Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(20) [(17)] Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(21) [(18)] Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

(22) [(19)] Closure--The act of permanently taking a waste management unit or facility out of service.

(23) [(20)] Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person[, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex].

(24) [(21)] Component--Either the tank or ancillary equipment of a tank system.

(25) [(22)] Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(26) [(23)] Consignee--The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(27) [(24)] Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(28) [(25)] Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title (relating to Standards).

(29) [(26)] Contaminant--Includes, but is not limited to, "solid waste," "hazardous waste," and "hazardous waste constituent" as defined in this subchapter; [,] "pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC), §361.431; [,] "hazardous substance" as defined in THSC, §361.003; [,] and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.268.

(30) [(27)] Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater, or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(31) [(28)] Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(32) [(29)] Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the

environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(33) [(30)] Corrective action management unit (CAMU)--An area within a facility that is designated by the commission under 40 Code of Federal Regulations Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Related to Hazardous Waste) [(Corrective Action related to Hazardous Waste)]. A CAMU shall only be used for the management of remediation wastes in accordance with implementing such corrective action requirements at the facility.

(34) [(31)] Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

(35) [(32)] Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(36) [(33)] Designated facility--A Class 1 or hazardous waste treatment, storage, [processing,] or disposal facility which has received a United States Environmental Protection Agency [an EPA] permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 270 and 124; a permit from a state authorized in accordance with 40 CFR Part 271 (in the case of hazardous waste); a permit issued in accordance with §335.2 of this title (relating to Permit Required) (in the case of nonhazardous waste); or that is regulated under §335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §335.12(e) of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(37) [(34)] Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(38) [(35)] Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(39) [(36)] Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(40) [(37)] Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(41) [(38)] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(42) [(39)] Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "disposal facility" does not include a corrective action management unit into which remediation wastes are placed.

(43) [(40)] Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of [a] non-earthen materials and designed to convey preservative kick-back or

dripage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(44) [(41)] Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of non-hazardous industrial solid waste; and

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

(45) [(42)] United States Environmental Protection Agency (EPA) acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(46) [(43)] United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D and to each characteristic identified in 40 CFR Part 261, Subpart C.

(47) [(44)] United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(48) [(45)] Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency [EPA] limits for drinking water as published in the *Federal Register*.

(49) [(46)] Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(50) [(47)] Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(51) [(48)] Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(52) [(49)] Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(53) [(50)] Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions, and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(54) [(51)] Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(55) [(52)] Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(56) [(53)] Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several treatment, storage, [processing,] or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, [processing,] and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste).

(57) [(54)] Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

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

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

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

(61) [(58)] Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

(62) [(59)] Groundwater--Water below the land surface in a zone of saturation.

(63) [(60)] Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency [EPA] in accordance with the Resource Conservation and Recovery Act [RCRA] of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive

director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

(64) [(61)] Hazardous substance--Any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [CERCLA], 40 Code of Federal Regulations Part 302.

(65) [(62)] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency [EPA] in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act [RCRA], 42 United States Code, §§6901 *et seq.*, as amended.

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

(67) [(64)] Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators,

boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(68) [(65)] Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

(69) [(66)] In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

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

(71) [(68)] Incinerator--Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(72) [(69)] Incompatible waste--A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

(73) [(70)] Individual generation site--The contiguous site at or on which one or more solid waste or hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of solid waste or hazardous waste, but is considered a single or individual generation site if the site or property is contiguous.

(74) [(71)] Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(75) [(72)] Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

(76) [(73)] Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(77) [(74)] Inground tank--A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

(78) [(75)] Injection well--A well into which fluids are injected. (See also "underground injection.")

(79) [(76)] Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(80) [(77)] Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

(81) [(78)] International shipment--The transportation of hazardous waste into or out of the jurisdiction of the United States.

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

(83) [(80)] Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(84) [(81)] Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(85) [(82)] Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

(86) [(83)] Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(87) [(84)] Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

(88) [(85)] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(89) [(86)] Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

(90) [(87)] Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(91) [(88)] Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22, originated and signed by the generator or offeror, that will accompany and be used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is the EPA Form 8700-22, obtainable from any printer registered with the EPA. [The waste shipping document which accompanies and is used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is TNRCC-0311 (Uniform Hazardous Waste Manifest) which is furnished by the executive director or may be printed through the agency's "Print Your Own Manifest Program."]

[(89) Manifest document number--A number assigned to the manifest by the commission for reporting and recordkeeping purposes.]

(92) Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed on the manifest by a registered source.

(93) [(90)] Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(94) [(91)] Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

(95) [(92)] Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(96) [(93)] Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency [EPA].

(97) [(94)] Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(98) [(95)] New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. (See also "existing tank system.")

(99) [(96)] Off-site--Property which cannot be characterized as on-site.

(100) [(97)] Ongoing tank--A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

(101) [(98)] On-site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(102) [(99)] Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

(103) [(100)] Operator--The person responsible for the overall operation of a facility.

(104) [(101)] Owner--The person who owns a facility or part of a facility.

(105) [(102)] Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

(106) [(103)] PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(107) [(104)] Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, [processing,] or disposal facility in accordance with specified limitations.

(108) [(105)] Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

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

(110) [(107)] Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq.*)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels--i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils--i.e., Number 1-D, Number 1, Number 2-D, and Number 2;

(vi) residual fuel oils--i.e., Number 4-D, Number 4-light, Number 4, Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils--i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils--i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants--i.e., automotive and industrial lubricants;

(x) building materials--i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials--i.e., transformer oils and cable oils; and

(xii) used oils--See definition for "used oil" in this section.

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, *et seq.*)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(111) [(108)] Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(112) [(109)] Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(113) [(110)] Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from the Resource Conservation and Recovery Act [RCRA] and solid waste management units.

(114) [(111)] Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(115) [(112)] Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(116) [(113)] Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(117) [(114)] Primary exporter--Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 Code of Federal Regulations Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

(118) [(115)] Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such

waste nonhazardous, or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency [EPA] in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act [RCRA], 42 United States Code, §§6901 *et seq.*, as amended.

(119) [(116)] Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(120) [(117)] Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

(121) [(118)] Receiving country--A foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

(122) [(119)] Regional administrator--The regional administrator for the United States Environmental Protection Agency [EPA] region in which the facility is located, or his designee.

(123) [(120)] Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(124) [(121)] Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under Texas Solid Waste Disposal Act [TSWDA], §361.303 (Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title.

(125) [(122)] Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, [processing,] or disposal.

(126) [(123)] Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste.

"Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency [EPA] or state approved corrective action.

(127) [(124)] Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

(128) [(125)] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

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

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

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

(132) [(129)] Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(133) [(130)] Small quantity generator--A generator who generates less than 1,000 kilogram of hazardous waste in a calendar month.

(134) [(131)] Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit

issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with [the] Natural Resources Code, §91.101, unless such waste, substance, or

material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency [EPA] in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act [RCRA], 42 United States Code, §§6901 *et seq.*, as amended; or

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §261.4(a)(1) - (19), as amended through May 11, 1999[,] (64 FR 25408), subject to the changes in this clause, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste). For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of 'Solid Waste' in §335.1 of this title (relating to Definitions)":

(I) in the certification statement under 40 CFR §261.38(c)(1)(i)(C)(4), the reference to "40 CFR §261.38" is changed to "40 CFR §261.38, as revised under subparagraph (A)(iv) under the definition of 'Solid Waste' in 30 TAC §335.1," and the reference to "40 CFR §261.28(c)(10)" is changed to "40 CFR §261.38(c)(10)";

(II) in 40 CFR §261.38(c)(2), the references to "§260.10 of this chapter" are changed to "§335.1 of this title (relating to Definitions)," and the reference to "parts 264 or 265 of this chapter" is changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities)";

(III) in 40 CFR §261.38(c)(3) - (5), the references to "parts 264 and 265, or §262.34 of this chapter" are changed to "Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";

(IV) in 40 CFR §261.38(c)(5), the reference to "§261.6(c) of this chapter" is changed to "§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)";

(V) in 40 CFR §261.38(c)(7), the references to "appropriate regulatory authority" and "regulatory authority" are changed to "executive director";

(VI) in 40 CFR §261.38(c)(8), the reference to "§262.11 of this chapter" is changed to "§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)";

(VII) in 40 CFR §261.38(c)(9), the reference to "§261.2(c)(4) of this chapter" is changed to "§335.1(129)(D)(iv) of this title (relating to Definitions)"; and

(VIII) in 40 CFR §261.38(c)(10), the reference to "implementing authority" is changed to "executive director."

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E)

of this paragraph; or

(iv) a military munitions identified as a solid waste in 40 CFR

§266.202.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33, but that exhibit one or more of the hazardous waste characteristics, or will be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(17)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(17)).

(iv) Accumulated speculatively. Materials noted with an asterisk in

Column 4 of Table 1 are solid wastes when accumulated speculatively.

Figure: 30 TAC §335.1(134)(D)(iv) [Figure: 30 TAC §335.1(131)(D)(iv)]

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i)(1)	Energy Recovery/Fuel S.W. Def. (D)(ii)(2)	Reclamation S.W. Def. (D)(iii)(3) ²	Speculative Accumulation S.W. Def. (D)(iv)(4)
Spent materials (listed hazardous & not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous) ¹	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous) ¹	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous) ¹	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal other than excluded scrap metal (see §335.17(9)) (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(9)) (nonhazardous) ¹	*	*	*	*

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

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

² Except as provided in 40 CFR §261.4(a)(17) for mineral processing secondary materials.

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) Except for materials described in subparagraph (H) of this paragraph, the following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2)[(1) - (2)].

(H) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that will otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as will be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel, or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land and the material, as generated:

(I) is a Class 3 waste under Subchapter R of this chapter (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Subchapter R
of this chapter; and

(-b-) does not exceed a concentration limit under
§312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

(viii) with the exception of [notwithstanding] the requirements under
§335.17(a)(8) of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous
Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual
production of the recycling material must be recycled or transferred to a different site and recycled on
an annual basis; and

(II) if the recycling material is placed in protective storage,
such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual
production of the recycling material must be recycled or transferred to a different site and recycled on
a biennial basis.

(I) Respondents in actions to enforce the industrial solid waste regulations who
raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation,
must demonstrate that there is a known market or disposition for the material, and that they meet the

terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(J) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(K) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities [Materials]).

(135) [(132)] Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

(136) [(133)] Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(137) [(134)] Staging pile--An accumulation of solid, non-flowing remediation waste, as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(138) [(135)] Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(139) [(136)] Sump--Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, [processing,] or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(140) [(137)] Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(141) [(138)] Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(142) [(139)] Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(143) [(140)] TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(144) [(141)] Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

(145) [(142)] Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(146) [(143)] Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any

constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(147) [(144)] Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste are held during the normal course of transportation.

(148) [(145)] Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(149) [(146)] Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

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

(151) [(148)] Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of 40 Code of Federal Regulations §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(152) [(149)] Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

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

(154) [(151)] Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

(155) [(152)] Underground tank--A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

(156) [(153)] Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

(157) [(154)] Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(158) [(155)] Universal waste handler--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

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

(160) [(157)] Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(161) [(158)] Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(162) [(159)] Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, conditionally exempt small quantity generator [Conditionally Exempt Small Quantity Generator] hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(163) [(160)] Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §§466 *et seq.*, §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of tank or tank system as defined in this section.

(164) [(161)] Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(165) [(162)] Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

(166) [(163)] Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

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

(a) Except as provided in subsection (g) and (h) of this section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste treatment, [process,] storage, or disposal facility within the United States or a treatment, storage, and disposal facility that offers for transport a rejected hazardous waste load, or a primary exporter[s] of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1) for generators of industrial nonhazardous Class 1 waste in a quantity greater than 100 kilograms per month and/or generators of hazardous waste shipping hazardous waste which is part of a total quantity of hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste treatment, storage, [processing,] or disposal facility in Texas, a standard (nationally uniform) Resource Conservation and Recovery Act (RCRA) manifest form (United States Environmental Protection Agency (EPA) Form 8700-22), under both RCRA and Department of Transportation (DOT) statutory authorities, is prepared; [; a Texas Natural Resource Conservation Commission (TNRCC) manifest on Form TNRCC-0311 is prepared;]

(2) (No change.)

(3) for generators of hazardous waste or Class 1 waste generated in Texas for consignment to another state the standard (nationally uniform) RCRA manifest form (EPA Form 8700-

22) [the consignment state's manifest, if provided, or a Texas state manifest if the consignment state does not provide a manifest,] is prepared, unless the generator is identified in paragraph (2) of this section;

(4) for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a standard (nationally uniform) RCRA manifest form (EPA Form 8700-22) [a manifest from the primary exporter's state if that state supplies the manifest form and requires its use or a manifest from any source if the primary exporter's state does not supply the manifest form]; and

(5) a generator designates on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternate facility which is authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "Alternate Facility." ["Special Handling Instructions and Additional Information."] If the transporter is unable to deliver the waste to the designated facility or the alternate facility, the generator must either designate another facility or instruct the transporter to return the waste;

(6) (No change.)

(b) Generators may obtain the manifest from any source that is registered with the EPA as a supplier of manifests. A registrant may not print, or have printed, the manifest for use or distribution

unless it has received approval from the EPA director of the Office of Solid Waste to do so under 40

Code of Federal Regulations (CFR) §262.21.

[(b) The manifest shall contain the following information.]

[(1) The manifest shall contain the generator's United States Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest by the generator. This requirement does not apply if the waste being shipped is nonhazardous or if the generator is a conditionally exempt small quantity generator of hazardous waste.]

[(2) The manifest shall contain the total number of pages used to complete the manifest, plus the number of continuation sheets, if any (page 1 of ____).]

[(3) The manifest shall contain the name, mailing address, and telephone number of the generator.]

[(4) The manifest shall contain the telephone number where an authorized agent of the generator may be reached in the event of an emergency.]

[(5) The manifest shall contain the generator's TNRCC registration and/or permit number. Conditionally exempt small quantity generators (CESQGs) of hazardous waste or industrial generators of less than 100 kg per month of nonhazardous Class 1 waste and less than CESQG limits of

hazardous waste that are exempt from manifesting may voluntarily choose to manifest their hazardous or Class 1 industrial nonhazardous waste. Such exempt generators may utilize the letters "CESQG" for their TNRCC generator registration number.]

[(6) The manifest shall contain the first transporter's company name.]

[(7) The manifest shall contain the first transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous or the transporter is a conditionally exempt small quantity generator transporting only his own hazardous waste.]

[(8) The manifest shall contain the first transporter's state registration number. Conditionally exempt small quantity generators who are not required to notify of their transportation activities as specified in §335.6(d) of this title (relating to Notification Requirements) may use the letters "CESQG" as the TNRCC transporter's registration number when transporting their own hazardous or Class 1 nonhazardous waste.]

[(9) The manifest shall contain a telephone number where an authorized agent of first transporter may be reached in the event of an emergency.]

[(10) The manifest shall contain the second transporter's company name.]

[(11) The manifest shall contain the second transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is non-hazardous.]

[(12) The manifest shall contain the second transporter's state registration number.]

[(13) The manifest shall contain a telephone number where an authorized agent of the second transporter may be reached in the event of an emergency.]

[(14) The manifest shall contain the company name and site address of the facilities designated to receive the waste identified on the manifest and an alternate facility, if designated. Except as provided otherwise in §335.78 of this title for the shipment of hazardous wastes that are required to be manifested under subsection (a) of this section, generators shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an approved state hazardous waste program administered in lieu thereof.]

[(15) The manifest shall contain the designated facility's EPA 12-digit identification number; however, this requirement does not apply if the waste being shipped is non-hazardous.]

[(16) The manifest shall contain the TNRCC storage, processing, or disposal facility registration and/or permit number.]

[(17) The manifest shall contain the appropriate notation in the hazardous materials (HM) column of the Texas uniform hazardous waste manifest. The form has been designed to allow the listing of both federally regulated wastes and wastes regulated solely by the state. In order to distinguish between federally regulated wastes and other waste, as required by United States Department of Transportation (DOT) regulations (49 Code of Federal Regulations (CFR) §172.201(a)(1)), the TNRCC has added an HM column on the manifest before the DOT description. When a waste shipment consists of both federally regulated materials and state-regulated wastes, the HM column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials.]

[(18) The manifest shall contain the DOT proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 CFR Parts 171-177. If the shipment contains non-hazardous waste solely regulated by the TNRCC, then the TNRCC waste classification code description should be used.]

[(19) The manifest shall contain the number of containers for each waste and the appropriate abbreviation from Table 1 from §335.30 of this title (relating to Appendix I) for the type of container.]

[(20) The manifest shall contain the total quantity of each waste described on each line.]

[(21) The manifest shall contain the unit of measure of each waste described on each line. The appropriate abbreviation for the unit of measure may be found in Appendix I, Table 1 of 40 CFR Parts 264 or 265.]

[(22) The manifest shall contain the TNRCC waste classification code assigned to the waste by the generator.]

[(23) The manifest shall contain a certification by the generator stating: "I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations, including applicable state regulations. If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of processing, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; or, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford. "]

[(24) If a mode other than highway is used, the word "highway" should be lined out and the appropriate mode (rail, water, or air) inserted in the space provided below the word

"highway". If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space provided below the word "highway."]

(c) All manifests for hazardous wastes must be prepared according to the instructions found in the Appendix to 40 CFR Part 262, and must also contain the Texas Waste Code for each waste. Manifests for Class 1 wastes must be prepared according to the instructions found in the Appendix to 40 CFR Part 262 (pre-printed on the back of the Uniform Hazardous Waste Manifest) with the addition of the Texas Waste Codes for each waste. When itemizing Class 1 waste, the TCEQ solid waste registration numbers will be used when EPA identification numbers are not required.

[(c) The manifest shall consist of at least the number of copies which will provide the generator, each transporter, the owner or operator of the storage, processing, or disposal facility and in the case of hazardous waste exports, the United States customs official, with one copy each for their records and another copy to be returned to the generator.]

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

(1) use a manifest system that ensures that interstate and intrastate shipments of hazardous waste are designated for delivery and, in the case of intrastate shipments, are delivered to facilities that are authorized to operate under an approved state program or the federal program; and

(2) ensure that all hazardous and Class 1 wastes offered for transportation are accompanied by a manifest except shipments subject to subsections (g) and (h) of this section or shipments by rail or water, as specified in subsections (e) and (f) of this section.

[(1) sign the manifest by hand;]

[(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;]

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

[(4) give the transporter the remaining copies of the manifest.]

(e) For shipments of [hazardous waste or] Class 1 waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

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

(h) No manifest and no marking in accordance with §335.67(b) of this title (relating to Marking) [(related to Marking)] is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).

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

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste [exporters of hazardous waste]) to an off-site treatment, storage, [processing,] or disposal facility, unless the transporter:

(1) complies with §335.10 of this title; and

[(1) obtains a manifest completed by the generator or primary exporter where appropriate in accordance with §335.10 of this title;]

[(2) upon receipt and prior to shipment, signs and dates the manifest acknowledging the acceptance of waste from the generator or primary exporter where appropriate;]

[(3) returns a signed copy to the generator or primary exporter where appropriate before leaving the generator's property; and]

(2) [(4)] in the case of hazardous waste exports, ensures [knows] that the shipment conforms to the requirements set forth in the regulations contained in 40 Code of Federal Regulations (CFR) §263.20[(a), as amended and adopted through April 12, 1996, at 61 FedReg 16290].

(b) A transporter may not cause, suffer, allow, or permit the delivery of a shipment of hazardous or Class 1 waste to another designated transporter or to a treatment, storage, or disposal facility unless accompanied by a standard (nationally uniform) Resource Conservation and Recovery Act (RCRA) manifest form (United States Environmental Protection Agency (EPA) Form 8700-22) prepared according to §335.10 of this title and complies with 40 CFR Part 263.

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

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

[(1) obtains the date of delivery and the handwritten signature of the accepting transporter on the manifest;]

[(2) retains one copy of the manifest in accordance with §335.14(a) of this title
(relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1
Waste);]

[(3) gives the remaining copies of the manifest to the accepting transporter; and]

[(4) in the case of hazardous waste exports, ensures that a copy of the EPA
acknowledgment of consent also accompanies the hazardous waste.]

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

[(1) obtains the date of delivery and the handwritten signature on the manifest of the
owner or operator of the facility designated on the manifest;]

[(2) retains one copy of the manifest in accordance with §335.14(a) of this title; and]

[(3) gives the remaining copies of the manifest to the owner or operator of the facility
designated on the manifest.]

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

(1) the waste is delivered by water (bulk shipment) to the facility designated on the manifest;

(2) a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste;

(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the facility on either the manifest or the shipping paper;

(4) the person delivering the waste to the initial water (bulk shipment) transporter obtains the date of delivery and the signature of the water (bulk shipment) transporter on the manifest and forwards it to the facility; and

(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §335.14(b) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste).

(d) [(f)] For shipments involving rail transportation, the requirements of subsections (b) - (e) of this section do not apply and the following requirements do apply.

(1) When accepting Class 1 waste from a non-rail [nonrail] transporter, the initial rail transporter must:

(A) sign and date, the manifest acknowledging acceptance of the waste;

(B) return a copy of the manifest to the non-rail [nonrail] transporter;

(C) forward at least three copies of the manifest to:

(i) the next non-rail transporter, if any;

(ii) the designated facility, if the shipment is delivered to that facility

by rail; or

(iii) the last rail transporter designated to handle the waste in the

United States;

(D) retain one copy of the manifest and rail shipping paper in accordance with §335.14(c) of this title.

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

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

(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and

(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title.

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

(A) obtain the date of delivery and the handwritten signature of the next non-rail [nonrail] transporter on the manifest; and

(B) retain a copy of the manifest in accordance with §335.14(c) of this title.

(5) Before accepting municipal hazardous waste or Class 1 waste from a rail transporter, a non-rail [nonrail] transporter must sign and date the manifest and provide a copy to the rail transporter.

(e) [(g)] Transporters who transport hazardous waste or Class 1 waste out of the United States shall comply with manifest requirements according to §335.10 of this title and 40 CFR Part 263. [:]

[(1) indicate on the manifest the date the municipal hazardous waste or Class 1 waste left the United States under the item labeled "special handling instructions and additional information";]

[(2) sign the manifest and retain one copy in accordance with §335.14(c) of this title;]

[(3) return a signed copy of the manifest to the generator or primary exporter where appropriate; and]

[(4) give a copy of the manifest to a United States customs official at the point of departure from the United States.]

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

- (1) the designated facility listed on the manifest;
- (2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery;
- (3) the next designated transporter; or
- (4) the place outside the United States designated by the generator.

(g) [(i)] If the transporter cannot deliver the waste in accordance with subsection (h) of this section because of an emergency condition other than rejection of the waste by the designated facility, then the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions. [If the transporter cannot deliver the waste in accordance with subsection (h) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.]

(h) If hazardous waste is rejected by the designated facility while the transporter is on the facility's premises, then the transporter must obtain the following:

(1) for a partial load rejection or for regulated quantities of container residues, a copy of the original manifest that includes the facility's date and signature, the manifest tracking number of the new manifest that will accompany the shipment, and a description of the partial rejection or

container residue in the discrepancy block of the original manifest. The transporter must retain a copy of this manifest and give the remaining copies of the original manifest to the rejecting designated facility. If the transporter is forwarding the rejected part of the shipment or a regulated container residue to an alternate facility or returning it to the generator, the transporter must obtain a new manifest to accompany the shipment, and the new manifest must include all of the information required;

(2) for a full load rejection that will be taken back by the transporter, a copy of the original manifest that includes the rejecting facility's signature and date attesting to the rejection, the description of the rejection, and the name, address, phone number, and EPA identification number for the alternate facility or generator to whom the shipment must be delivered. The transporter must retain a copy of the manifest containing this information to the rejecting designated facility. If the original manifest is not used, then the transporter must obtain a new manifest for the shipment.

§335.12. Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [Processing,] or Disposal Facilities.

(a) No owner or operator of a treatment, storage, [processing,] or disposal facility may accept delivery of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), for off-site treatment, storage, [processing,] or disposal unless:

(1) a manifest accompanies the shipment which designates that facility to receive the waste; [and]

(2) the manifest complies with §335.10 of this title and 40 Code of Federal Regulations (CFR) Part 264;

[(2) the owner or operator signs the manifest and immediately gives at least one copy of the signed manifest to the transporter; and]

(3) the owner or operator retains one copy of the manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, [Processing,] or Disposal Facilities);

(4) within 30 days after the delivery, the owner or operator sends a copy of the manifest to the generator or primary exporter where appropriate; and

(5) in the case of hazardous waste exports, a copy of the United States Environmental Protection Agency (EPA) [EPA] acknowledgment of consent also accompanies the waste and the owner or operator has no knowledge that the shipment does not conform to the EPA acknowledgment of consent.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste or Class 1 waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall process the manifest in accordance with §335.10 of this title and comply with 40 CFR Part 264. [:]

[(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste or Class 1 waste covered by the manifest or the shipping paper was received;]

[(2) immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);]

[(3) within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and]

[(4) retain at the facility a copy of each shipping paper and manifest in accordance with §335.15(a) of this title.]

(c) If a facility receives hazardous waste or Class 1 waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment)[,] by a shipping paper, the owner or operator,

or his agent[,] must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) Manifest discrepancies are:

(A) significant differences between the quantity or type of hazardous waste designated on the manifest or shipping paper, and the quantity and type of hazardous waste a facility actually receives;

(B) rejected wastes, which may be a full or partial shipment of hazardous waste that the treatment, storage, and disposal facility cannot accept; or

(C) container residues, which are residues that exceed the quantity limits for “empty” containers set forth in 40 CFR §261.7(b).

(2) Significant differences in quantity are for bulk weight, variations greater than 10% in weight; and for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(3) Significant differences in type are obvious differences that can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported on the manifest or shipping paper.

[(1) Manifest discrepancies are differences between the quantity or type of hazardous waste or Class 1 waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste or Class 1 waste a facility actually received. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported in the manifest or shipping paper. Significant discrepancies in quantity are:]

[(A) for bulk weight, variations greater than 10% in weight; and]

[(B) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.]

~~(4)~~ [(2)] Upon discovering a significant difference in quantity or type [discrepancy], the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 CFR [Code of Federal Regulations (CFR)] §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

(d) If a facility receives hazardous waste imported from a foreign source, the receiving facility must mail a copy of the manifest to the following address within 30 days of delivery: International Compliance Assurance Division, OFA/OECA (2254A), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460.

[(d) Within three working days of the receipt of a shipment subject to 40 CFR Part 262, Subpart H, concerning transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development, the owner or operator of the facility must provide a copy of the tracking document bearing all required signatures to the notifier, to the Office of Enforcement and Compliance Assurance, Office of Compliance, Enforcement Planning, Targeting and Data Division (2222A), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and to competent authorities of all other concerned countries, as defined under 40 CFR §262.81. The original copy of the tracking document must be maintained at the facility for at least three years from the date of signature.]

(e) The guidelines for rejecting waste are as follows.

(1) Upon rejecting waste or identifying a container residue that exceeds the quantity limits for “empty” containers set forth in 40 CFR §261.7(b), the facility must consult with the generator prior to forwarding the waste to another facility that can manage the waste.

(A) If it is impossible to locate an alternative facility that can receive the waste, the facility may return the rejected waste or residue to the generator. The facility must send the waste to the alternative facility or to the generator within 60 days of the rejection or the container residue identification.

(B) While the facility is making arrangements for forwarding rejected wastes or residues to another facility under this section, it must ensure that either the delivering transporter retains custody of the waste, or the facility must provide for secure, temporary custody of the waste, pending delivery of the waste to the first transporter designated on the manifest prepared under paragraph (2) or (3) of this subsection.

(2) Except as provided in subsection (e)(3) of this section, for full or partial load rejections and residues that are to be sent off-site to an alternate facility, the facility is required to prepare a new manifest as set in §335.10 of this title.

(3) For full load rejections that are made while the transporter remains present at the facility, the facility may forward the rejected shipment to the alternate facility.

(4) Except as provided in paragraph (5) of this subsection, for rejected wastes and residues that must be sent back to the generator, the facility is required to prepare a new manifest in accordance with §335.10 of this title.

(5) For full load rejections that are made while the transporter remains at the facility, the facility may return the shipment to the generator with the original manifest designating the generator as the alternate facility. The facility must retain a copy for its records then give the remaining copies of the manifest to the transporter to accompany the shipment. If the original manifest is not used, then the facility must use a new manifest.

(6) If a facility rejects a waste or identifies a container residue that exceeds the quantity limits for “empty” containers set forth in 40 CFR §261.7(b) after it has signed, dated, and returned a copy of the manifest to the delivering transporter or to the generator, the facility must amend its copy of the manifest to indicate the rejected wastes or residues in the discrepancy space of the amended manifest. The facility must also copy the manifest tracking number of the new manifest to the discrepancy space of the amended manifest, and must re-sign and date the manifest to certify to the information as amended. The facility must retain the amended manifest for at least three years from the date of amendment, and must within 30 days, send a copy of the amended manifest to the transporter and generator that received copies prior to the amendments.

§335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, [Processing,] or Disposal Facilities.

This section applies to owners and operators who receive hazardous or Class 1 waste from off-site sources or who have notified that they intend to receive hazardous or Class 1 waste from off-site sources.

(1) The owner or operator of the treatment, storage, [processing,] or disposal facility designated on the manifest shall retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator or primary exporter where appropriate.

(2) Except as provided in paragraph (6) of this section or as provided in §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), the owner or operator shall prepare a complete and correct Monthly Waste Receipt Summary for all manifested and unmanifested hazardous or Class 1 waste shipments received. The Monthly Waste Receipt Summary shall be submitted electronically, using software provided by the executive director. Upon written request by the receiver, authorization may be given by the executive director to use paper forms or an alternative reporting method. The Monthly Waste Receipt Summary shall be submitted to the executive director on or before the 25th of each month for wastes or manifests received during the previous month. (The appropriate abbreviations for method of treatment, storage, [processing,] and disposal of waste and for units of measure may be found on the form or accompanying instructions.) Any owner or operator of a treatment, storage, [processing,] or disposal facility required to comply with this paragraph [subsection] shall prepare and submit a Monthly Waste Receipt Summary each month even if no waste was received.

(3) If a facility accepts for treatment, storage, or disposal any hazardous waste or Class 1 waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described in §335.10 of this title (relating to Shipping and Reporting Procedures

Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and if the waste is not excluded from the manifest requirement of this chapter, then the owner or operator must prepare and submit a letter to the executive director within 15 days after receiving the waste. The unmanifested waste report must contain the following information: [The owner or operator shall submit a report on forms provided or approved by the executive director summarizing the types and volumes of any hazardous waste received without manifests, or, in the case of shipments by rail or water (bulk shipments), without shipping papers. This report shall be submitted within 15 days of receiving the waste, regardless of quantity, and shall include the following information:]

(A) the United States Environmental Protection Agency (EPA) [EPA] identification number, name, and address of the facility;

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

(D) a description and the quantity of each unmanifested hazardous waste the facility received which was not accompanied by a manifest;

(E) the method of treatment, storage, [processing,] or disposal for each hazardous waste;

(F) (No change.)

(G) a brief explanation of why the waste was unmanifested [unaccompanied by a manifest], if known.

(4) The owner or operator shall retain a copy of each summary required by paragraphs (2) and (3) of this section [subsection] for a minimum of three years from the date of each summary.

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

SUBCHAPTER B: HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

§335.41

STATUTORY AUTHORITY:

The amendment is proposed under 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 hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.41. Purpose, Scope and Applicability.

(a) (No change.)

(b) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, [Processing,] or Disposal Facilities); Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste, Treatment, Storage, [Processing,] or Disposal Facilities); §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, [Processing,] or Disposal Facilities); and §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or

Operators of Treatment, 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) - (e) (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 Treatment, Storage, [Processing,] or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste, Treatment, 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) - (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 119 [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 119 [110] gallons in size;

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

(g) -(j) (No change.)

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

§§335.67 - 335.69, 335.76

STATUTORY AUTHORITY:

The amendments are proposed under 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 hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendments implement THSC, Chapter 361.

§335.67. Marking.

(a) (No change.)

(b) Before transporting or offering hazardous waste for transportation off-site, a generator must mark each container of 119 [110] gallons or less used in such transportation with the following words and information displayed in accordance with the requirements of 49 CFR §172.304:
HAZARDOUS WASTE - Federal Law Prohibits Improper Disposal. If found, contact the nearest police or public safety authority or the U.S. Environmental Protection Agency (EPA). [EPA]

Figure: 30 TAC §335.67(b)

Generator's Name and Address _____
Generator EPA Identification Number _____
Manifest Tracking Number _____
[Manifest Document Number _____]

§335.68. Placarding.

Before transporting or offering hazardous waste for transportation off-site, a generator must placard or offer the initial transporter the appropriate placards according to Department of Transportation regulations for hazardous materials under 49 Code of Federal Regulations (CFR) Part 172, Subpart F. If placards are not required, a generator must mark each motor vehicle according to 49 CFR §171.3(b)(1), which states that no person may accept for transportation, transport, or deliver a hazardous waste for which a manifest is required unless that person has marked each motor vehicle used to transport hazardous waste in accordance with §390.21 or §1058.2 even though placards may not be required.

§335.69. Accumulation Time.

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to

Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f) - (k) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:

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

(D) the waste is placed in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title 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) (No change.)

(ii) documentation that the unit is emptied at least once every 90

days;[.]

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

(b) (No change.)

(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 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 §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 §§265.171, 265.172_a and 265.173(a), as adopted by reference under §335.112(a) of this title (relating to Standards); and

(2) (No change.)

(e) (No change.)

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

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

(4) the generator complies with the requirements of:

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

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

(5) the generator complies with the following requirements_[:]

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

(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows_[:]

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher_[:]

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.[]

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using its [their] 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) identification number [Identification Number] of the generator;

(II) - (V) (No change.)

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms [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 Treatment, Storage, [Processing,] or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, 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 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) - (4) (No change.)

(k) - (l) (No change.)

(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) may accumulate the returned waste on-site in accordance with subsections (a) and (b) or (d), (e), and (f) of this section depending on the amount of hazardous waste on-site in that calendar month.

§335.76. Additional Requirements Applicable to International Shipments.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, [as amended and adopted through April 12, 1996 (61 FR 16290)

provide otherwise,] a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.

(b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title [(relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste)] and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). Exports of hazardous waste are prohibited unless:

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

(3) a copy of the United States Environmental Protection Agency (EPA) [EPA] acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));

(4) (No change.)

(5) the primary exporter complies with the manifest requirements of §335.10[(a) - (d)] of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) except that:

(A) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and

(B) the primary exporter may obtain the manifest from any source that is registered with the EPA as a supplier of manifests.

[(A) in lieu of the name, site address, and EPA ID number of the designated permitted facility, the primary exporter must enter the name and site address of the consignee;]

[(B) in lieu of the name, site address and EPA ID number of a permitted alternate facility, the primary exporter may enter the name and site address of any alternate consignee;]

[(C) in special handling instructions and additional information, the primary exporter must identify the point of departure from the United States;]

[(D) the following statement must be added to the end of the first sentence of the certification set forth in item 16 of the uniform hazardous waste manifest form, as set out in §335.10(b)(23) of this title: "and conforms to the terms of the attached EPA acknowledgment of consent";]

[(E) the primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in §335.12(c)(1) of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities) as the subsection applies to hazardous waste between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste;]

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

[(i) renotify EPA of a change in the conditions of the original notification to allow shipment to a new consignee in accordance with the regulations contained in 40 CFR §262.53(c), which are in effect as of November 8, 1986, and obtain an EPA acknowledgment of consent prior to delivery; or]

[(ii) instruct the transporter to return the waste to the primary exporter in the United States or designate another facility within the United States; and]

[(iii) instruct the transporter to revise the manifest in accordance with the primary exporter's instructions;]

[(G) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and]

[(H) the primary exporter shall provide the transporter with an additional copy of the manifest for delivery to the United States customs official at the point the hazardous waste leaves the United States in accordance with §335.11(g)(4) of this title.]

(c) (No change.)

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title for the manifest except:

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

(3) a person who imports hazardous waste may obtain the Uniform Hazardous Waste Manifest from any source that is registered with the EPA as a supplier of the manifests. [a person who imports hazardous waste must obtain the manifest form from the consignment state if the state supplies the manifest and requires its use. If the consignment state does not supply the manifest form, then the manifest form may be obtained from any source.]

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

(h) Transfrontier shipments of hazardous waste for recovery within the Organization for Economic Cooperation and Development are subject to 40 CFR Part 262, Subpart H, which is adopted by reference as amended and adopted in the CFR through April 12, 1996 (61 FR 16290)[, at 61 FedReg 16290].

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

§335.112

STATUTORY AUTHORITY

The amendment is proposed under 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 hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.112. Standards.

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

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

(4) Subpart E - Manifest System, Recordkeeping and Reporting (as amended through June 16, 2005 (70 CFR 35037)). [(as amended through December 8, 1997 (62 FR 64636)), except 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77.]

(5) Subpart F - Groundwater Monitoring (as amended through October 22, 1998[,] (63 FR 56709)), except 40 CFR §265.90 and §265.94;

(6) Subpart G - Closure and Post-Closure (as amended through October 22, 1998[,] (63 FR 56709)); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

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

(8) - (12) (No change.)

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

(14) - (19) (No change.)

(20) Subpart BB - Air Emission Standards for Equipment Leaks (as amended through April 26, 2005 (69 FR 22601)) [December 8, 1997 (62 FR 64636)];

(21) - (24) (No change.)

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

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

(3) Reference to Resource Conservation and Recovery Act [RCRA], §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

(A) - (I) (No change.)

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

(K) - (L) (No change.)

(5) - (6) (No change.)

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

(8) - (10) (No change.)

(c) (No change.)

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

§335.152

STATUTORY AUTHORITY:

The amendment is proposed under 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 hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.152. Standards.

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

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

(4) Subpart E - Manifest System, Recordkeeping, and Reporting (as amended through June 16, 2005 (70 FR 35037)); [December 8, 1997 (62 FR 64636)], except 40 CFR §§264.71, 264.72, 264.76 and 264.77] facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G - Closure and Post-Closure (as amended through October 22, 1998[,] (63 FR 56709)); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

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

(7) - (22) (No change.)

(b) (No change.)

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

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

(3) Reference to Resource Conservation and Recovery Act [RCRA], §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (relating to Corrective Action Relating to Hazardous Waste).

(4) - (6) (No change.)

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

(8) - (10) (No change.)

(d) (No change.)