

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the amendment to §335.261 *with change* to the proposed text as published in the February 10, 2006, issue of the *Texas Register* (31 TexReg 823).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

House Bill (HB) 2793, passed by the 79th Legislature, 2005, requires the commission to adopt rules for regulating a mercury-containing automobile convenience switch as a universal waste as defined under §335.261. Handlers of universal wastes are subject to less stringent standards for reporting, storing, transporting, and collecting these wastes.

The United States Environmental Protection Agency (EPA) published a final rule, effective August 5, 2005, that adds mercury-containing equipment (MCE) to the federal list of universal wastes regulated under the hazardous waste regulations of the Resource Conservation and Recovery Act (RCRA). The EPA concluded that regulating spent MCE, including convenience switches, as a universal waste would lead to better management of the mercury contained in this equipment and would facilitate compliance with hazardous waste requirements. The adopted rule implements provisions of HB 2793 by adopting an existing federal rule and adding MCE waste to the existing list of universal wastes.

Background on MCE

MCE consists of devices, items, or articles that contain varying amounts of elemental mercury that is integral to their functions. MCE includes several types of instruments used throughout the electric utility industry, other industries, municipalities, and households. Some commonly recognized devices

are thermostats, barometers, manometers, and convenience light switches in automobiles. EPA's definition does not include mercury waste that a process of manufacturing or treatment generates as a by-product.

MCE waste is a solid waste and likely to be a hazardous waste when disposed of or reclaimed due to the toxicity characteristic (see definitions in the federal regulations in 40 Code of Federal Regulations (CFR) §261.2 and §261.3 and in TCEQ regulations in §335.1(62) and (131)). Some spent MCE contains a few grams of mercury, whereas larger articles, items, and devices can contain much more mercury. Many of these pieces of equipment would fail the toxicity characteristic leaching procedure (TCLP) level for mercury of 0.2 milligrams per liter and would therefore be a D009 characteristic hazardous waste (see federal regulations in 40 CFR §261.24, Table 1, and TCEQ regulations in §335.29).

A variety of industries generate spent MCE. Electric and gas utilities generate the greatest amount of this waste, but many other sectors, including medicine, farming, and automobile manufacturing, use MCE to regulate pressure and temperature, or to conduct electricity in switches or regulators.

Generators of spent MCE, then, are from a wide range of sectors: utilities, manufacturers, commercial establishments, universities, hospitals, and households.

Rationale for the Universal Waste Rule and its Expansion

In 1995, EPA promulgated the universal waste rule to establish a streamlined hazardous waste

management system for widely generated hazardous wastes as a way to encourage environmentally sound collection and proper management of the wastes. EPA included hazardous waste batteries, certain hazardous waste pesticides, mercury-containing thermostats, and hazardous waste lamps on the federal list of universal wastes. The TCEQ adopted an equivalent universal waste rule in 1997, with an amendment in 1999 to allow for paint and paint-related wastes to be managed as universal waste in Texas.

In 2005, the 79th Legislature passed HB 2793 requiring the TCEQ to adopt rules for regulating a convenience switch as a universal waste. The EPA rule, adopted August 5, 2005, in allowing for MCE to be designated as universal waste, allows convenience switches to be designated as universal waste. The commission believes that adopting the EPA rule by reference simplifies storage, handling, recycling, and disposal of MCE. It also helps ensure that spent MCE will be sent to the appropriate destination facilities, which would manage it as a hazardous waste with all applicable Subtitle C requirements. Specifically, under the commission's adopted rule, rather than having to comply with the full RCRA Subtitle C regulations, handlers and transporters who generate or manage MCE designated as universal waste are subject to the management standards under 40 CFR Part 273 and its state-equivalent, Chapter 335, Subchapter H, Division 5. Handlers include universal waste generators and collection facilities. The regulations distinguish between "large-quantity handlers of universal waste" (those who handle 5,000 kilograms or more total of universal waste at one time) and "small-quantity handlers of universal waste" (those who handle less than 5,000 kilograms or more total of universal waste at one time). The 5,000-kilogram accumulation criterion applies to the quantity of all universal wastes accumulated.

The adopted rule incorporates streamlined standards for storage, labeling and marking, preparing MCE waste for shipment off site, employee training, response to releases, and notification. However, the adopted rule is not likely to impose an additional burden on many who will fall within the expanded regulated community handling MCE. This is because the adopted packaging and labeling standards for spent MCE are already in place for used thermostats, a subset of MCE. Moreover, these streamlined standards should also encourage proper handling and recycling of the waste.

The adopted rule also subjects transporters of universal waste to less stringent requirements than the full, Subtitle C hazardous waste transportation regulations and TCEQ regulations in Chapter 335, Subchapter D. The primary difference between the universal waste transporter requirements and the full hazardous waste transportation requirements is that the transport of universal waste requires no manifest.

The commission maintains that the adopted universal waste requirements will be highly effective in mitigating risks posed by spent MCE. Specifically, the requirements for handlers to manage and transport ampules of mercury in a way that will prevent breakage, or to seal the MCE in its original housing and ship it sealed, should help ensure safe management and transport. In addition, the universal waste program requires proper training for employees on handling universal waste, responding to releases, and shipping in accordance with Department of Transportation regulations. These requirements should lower the risks posed during accumulation and transport.

The TCEQ expects that managing spent MCE as universal waste will increase the collection of this

equipment. As a result, the adopted rule should increase the amount of mercury being diverted from the non-hazardous waste stream into the hazardous waste stream because it allows Texas handlers, especially those that generate this waste sporadically and in small volumes, to send it to a central consolidation point. Before EPA's adopted rule expanding universal wastes to include MCE, an entity in Texas could not consolidate these materials for more than 90 days unless it had a RCRA permit. Under the federal universal waste rule and the TCEQ's adopted universal waste rule, a handler of universal waste can send the universal waste to another handler, who can consolidate it into a larger shipment.

Another benefit of the adopted rule should be improved implementation and compliance with the state's hazardous waste regulatory program. The commission believes that the structure and requirements of the universal waste rule are compatible with the circumstances of handlers of spent MCE. Being able to handle MCE as universal waste will most likely improve compliance with the hazardous waste regulations. Because spent MCE is generated in small quantities in geographically dispersed operations, compliance with full Subtitle C requirements is difficult to achieve. Compliance with Subtitle C is particularly difficult for electric or gas utility operations that are located on customers' properties. In addition, handlers of spent MCE who are infrequent generators of hazardous waste and who might otherwise be unfamiliar with the more complex Subtitle C management structure, but who generate spent MCE, will be able to more easily send this waste for proper management. For example, under the TCEQ's adopted universal waste rule, a fire station, community center, or retail store can participate in an MCE collection program without having to get a RCRA permit, as full Subtitle C regulation would require. The TCEQ can encourage individual households and conditionally exempt

small quantity generators to participate in such programs which would divert MCE from the municipal waste stream. The consolidation of MCE at facilities, which is made possible by the adopted universal waste rule, should significantly reduce the administrative and financial burden of collection and transportation of MCE. Therefore, adding spent MCE to the universal waste rule should improve compliance with the hazardous waste regulations. Improved compliance will be likely to benefit human health and the environment.

When managed improperly, mercury poses a threat to human health and the environment. The adopted addition of MCE waste to the list of universal wastes should help ensure that MCE waste ends up at a destination facility equipped to manage it properly. This adopted rule streamlines requirements only for generators and transporters of universal waste. The stringent regulation of “destination facilities” remains the same. “Destination facilities” treat, store, dispose, or recycle universal wastes. Universal waste destination facilities are subject to all currently applicable requirements for hazardous waste treatment, storage, and disposal facilities (TSDFs) and must receive a RCRA permit for such activities. For example, destination facilities must comply with the substantive requirements of the land disposal restriction (LDR) provisions of the Hazardous and Solid Waste Amendments of 1984 and the TCEQ’s LDR provisions in §335.431. These include a prohibition on accumulating prohibited wastes directly on the ground; a requirement to treat waste to meet treatment standards before land placement; a prohibition on dilution; and a prohibition on accumulation, except for purposes of accumulating quantities sufficient for proper recovery, treatment, or disposal. The commission contends that compliance with the substantive requirements of the LDR program is necessary to minimize risks from mismanaging spent MCE. The commission expects that allowing spent MCE to be universal waste will

make collection and transportation of this waste to an appropriate facility easier and, therefore, will reduce the amount of mercury released into the environment.

In summary, the commission maintains that expanding the universal waste list to include spent MCE is a sound way to address the environmental hazards of spent MCE. Handlers will be operating within a simple, streamlined management system with some limited oversight. The universal waste rules, as adopted, address the environmental concerns surrounding the management of MCE wastes, while at the same time putting into place a structure that better facilitates, and encourages, the increased collection of spent MCE.

SECTION BY SECTION DISCUSSION

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

Section 335.261, Universal Waste Rule

The adopted amendment to §335.261(a) updates a reference to the *Federal Register*.

The adopted amendment to §335.261(b)(2) changes the reference, “Texas Natural Resource Conservation Commission,” to “Texas Commission on Environmental Quality.”

The adopted amendment to §335.261(b)(12) changes the meaning of a reference to 40 CFR “§273.9”

from equating solely to the TCEQ's definition of "thermostats," as contained in §335.261(b)(16)(E), to encompassing 40 CFR §273.9 in addition to the definition of "thermostats."

The adopted amendment to §335.261(b)(15) updates a reference from 40 CFR and adds to what, in Chapter 335, that reference is changed to.

The adopted amendment to §335.261(b)(16)(F)(iii) adds "mercury-containing equipment" to the list of hazardous wastes subject to the universal waste requirements of the section.

In §335.261(b), existing paragraph (21) is deleted since it was created solely to clarify references which no longer exist. Section 335.261(b)(22) - (29) is renumbered as §335.261(b)(21) - (28). Section 335.261(b)(29) is added to change a new reference in 40 CFR §273.33(c)(4)(i), "40 CFR Part 261, subpart C," to "Chapter 335, Subchapter R of this title (relating to Waste Classification)." In 335.261(b), existing paragraph (30) is deleted since it was created solely to clarify references which no longer exist. Section 335.261(b)(30) is added to change a new reference in 40 CFR §273.33(c)(3)(ii), "40 CFR parts 260 through 272," to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission 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 Texas Government Code, §2001.0225(a). Although this rule is adopted to protect the environment and reduce the risk to human health from environmental exposure, it is not a major environmental rule because it will 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 rule will not adversely affect in a material way the previously mentioned aspects of the state because the rule provides for streamlined waste-management standards for certain MCE, which in turn should provide an overall benefit to the economy, certain sectors of the economy, productivity, competition, jobs, the environment, affected sectors of the state, and the public health and safety of the state. More simply stated, the adopted amendments revise the commission's hazardous waste rules in a manner which should benefit the economy while enhancing the protection of the environment and public health and safety, as per the following explanation. The overall benefit from streamlining waste management standards for certain MCE is that the new standards reduce the regulatory burden on persons generating or collecting these wastes. The streamlined waste-management standards for certain MCE should provide a benefit to the economy, certain sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. The rule should be a benefit by facilitating environmentally sound collection and increasing the proper recycling and processing of MCE. There should be no adverse effect because the rule is designed to maintain protection of the environment, the public health, and the public safety of the state and all sectors of the state. In other words, the TCEQ anticipates that the adopted standards will reduce regulatory requirements while facilitating an alternative for the collection of MCE and increasing the proper recycling and processing of these wastes.

Furthermore, the adopted rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The rule does not exceed a standard set by federal law because the purpose of this rulemaking is to adopt federal rules by reference, with no additional state standards.

Requirements in the adopted rule are in accordance with the corresponding federal regulations, and they do not exceed an express requirement of state law as there is no express requirement in state law concerning universal wastes. The adopted rule does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule fits the framework of the corresponding federal universal waste regulations. See 40 CFR §271.21, relating to procedures, for revision of state programs and 40 CFR Part 273, relating to standards for universal waste management. The rulemaking adopts a rule under specific state law (i.e., Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024). Finally, this rulemaking is not being adopted on an emergency basis either to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

In accordance with Texas Government Code, §2007.043, the commission has prepared a takings impact assessment for the adopted rule. The following is a summary of that assessment. The specific purpose of the adopted rule is to provide an alternative for the collection of MCE, facilitating environmentally sound collection and increasing the proper recycling and processing of MCE. The adopted rule should substantially advance this purpose through environmentally protective, streamlined standards relating to universal wastes meeting the definition of MCE. Promulgation and enforcement of the adopted rule

will not affect private property because the rule provides an alternative set of management standards for MCE in lieu of other, more stringent hazardous waste regulations, representing a streamlined approach. The adopted standards are not more stringent than existing standards. In addition, the reduction of regulatory requirements will be taken only at the initiative of certain persons managing MCE. For these reasons, the adopted rule will not be a burden to private real property and will not constitute a taking under Texas Government Code, Chapter 2007. The adopted rule will not affect a landowner's rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the adopted rule is subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. In accordance with 31 TAC §505.22, the commission has prepared a consistency determination for the adopted rule and has found that it is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). CMP policies focus on construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq.* Promulgation and enforcement of this rule will be consistent with the applicable CMP goals and policies because the rule will facilitate the environmentally sound collection of MCE wastes, increase the proper

recycling and processing of MCE wastes, and enable programs developed to reduce the quantity of these wastes going to municipal solid waste landfills or incinerators. The rule should also help assure that the wastes go to appropriate processing and recycling facilities under full RCRA Subtitle C hazardous waste regulatory controls. Thus, the rule will serve to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Adding MCE to the list of universal wastes will not impact new solid waste facilities and areal expansions of existing solid waste facilities. The commission has determined that the specific actions detailed in this section and earlier in this preamble under the sections explaining the adopted rule, concerning explanation of the adopted rule, final regulatory impact assessment, and takings impact assessment comply with the goals and policies of the CMP. In addition, the adopted rule does not violate any applicable provisions of the CMP's stated goals and policies.

PUBLIC COMMENT

The TCEQ did not receive any comments on the rule proposal. The comment period was 30 days. It began on February 10, 2006, and ended on March 13, 2006.

**SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND
SPECIFIC TYPES OF FACILITIES**

DIVISION 5: UNIVERSAL WASTE RULE

§335.261

STATUTORY AUTHORITY

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

The adopted amendment implements THSC, Chapter 375, which relates to convenience switches from motor vehicles to be classified as universal waste.

§335.261. Universal Waste Rule.

(a) This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under 30 Texas Administrative Code. Except as provided in subsection (b) of this section, 40 Code of Federal Regulations (CFR) Part 273 is

adopted by reference as amended and adopted in the *Federal Register* through August 5, 2005 (70 FR 45508).

(b) 40 CFR Part 273, except §273.1, is adopted subject to the following changes.

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

(2) The terms "U.S. Environmental Protection Agency" and "EPA" are changed to "the Texas Commission on Environmental Quality," "the agency," or "the commission" consistent with the organization of the commission as set out in Texas Water Code, Chapter 5. This paragraph does not apply to 40 CFR §273.32(a)(3) or §273.52 or to references to the following: "EPA Acknowledgment of Consent" or "EPA Identification Number."

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

(4) The term "universal waste" is changed to "universal waste as defined under §335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(5) The term "this part" is changed to "Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule)."

(6) In 40 CFR §273.2(a) and (b), references to "40 CFR part 266, subpart G," are changed to "§335.251 of this title (relating to Applicability and Requirements)."

(7) In 40 CFR §273.2(b)(2), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(8) In 40 CFR §273.3(b)(1), the reference to "40 CFR §262.70" is changed to "§335.77 of this title (relating to Farmers)." Also, the phrase "(40 CFR §262.70 addresses pesticides disposed of on the farmer's own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR 261.7(b)(3))" is deleted.

(9) In 40 CFR §273.3(b)(2), the reference to "40 CFR parts 260 through 272" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(10) In 40 CFR §273.3(b)(3), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(11) In 40 CFR §273.3(d)(1)(i) and (ii), references to "40 CFR §261.2" are changed to "§335.1 of this title (relating to Definitions)."

(12) In 40 CFR §273.4(a), the reference to "§273.9" as it relates to the definition of "mercury-containing equipment" is amended to include the commission definition of "thermostats" as contained in §335.261(b)(16)(E) of this title (relating to Universal Waste Rule) and in 40 CFR §273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(13) In 40 CFR §273.5(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(14) In 40 CFR §273.8(a)(1), the reference to "40 CFR §261.4(b)(1)" is changed to "§335.1 of this title (relating to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(15) In 40 CFR §273.8(a)(1), the reference to "40 CFR §261.4(b)(1)" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)" and to "§335.402(5) of this title (relating to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(16) In 40 CFR §273.9, the following definitions are changed to the meanings described in this paragraph.

(A) **Destination facility**--A facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.

(B) **Generator**--Any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation.

(C) **Large quantity handler of universal waste**--A universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total universal waste is accumulated.

(D) **Small quantity handler of universal waste**--A universal waste handler (as defined in this section) who does not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively.

(E) **Thermostat**--A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been

removed from these temperature control devices in compliance with the requirements of 40 CFR §273.13(c)(2) or §273.33(c)(2) as adopted by reference in this section.

(F) **Universal waste**--Any of the following hazardous wastes that are subject to the universal waste requirements of this section:

- (i) batteries, as described in 40 CFR §273.2;
- (ii) pesticides, as described in 40 CFR §273.3;
- (iii) mercury-containing equipment, including thermostats, as described in 40 CFR §273.4;
- (iv) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and
- (v) lamps, as described in 40 CFR §273.5.

(17) In 40 CFR §273.10, the reference to "40 CFR §273.9" is changed to "§335.261(b)(16)(D) of this title (relating to Universal Waste Rule)."

(18) 40 CFR §273.11(b) is changed to read as follows: "Prohibited from diluting or

treating universal waste, except when responding to releases as provided in 40 CFR §273.17; managing specific wastes as provided in 40 CFR §273.13; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(19) In 40 CFR §273.13(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(20) In 40 CFR §273.13(c)(2)(iii) and (iv), references to "40 CFR §262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(21) In 40 CFR §273.13(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(22) In 40 CFR §273.17(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(23) In 40 CFR §273.20(a), the reference to "40 CFR §§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 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 §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(24) In 40 CFR §273.20(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(25) In 40 CFR §273.30, the reference to "§273.9" is changed to "§335.261(b)(16)(C) of this title (relating to Universal Waste Rule)."

(26) 40 CFR §273.31(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.37; managing specific wastes as provided in 40 CFR §273.33; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(27) In 40 CFR §273.33(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(28) In 40 CFR §273.33(c)(2)(iii) and (iv), the references to "40 CFR §262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(29) In 40 CFR §273.33(c)(4)(i), the reference, "40 CFR part 261, subpart C," is

changed to "Chapter 335, Subchapter R of this title (relating to Waste Classification)."

(30) In 40 CFR §273.33(c)(3)(ii), the reference, "40 CFR parts 260 through 272," is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(31) In 40 CFR §273.33(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(32) In 40 CFR §273.37(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(33) In 40 CFR §273.40(a), the reference to "40 CFR §§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 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 §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

(34) In 40 CFR §273.40(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(35) In 40 CFR §273.52(a), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(36) In 40 CFR §273.52(b), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(37) In 40 CFR §273.54(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(38) In 40 CFR §273.60(a), the reference to "§273.9" is changed to "§335.261(b)(16)(A) of this title (relating to Universal Waste Rule)" and the reference to "parts 264, 265, 266, 268, 270, and 124 of this chapter" is changed to "30 Texas Administrative Code (relating to Environmental Quality)."

(39) In 40 CFR §273.60(b), the reference to "40 CFR §261.6(c)(2)" is changed to "§335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)."

(40) In 40 CFR §273.80(a), the reference to "40 CFR §260.20 and §260.23" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules) and §335.261(c) of this title (relating to Universal Waste Rule)."

(41) In 40 CFR §273.80(b), the reference to "40 CFR §260.20(b)" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules)."

(42) In 40 CFR §273.81(a), the reference to "40 CFR §260.10" is changed to "§335.1 of this title (relating to Definitions) and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(c) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste rule may file a petition for rulemaking under this section, §20.15 of this title, and 40 CFR Part 273, Subpart G as adopted by reference in this section.

(1) To be successful, the petitioner must demonstrate to the satisfaction of the commission that regulation under the universal waste rule: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by §20.15 of this title. The petition should also address as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

(2) The commission will grant or deny a petition using the factors listed in 40 CFR §273.81. The decision will be based on the commission's determinations that regulation under the universal waste rule is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste

program.

(3) The commission may request additional information needed to evaluate the merits of the petition.

(d) Any waste not qualifying for management under this section must be managed in accordance with applicable state regulations.

(e) Crushing lamps is permissible only in a crushing system for which the following control conditions are met:

(1) an exposure limit of no more than 0.05 milligrams of mercury per cubic meter is demonstrated through sampling and analysis using Occupational Safety and Health Administration (OSHA) Method ID-140 or National Institute for Occupational Safety and Health Method Number 6009, based on an eight-hour time-weighted average of samples taken at the breathing zone height near the crushing system operating at the maximum expected level of activity;

(2) compliance with the notification requirements of §106.262 of this title (relating to Facilities (Emission and Distance Limitations) (Previously SE 118)) is demonstrated;

(3) documentation of the demonstrations under paragraphs (1) and (2) of this subsection is provided in a written report to the executive director; and

(4) the executive director approves the crushing system in writing.