

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§335.1, 335.29, 335.31, 335.152, 335.221, 335.431, and 335.504.

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

The federal hazardous waste program is authorized under Section 3006 of the Resource Conservation and Recovery Act (RCRA) of 1976. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program at the state level. State authorization is a rulemaking process through which EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, the State of Texas has continuously exercised its prerogative to participate in the EPA's authorization program. Texas received authorization of its hazardous waste "base program" under the Resource Conservation and Recovery Act (RCRA) on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, October 18, 1999, September 11, 2000, and June 14, 2005 (Clusters III through X).

To maintain authorization, the commission must adopt regulations that meet the minimum standards of federal programs administered by EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations to meet the changing federal regulations. Texas has received authorizations for revisions to its base program through adoption of RCRA Rule Clusters I through X. The commission must adopt rule amendments that implement certain mandatory revisions to the federal hazardous waste program, which were made by EPA after May 14, 2001.

In order for the State of Texas to maintain its RCRA authorization and continue to receive federal funding for the program, the mandatory federal rule changes in RCRA Rule Clusters XI, XII, XIII, and XV must be incorporated into state rules.

This rulemaking includes the mandatory RCRA Rule Clusters XI, XII, XIII, and XV. Establishing equivalency with federal regulations will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program in lieu of the EPA. Additionally, the timely adoption of these federal rules allows the commission to continue receiving special project funding through the EPA Performance Partnership Grant.

The Hazardous Waste Combustion Maximum Achievable Control Technology (MACT) regulations are multi-media at the federal and state level, affecting both air quality and hazardous waste management. The TCEQ has already adopted certain parts of Title 40 Code of Federal Regulations (CFR) Part 63, Subpart EEE (i.e., the Hazardous Waste Combustion MACT rules) prior to this rulemaking under air quality regulations at Title 30 Texas Administrative Code Chapter 113. This rulemaking includes other

parts of the federal combustion MACT program, which are encoded at 40 CFR Parts 264, 265, 266, and 270. The proposed changes related to air quality are necessary to be consistent with previously adopted federal requirements.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 305, Consolidated Permits.

## SECTION BY SECTION DISCUSSION

### *§335.1. Definitions*

The revision of definitions are mandatory amendments in order to conform with federal definitions in the RCRA program.

The commission proposes amendments to §335.1(33) to delete the definition of corrective action management unit (CAMU) to conform to federal regulations promulgated in the January 22, 2002, issue of the *Federal Register* (67 FR 2962). The definition for CAMU is moved from 40 CFR §260.10 to 40 CFR Part 264, Subpart S and adopted by reference in §335.152. In addition, “CAMU-eligible waste” is created in 40 CFR Part 264, Subpart S and adopted by reference in §335.152. Subsequent paragraphs have been renumbered accordingly. This amendment is more stringent than the current state rules.

The commission proposes amendments to §335.1(133)(A)(iv) to conform to federal regulations promulgated in the July 3, 2001, issue of the *Federal Register* (66 FR 35087), November 20, 2001, issue of the *Federal Register* (66 FR 58258), March 13, 2002, issue of the *Federal Register* (67 FR

11251), July 24, 2002, issue of the *Federal Register* (67 FR 48393), and February 24, 2005, issue of the *Federal Register* (70 FR 9138). This amendment would incorporate by reference requirements for exclusions from definition of a solid waste found in 40 Code of Federal Regulations §261.4. First, this amendment would exempt wastes that meet comparable syngas fuel requirements from classification as a solid waste if the fuel is burned in a gas turbine; this amendment is less stringent than the current state rules. Second, the amendment would also add three inorganic chemical manufacturing wastes (K176, K177, and K178) to the list of hazardous wastes and also would add land disposal restrictions for these wastes; this amendment is more stringent than the current states rules. Third, the amendment would delete from the definition of hazardous waste those wastes that are classified as mineral processing by-products and sludges that would test as being characteristically hazardous and are being reclaimed as solid wastes and disallows the toxicity characteristic leaching procedure to be used for determining whether manufactured gas plant waste is hazardous; this amendment is less stringent than the current state rules. Fourth, this amendment establishes conditions for excluding hazardous secondary materials used to make zinc fertilizers from the definition of solid waste; this amendment is less stringent than the current state rules. Finally, the amendment adds hazardous nonwastewaters generated from the production of certain dyes, pigments, and food, drug and cosmetic colorants (K181) to the list of hazardous wastes; this amendment is more stringent than the current state rules.

*§335.29. Adoption of Appendices by Reference*

The commission proposes deleting existing language in §335.29(2) and (3), and renumbering paragraphs as necessary. Old paragraphs (2) and (3) refer to 40 CFR Part 261, Appendices II and III. These appendices no longer exist in the federal regulations.

The commission proposes amending §335.29(4), renumbered as paragraph (2), to conform to federal regulations promulgated in the November 20, 2001, issue of the *Federal Register* (66 FR 58258) and February 24, 2005, issue of the *Federal Register* (70 FR 9138). This amendment would adopt by reference requirements related to the basis for listing hazardous waste found in 40 Code of Federal Regulations Part 261, Appendix VII. This amendment would add toxic constituents found in four newly listed wastes (K176, K177, K178, and K181) to the list of constituents which forms the basis for classifying wastes as hazardous. This amendment is more stringent than the current state rules.

The commission proposes amendments to §335.29(5), renumbered as paragraph (3), to conform to federal regulations promulgated in the February 24, 2005, issue of the *Federal Register* (70 FR 9138). This amendment would adopt by reference the list of hazardous constituents found in 40 Code of Federal Regulations Part 261, Appendix VIII. This amendment would add hazardous constituents found in four newly listed wastes (K176, K177, K178, and K181) to the list of hazardous constituents. This amendment is more stringent than the current state rules.

#### *§335.31. Incorporation of References*

The commission proposes amendments to §335.31 to conform to federal regulations promulgated in the June 28, 2001, issue of the *Federal Register* (66 FR 34374). This amendment would incorporate by reference revisions to references found in 40 Code of Federal Regulations §260.11. This amendment would update the official mailing address for EPA, due to the relocation of the majority of its headquarters offices to downtown Washington, DC.

*§335.152. Standards*

The commission proposes amendments to §335.152(a)(13) and §335.152(a)(14) to conform to federal regulations promulgated in the July 3, 2001, issue of the *Federal Register* (66 FR 35087) and January 22, 2002, issue of the *Federal Register* (67 FR 2962). These amendments would adopt by reference revisions to incinerators found in 40 Code of Federal Regulations Part 264, Subpart O and revisions to corrective action for solid waste management units found in 40 Code of Federal Regulations Part 264, Subpart S. The revisions to Subpart O would amend final emission standards for hazardous waste combustors and amend compliance standards for hazardous waste combustors. The revisions to Subpart S would facilitate treatment, storage, and disposal of hazardous wastes in CAMUs managed for implementing cleanup. These amendments are more stringent than the current state rules.

*§335.221. Applicability and Standards*

The commission proposes amendments to §335.221(a) to conform to federal regulations promulgated in the February 14, 2002, issue of the *Federal Register* (67 FR 6968). This amendment would adopt by reference revisions to standards for the management of specific hazardous wastes and specific types of hazardous waste management facilities found in 40 Code of Federal Regulations Part 266, Subpart H, for hazardous waste burned in boilers and industrial furnaces. This amendment would adopt by reference revisions to the September 1999 National Emission Standards for Hazardous Air Pollutants (NESHAP) rule to adopt final standards to fulfill the statutory requirement to have national emission standards in place by a specified time. This amendment is at least as stringent as the current state rules.

The commission also proposes amending §335.221(a)(1) by deleting subparagraph (A). Subparagraph (A) changes any reference to 40 CFR §266.212 that is found in §266.100 to §266.112. Section 266.212 no longer is referenced in §266.100. Deleting subparagraph (A) will require that paragraph (1) be renumbered to eliminate the need for a separate subparagraph (B) and would incorporate the text of subparagraph (B) into a single, unbroken paragraph without subparagraphs.

*§335.431. Purpose, Scope, and Applicability*

The commission proposes amendments to §335.431(c)(1) and §335.431(c)(3) to conform to federal regulations promulgated in the November 20, 2001, issue of the *Federal Register* (66 FR 58258) and February 24, 2005, issue of the *Federal Register* (70 FR 9138). These amendments would adopt by reference revisions to land disposal restrictions found in 40 Code of Federal Regulations Part 268, Subpart C, for prohibitions on land disposal. These amendments would require that three inorganic chemical manufacturing wastes (K176, K177, and K178) meet universal treatment standards and require that hazardous nonwastewaters generated from the production of certain dyes, pigments and food, drug, and cosmetic colorants (K181) meet universal treatment standards. In addition, K061 waste derived from fertilizers would no longer be exempted from treatment standards under the land disposal restrictions. These amendments are more stringent than the current state rules.

*§335.504. Hazardous Waste Determination*

The commission proposes an amendment to §335.504(2) to conform to federal regulations promulgated in the November 8, 2000, issue of the *Federal Register* (65 FR 67068) and the February 24, 2005, issue of the *Federal Register* (70 FR 9138). This amendment would incorporate by reference revisions to the

identification and listing of hazardous waste found in 40 Code of Federal Regulations Part 261, Subpart D, Lists of Hazardous Wastes. This amendment would add two wastes generated by the chlorinated aliphatics industry (K174 and K175) to the list of hazardous wastes. It would also add hazardous nonwastewaters generated from the production of certain dyes, pigments and food, drug, and cosmetic colorants (K181) to the list of hazardous wastes. This amendment is more stringent than the current state rules.

The commission proposes an amendment to §335.504(3) to conform to federal regulations promulgated in the March 13, 2002, issue of the *Federal Register* (67 FR 11251). This amendment would incorporate by reference revisions to the identification and listing of hazardous waste found in 40 Code of Federal Regulations Part 261, Subpart C, Characteristics of Hazardous Waste. This amendment would delete regulatory language classifying mineral processing characteristic by-products and sludges that would test as characteristically hazardous and which are being reclaimed as solid wastes. It would also disallow the toxicity characteristic leaching procedure to be used for determining whether manufactured gas plant waste is hazardous. This amendment is less stringent than the current state rules.

In addition to the changes discussed previously, the commission proposes corrections to outdated citations.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Grants Management, determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state or local government. No known state agencies or local governments operate the types of facilities or generate a sufficient quantity of hazardous wastes that would be subject to the fiscal implications of the proposed rules.

The proposed rules are intended to revise the commission's rules for hazardous waste to conform to federal regulations by incorporating the federal regulations by reference. The commission is required to maintain equivalency with the federal regulations in order to maintain RCRA program authorization and enforcement authority over facilities in the state affected by the regulations. The proposed rules will amend Chapter 335 to implement federal regulations by: amending permitting standards for CAMUs; amending the definition of solid waste; amending hazardous waste standards for fertilizers; adding substances to the list of hazardous waste; amending land disposal restrictions for three inorganic chemical manufacturing wastes; and designating new treatment standards for hazardous nonwastewaters generated by producers of specified dyes, pigments, and colorants used in food, drugs, and cosmetics.

In Texas, there are approximately 5,675 registered businesses or individuals that generate hazardous waste and approximately 200 permitted hazardous waste facilities owned by businesses or individuals that may be subject to the proposed rules and permitting standards. The fiscal implications of the proposed rules will depend on the waste generated and the unique characteristics of each facility. In cases where federal regulations are more stringent than current state rules, hazardous waste facilities may have already incurred additional costs to comply with those rules. Construction of new CAMUs or

the handling of a different type of waste under the proposed rules may increase costs in the same manner as that seen under the federal regulations. In cases where current state regulations are more stringent than federal regulations governing hazardous waste, entities may experience cost savings under the proposed rules.

#### PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued compliance with federal law and the protection of human health and the environment. Some businesses and individuals, depending on the type of waste generated, treated, or stored and their operational environment, may see an increase in operating costs while others may see a decrease in costs.

If a hazardous waste facility proposes to construct and operate a CAMU, costs may increase to comply with the more stringent design requirements, treatment standards, and operating standards under the proposed rules. Estimates range from as much as \$500,000 to \$5 million, depending on the size of the CAMU and the extent to which the waste has already been treated. If a facility handles wastes that are newly listed as hazardous under the proposed rules, additional treatment and management costs may be incurred. Cost estimates for these newly listed wastes could be as much as \$100 to \$500 per 55-gallon drum.

Waste management and disposal costs may decrease for those wastes which, under the proposed rules, are now excluded from the definition of hazardous wastes. Excluded wastes are those that were

previously listed for characteristics of toxicity, ignitability, corrosivity, and/or reactivity and those that were used as secondary materials to make zinc fertilizers. Cost savings from this part of the proposed rules may be as much as \$100 to \$500 per 55-gallon drum.

#### SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications for small or micro-businesses as a result of implementation of the proposed rule are anticipated. In general, small or micro-businesses do not generate sufficient volumes of wastes to be subject to the proposed rules. If a small or micro-business were to generate a volume of waste governed by the proposed rule, it would experience the same cost increases or cost savings as those experienced by a large business.

#### LOCAL EMPLOYMENT IMPACT STATEMENT

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

#### DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute.

Although the intent of the proposed rulemaking is to protect the environment and reduce the risk to human health from environmental exposure, the proposed rulemaking 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. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because 42 United States Code (USC), §6926(g), already imposes the more stringent federal requirements on the regulated community under the Hazardous and Solid Waste Amendments of 1984. The regulated community must comply with the more stringent federal requirements beginning on the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal rules, the proposed equivalent state rules will not cause any adverse effects.

There is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state because the proposed rulemaking is designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. Because the proposed rulemaking does not have an adverse material impact on the economy, the proposed rulemaking does not meet the definition of a major environmental rule. Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

First, the proposed rulemaking does not exceed a standard set by federal law because the commission proposes this rulemaking to implement revisions to the federal hazardous waste program. The

commission must meet the minimum standards of the federal program to maintain authorization of the state hazardous waste program.

Second, although the proposed rulemaking contains some requirements that are more stringent than existing state rules, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program.

Third, the proposed rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the proposed rulemaking to maintain authorization of the state hazardous waste program.

And fourth, the proposed rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission proposes this rulemaking under Texas Water Code, §5.103 and §5.105 and under Texas Health and Safety Code, §361.017 and §361.024.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed a preliminary assessment of whether Texas Government Code, Chapter 2007 applies. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rulemaking because this action is reasonably taken to fulfill an obligation mandated by federal law; therefore, this action is exempt under Texas Government Code, §2007.003(b)(4).

The specific purpose of the proposed rulemaking is to maintain state RCRA authorization by proposing state hazardous waste rules that are equivalent to the federal regulations. The proposed rulemaking will substantially advance this purpose by proposing language that is equivalent to the language of the federal regulations and by incorporating the federal regulations by reference.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property. Specifically, the proposed rulemaking does not affect a landowner's rights in private real property because this rulemaking does not constitutionally burden the owner's right to property, does not restrict or limit the owner's right to property, and does not reduce the value of property by twenty-five percent or more beyond that which would otherwise exist in the absence of the regulations.

The proposed rulemaking seeks to meet the minimum standards of federal RCRA regulations that are already in place. 42 USC, §6926(g) imposes on the regulated community any federal requirements that are more stringent than current state rules. The regulated community must comply with the more

stringent federal requirements beginning on the effective date of the federal regulations. Because the regulated community is already required to comply with the more stringent federal regulations, promulgating equivalent state rules will not burden, restrict, or limit the owner's right to property and will not reduce the value of property by twenty-five percent or more.

#### CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 Texas Administrative Code §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 Texas Administrative Code §505.11(a)(6), and will, therefore, require that applicable goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission prepared a consistency determination for the proposed rule in accordance with §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRA).

Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the federal Solid Waste Disposal Act, 42 USC, §§6901 *et seq.* Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the proposed rule amendments will update and enhance the

commission's rules concerning hazardous and industrial solid waste facilities. In addition, the proposed rule does not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of the proposed rule.

#### SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas, 78711-3087, or faxed to (512) 239-4808.

Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2006-032-335-PR. The comment period closes April 9, 2007. Copies of the proposed rulemaking can be obtained from the commission's Web site at

[http://www.tceq.state.tx.us/nav/rules/propose\\_adopt.html](http://www.tceq.state.tx.us/nav/rules/propose_adopt.html). For further information, please contact Ms. Cynthia Palomares of the Waste Permits Division at (512) 239-6079.

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

**§§335.1, 335.29, 335.31**

**STATUTORY AUTHORITY**

The amendments are proposed under Texas Water Code, §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 Texas Water Code and other laws of this state; and under Texas Health and Safety Code, §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 Texas Health and Safety Code.

The proposed amendment implements Texas Health and Safety Code, 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) (No change.)

(B) the production of oil or gas or geothermal resources, including:

(i) – (iv) (No change.)

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201 [§91.173]; and

(vi) (No change.)

(C) – (D) (No change.)

(6) (No change.)

(7) **Ancillary equipment**--Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on site [on-

site], or to a point of shipment for disposal off site [off-site]. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(8) – (10) (No change.)

(11) **Battery**--As defined in [Has the definition adopted under] §335.261 of this title (relating to Universal Waste Rule).

(12) – (28) (No change.)

(29) **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), §361.401 [§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 - 26.267 [§§26.261 - 26.268].

(30) – (32) (No change.)

[(33) **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). A CAMU shall only be used for the management of remediation wastes in accordance with implementing such corrective action requirements at the facility.]

(33) [(34)] **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.

(34) [(35)] **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.

(35) [(36)] **Designated facility**--A Class 1 or hazardous waste treatment, storage, or disposal facility which has received a United States Environmental Protection Agency 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 Treatment, Storage, or Disposal Facilities).

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

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

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

(39) [(40)] **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.

(40) [(41)] **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.

(41) [(42)] **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.

(42) [(43)] **Drip pad**--An engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(43) [(44)] **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.

(44) [(45)] **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.

(45) [(46)] **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.

(46) [(47)] **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.

(47) [(48)] **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 limits for drinking water as published in the *Federal Register*.

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

(49) [(50)] **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.

(50) [(51)] **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.

(51) [(52)] **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.

(52) [(53)] **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.

(53) [(54)] **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.

(54) [(55)] **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.

(55) [(56)] **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, 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, 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).

(56) [(57)] **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, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, 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).

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

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

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

(60) [(61)] **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.

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

(62) [(63)] **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 in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). 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.

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

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

(65) [(66)] **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.

(66) [(67)] **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.

(67) [(68)] **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.

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

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

(70) [(71)] **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.

(71) [(72)] **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.

(72) [(73)] **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.

(73) [(74)] **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.

(74) [(75)] **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.

(75) [(76)] **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.

(76) [(77)] **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.

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

(78) [(79)] **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.

(79) [(80)] **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.

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

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

(82) [(83)] **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.

(83) [(84)] **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.

(84) [(85)] **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.

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

(86) [(87)] **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.

(87) [(88)] **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.

(88) [(89)] **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.

(89) [(90)] **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.

(90) [(91)] **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.

(91) [(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.

(92) [(93)] **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.

(93) [(94)] **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).

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

(95) [(96)] **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.

(96) [(97)] **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.

(97) [(98)] **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.")

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

(99) [(100)] **Onground 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.

(100) [(101)] **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.

(101) [(102)] **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.")

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

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

(104) [(105)] **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, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, 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.

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

(106) [(107)] **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, or disposal facility in accordance with specified limitations.

(107) [(108)] **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.

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

(109) [(110)] **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.

(110) [(111)] **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.

(111) [(112)] **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.

(112) [(113)] **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 Resource Conservation and Recovery Act and solid waste management units.

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

(114) [(115)] **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.

(115) [(116)] **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.

(116) [(117)] **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.

(117) [(118)] **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 in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

(118) [(119)] **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.

(119) [(120)] **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.

(120) [(121)] **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).

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

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

(123) [(124)] **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, §361.303 (Corrective Action),] §335.166(5) of this title (relating to Corrective Action Program)[,] or §335.167(c) of this title.

(124) [(125)] **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, or disposal.

(125) [(126)] **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 or state approved corrective action.

(126) [(127)] **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.

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

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

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

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

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

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

(133) [(134)] **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 in accordance with the federal Solid Waste Disposal Act, [as amended by the Resource Conservation and Recovery Act,] 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) - (21) [(19)], as amended through July 24, 2002 (67 FR 48393) [May 11, 1999 (64 FR 25408)], subject to the changes in this clause, and a material excluded by 40 CFR §261.4(b)(15), as amended through February 24, 2005 (70 FR 9138), 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, or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, 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, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, 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(133)(D)(iv) "[§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 munition 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(133)(D)(iv)

[Figure: 30 TAC §335.1(134)(D)(iv)]

TABLE 1

	<u>Use Constituting Disposal S.W. Def. (D)(i)(1)</u>	<u>Energy Recovery/Fuel S.W. Def. (D)(ii)(2)</u>	<u>Reclamation S.W. Def. (D)(iii)(3)<sup>2</sup></u>	<u>Speculative Accumulation S.W. Def. (D)(iv)(4)</u>
<u>Spent materials (listed hazardous &amp; not listed characteristically hazardous)</u>	* —	* —	* —	* —
<u>Spent materials (nonhazardous)<sup>1</sup></u>	* —	* —	* —	* —
<u>Sludges (listed hazardous in 40 CFR §261.31 or §261.32)</u>	* —	* —	* —	* —
<u>Sludges (not listed characteristically hazardous)</u>	* —	* —	-	* —
<u>Sludges (nonhazardous)<sup>1</sup></u>	* —	* —	-	* —
<u>By-products (listed hazardous in 40 CFR §261.31 or §261.32)</u>	* —	* —	* —	* —
<u>By-products (not listed characteristically hazardous)</u>	* —	* —	-	* —
<u>By-products (nonhazardous)<sup>1</sup></u>	* —	* —	-	* —

<u>Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)</u>	*	*	-	-
<u>Scrap metal other than excluded scrap metal (see §335.17(9)) (hazardous)</u>	*	*	*	*
<u>Scrap metal other than excluded scrap metal (see §335.17(9)) (nonhazardous)<sup>1</sup></u>	*	*	*	*

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).

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

<sup>2</sup> 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).

(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 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).

(134) [(135)] **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.

(135) [(136)] **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.

(136) [(137)] **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).

(137) [(138)] **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.

(138) [(139)] **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, 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.

(139) [(140)] **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.

(140) [(141)] **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.

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

(142) [(143)] **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.

(143) [(144)] **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.")

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

(145) [(146)] **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.

(146) [(147)] **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.

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

(148) [(149)] **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.

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

(150) [(151)] **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.

(151) [(152)] **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.

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

(153) [(154)] **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.")

(154) [(155)] **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.

(155) [(156)] **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.

(156) [(157)] **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).

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

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

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

(160) [(161)] **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.

(161) [(162)] **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 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).

(162) [(163)] **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.

(163) [(164)] **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.

(164) [(165)] **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.

(165) [(166)] **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.

**§335.29. Adoption of Appendices by Reference.**

The following appendices contained in 40 Code of Federal Regulations Part 261 are adopted by reference as amended and adopted through April 1, 1987, and as further amended as indicated in each paragraph:

(1) (No change.)

[(2) Appendix II - Method 1311 Toxicity Characteristic Leaching Procedure (TCLP)  
(as amended through August 31, 1993 (58 FR 46040));]

[(3) Appendix III - Chemical Analysis Test Methods (as amended through August 31,  
1993 (58 FR 46040));]

(2) [(4)] Appendix VII - Basis for Listing Hazardous Waste (as amended through  
February 24, 2005 (70 FR 9138)) [November 8, 2000 (65 FR 67068)];

(3) [(5)] Appendix VIII - Hazardous Constituents (as amended through February 24,  
2005 (70 FR 9138)) [November 8, 2000 (65 FR 67068)]; and

(4) [(6)] Appendix IX - Wastes Excluded Under §260.20 and §260.22 (as amended  
through October 19, 1999 (64 FR 56256)).

**§335.31. Incorporation of References.**

When used in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), the references contained in 40 Code of Federal Regulations (CFR) §260.11 are incorporated by reference as amended and adopted in the CFR through June 28, 2001 (66 FR 34374) [May 14, 1999 (64 FR 26315)].

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

**§335.152**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Water Code, §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 Texas Water Code and other laws of this state; and under Texas Health and Safety Code, §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 Texas Health and Safety Code.

The proposed amendment implements Texas Health and Safety Code, 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) – (12) (No change.)

(13) Subpart O - Incinerators (as amended through July 3, 2001 (66 FR 35087))  
[September 30, 1999 (64 FR 52828)];

(14) Subpart S - Special Provisions for Cleanup [Corrective Action for Solid Waste  
Management Units] (as amended through January 22, 2002 (67 FR 2962)); [(as amended through  
February 16, 1993 (58 FR 8683)), and 40 CFR §264.554 (as amended through November 30, 1998 (63  
FR 65874))];

(15) – (22) (No change.)

(b) (No change.)

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

(1) – (8) (No change.)

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 of this  
title (relating to Applicability of Groundwater Monitoring Requirements) and §335.117 of this title  
(relating to Recordkeeping and Reporting), in addition to the reference to 40 CFR Part 265, Subpart F,  
except §265.90 and §265.94.

(10) (No change.)

(d) (No change.)

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

**DIVISION 2: HAZARDOUS WASTE BURNED FOR ENERGY RECOVERY**

**§335.221**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Water Code, §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 Texas Water Code and other laws of this state; and under Texas Health and Safety Code, §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 Texas Health and Safety Code.

The proposed amendment implements Texas Health and Safety Code, Chapter 361.

**§335.221. Applicability and Standards.**

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the CFR through February 14, 2002 (67 FR 6968), [November 19, 1999 (64 FR 63209),] except as noted in this section:

(1) §266.100 -- Applicability, except §266.100(c); and

[(A) reference to “§266.212” is changed to “§266.112”; and]

[(B)] reference to “the applicable requirements of subparts A through H, BB<sub>2</sub> and CC of parts 264 and 265 of this chapter” is changed to “the applicable requirements of §§335.111 of this title (relating to Purpose, Scope<sub>2</sub> and Applicability), 335.112(a)(1) - (7), (20), and (21) of this title (relating to Standards), 335.151 of this title (relating to Purpose, Scope<sub>2</sub> and Applicability), and 335.152(a)(1) - (6), (18), and (19) of this title (relating to Standards)”;

(2) – (18) (No change.)

(19) §266.108 -- Small Quantity On-Site Burner Exemption, except §266.108(d), and except that hazardous wastes subject to §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by [By] Conditionally Exempt Small Quantity Generators) may not be burned in an off-site device under the exemption provided by §266.108;

(20) – (23) (No change.)

(b) The following hazardous wastes and facilities are not regulated under this division:

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C, from use versus mixing. Such used oil is subject to regulation by the United States Environmental Protection Agency (EPA) [EPA] under 40 CFR Part 279 and Chapter 324 of this title (relating to Used Oil Standards). This exception does not apply if the used oil has been made hazardous by mixing with characteristic or listed hazardous waste other than by a conditionally exempt small quantity generator [CESQG] or household generator;

(2) – (4) (No change.)

**SUBCHAPTER O: LAND DISPOSAL RESTRICTIONS**

**§335.431**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Water Code, §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 Texas Water Code and other laws of this state; and under Texas Health and Safety Code, §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 Texas Health and Safety Code.

The proposed amendment implements Texas Health and Safety Code, Chapter 361.

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

(a) – (b) (No change.)

(c) Adoption by Reference.

(1) except as provided in paragraph (2) of this subsection, and subject to the changes indicated in subsection (d) of this section, the regulations contained in 40 CFR Part 268, as amended

through February 24, 2005 (70 FR 9138) [December 26, 2000 (65 FR 81373)] are adopted by reference.

(2) The following sections of 40 CFR[,] Part 268 are excluded from the sections adopted in paragraph (1) of this subsection: §§268.1(f), 268.5, 268.6, 268.7(a)(10), 268.13, 268.42(b) [268.42(b)], and 268.44.

(3) Appendices IV, VI - IX, and XI of 40 CFR[,] Part 268 are adopted by reference as amended through November 20, 2001 (66 FR 58258) [May 26, 1998 (63 FR 28705)].

(d) (No change.)

**SUBCHAPTER R: WASTE CLASSIFICATION**

**§335.504**

**STATUTORY AUTHORITY**

The amendment is proposed under Texas Water Code, §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 Texas Water Code and other laws of this state; and under Texas Health and Safety Code, §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 Texas Health and Safety Code.

The proposed amendment implements Texas Health and Safety Code, Chapter 361.

**§335.504. Hazardous Waste Determination.**

A person who generates a solid waste must determine if that waste is hazardous using the following method:

- (1) (No change.)

(2) If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart D, as amended through February 24, 2005 (70 FR 9138).

(3) If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C, as amended through March 13, 2002 (67 FR 11251).