

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §335.1 and adopts new §335.261, concerning industrial solid waste and municipal hazardous waste. Section 335.261 is adopted with changes to the proposed text as published in the April 15, 1997 issue of the *Texas Register* (22 TexReg 3511). Section 335.1 is adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULES

This rulemaking adopts by reference new streamlined federal hazardous waste regulations governing the collection and management of certain widely generated wastes known as universal wastes. This rulemaking incorporates the Environmental Protection Agency's (EPA) Universal Waste Rule, which was promulgated as a final rule in the *Federal Register* on May 11, 1995 (60 FedReg 25492). The EPA's existing hazardous waste regulatory framework under Subtitle C of the Resource Conservation and Recovery Act has been a major impediment to national collection and recycling campaigns for these wastes. The universal waste rule will facilitate the environmentally-sound collection of universal wastes, increase the proper recycling or treatment of universal wastes, and reduce the quantity of universal wastes going to municipal solid waste landfills.

The universal waste rule establishes a streamlined set of management standards for collecting certain widely-dispersed hazardous wastes. These wastes share several characteristics: 1) they are frequently generated in a wide variety of settings other than industrial settings usually associated with hazardous wastes; 2) they are generated by a vast community, the size of which poses implementation difficulties for both those who are regulated and the regulatory agencies charged with implementing the hazardous

waste program; and 3) they may be present in significant volumes in the nonhazardous waste management system.

Specifically, the universal waste rule encompasses three types of wastes: 1) all hazardous waste batteries, 2) mercury-containing thermostats, and 3) certain hazardous waste pesticides. The rule establishes a reduced set of regulatory requirements for those facilities managing universal wastes dependent upon whether the facility falls into one of four categories: 1) small quantity handlers of universal waste (SQHUW), 2) large quantity handlers of universal waste (LQHUW), 3) transporters of universal waste, or 4) final destination facilities.

An SQHUW is defined as a handler managing less than 5,000 kilograms (kg) of universal waste. The management requirements are minimal for small-quantity handlers; for example, there is no notification requirement. An SQHUW is required to properly collect the waste and mitigate any spills or releases. The handler must also ensure that the waste is delivered only to another universal waste handler, transporter or destination facility, or foreign destination. An SQHUW is not required to keep records of shipments of universal waste. Training requirements amount to basic employee awareness appropriate to the type of waste being collected. In addition, the waste must be labeled and may be accumulated for up to one year.

An LQHUW is defined as a handler managing 5,000 kg or more of universal waste. Management requirements for LQHUW's are somewhat more detailed. If an LQHUW does not presently generate hazardous waste and does not have an EPA identification number, one must be obtained prior to

exceeding the 5,000 kg storage limit. Employee training, labeling requirements, responses to releases and requirements for off-site shipments are similar to those for SQHUWs. However, an LQHUW must keep records of waste received or shipped off-site for three years.

Transporters must comply with Department of Transportation regulations relative to hazardous materials. The transporter may only store universal wastes at a transfer facility for 10 days; if the transporter exceeds this limit, he must comply with the requirements of a universal waste handler. The transporter must adequately respond to releases and comply with off-site shipment requirements identical to those of small and large quantity handlers.

Final destination facilities must comply with all applicable hazardous waste requirements except with regard to off-site shipments, waste tracking, and export requirements, for which the requirements are the same as for LQHUWs.

The coverage of the universal waste rule may be expanded in the future to include other similar wastes. A process is included to allow persons to petition the commission for the addition of new waste types. In addition to the commission's existing rulemaking petitioning process under 30 TAC §20.15, this rule provides procedures to be used by the commission in responding to petitions and evaluating whether a new waste type is appropriate to be added to the universal waste system.

The amendments to §335.1 add new definitions that are unique to the universal waste rule.

New §335.261 incorporates by reference the version of 40 Code of Federal Regulations Part 273 that was effective on May 11, 1995 (60 FedReg 25492). Subsection (b) lists conforming changes necessary for the state to adopt the federal rule into existing 30 TAC Chapter 335 by replacing federal cross-references with the appropriate state cross-references. Subsection (b) is adopted with changes to clarify citations to the Texas Water Code regarding the organization of the commission, to correct a cross-reference to "EPA" in 40 CFR §273.32(a)(3), to correct a grammatical error, and also to clarify that the definition of SQHUW means a handler who accumulates less than 5,000 kg total of universal waste. Subsection (c) sets forth the requirements for the petitioning process to add wastes to the universal waste rule. Subsection (c) is adopted with changes to clarify that the commission's decisions to grant or deny petitions will be based on the commission's determinations with regard to the appropriate factors listed in the rule rather than the weight of evidence because the term "weight of evidence" is more appropriate for EPA proceedings or contested case proceedings but not for commission proceedings related to rulemaking.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to adopt a set of streamlined regulations for certain categories of widely generated hazardous wastes known as universal wastes. The rules will substantially advance this specific purpose by adopting by reference the EPA's universal waste rule, which establishes an alternative set of regulatory standards designed to encourage recycling in the state, helps remove universal wastes from the municipal solid waste stream, and reduces the regulatory burden on entities

wishing to collect or recycle these wastes. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the proposed changes provide for a streamlined set of regulatory management standards and do not limit or restrict a person's rights in private real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the rulemaking is consistent with the applicable CMP goals and policies.

HEARING AND COMMENTERS

A public hearing on this rule was held in Austin on May 9, 1997. One commenter presented oral testimony at the public hearing on behalf of the Association of Electric Companies of Texas (AECT). The commenter expressed general support for the proposed rulemaking and did not suggest any changes.

The following two commenters submitted written comments on the proposed rulemaking expressing general support for the proposal and not suggesting any changes: Central and South West Corporation (C&SW); and Texas Utilities Services, Inc. on behalf of Texas Utilities Electric Company, Texas Utilities Fuel Company, and Texas Utilities Mining Company (TU Services).

ANALYSIS OF TESTIMONY

AECT, C&SW, and TU Services expressed support for the belief that the streamlining process outlined in the universal waste rule will promote recycling and remove certain barriers associated with the management of some low volume commonly generated waste streams. All three commenters also mentioned that the EPA is considering several management scenarios for lighting waste, one of which is to exclude these wastes from hazardous waste regulation contingent on disposal of the lighting waste in a state-approved Subtitle D municipal solid waste landfill. The commenters suggested that management in this type of municipal landfill is a cost-effective and environmentally protective approach to dealing with lighting waste. Finally, the three commenters expressed support for the commission's decision to defer inclusion of lighting waste in the universal waste rule pending EPA's assessment.

C&SW and TU Services further commended the commission for moving forward with its own in-house peer review of the lighting waste issue and suggested that the review include a comprehensive, risk-based evaluation of the issue including consideration of factors such as current practices, impacts to the environment, available recycling resources, economics, and sampling/testing difficulties.

The commission notes the commenters' support for the proposed rule and their concerns and support regarding the issue of lighting waste; however, the issue of lighting waste is outside the scope of this rulemaking as proposed and no changes have been made in response to these comments.

STATUTORY AUTHORITY

The amendments are adopted 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

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

§335.1

§335.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly requires otherwise.

Battery--A device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

Destination facility--A facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR 273.13(a) and (c) and 40 CFR 273.33(a) and (c) as adopted by reference in §335.261 of this title (relating to Universal Waste Rule). A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.

Pesticide--Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(A) is a new animal drug under Federal Food, Drug, and Cosmetic Act (FFDCA), §201(w), or

(B) is an animal drug that has been determined by regulation of the United States Secretary of Health and Human Services not to be a new animal drug, or

(C) is an animal feed under FFDCA, §201(x) that bears or contains any substances described by subparagraph (A) or (B) of this paragraph.

Thermostat--A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR 273.13(c)(2) or 273.33(c)(2) as adopted by reference in §335.261 of this title.

Universal waste--Any of the following hazardous wastes that are managed under 40 CFR Part 273, the Universal Waste Rule, as adopted by reference in §335.261 of this title. The following wastes are exempt from regulation under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) except as otherwise specified in §335.261 of this title:

(A) Batteries as described in 40 CFR 273.2;

(B) Pesticides as described in 40 CFR 273.3; and

(C) Thermostats as described in 40 CFR 273.4.

Universal waste handler--A generator of universal waste; or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination. Universal waste handler does not mean a person who treats (except under the provisions of 40 CFR 273.13(a) or (c), or 273.33(a) or (c), as adopted by reference in §335.261 of this title), disposes, or recycles universal waste; or a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

Universal waste transporter--A person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 25, 1997.

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

§335.261

This new section is adopted 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 or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

§335.261. Universal Waste Rule.

(a) Except as provided in subsection (b) of this section, Title 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as adopted and effective on May 11, 1995, at 60 FedReg 25492.

(b) Title 40 CFR Part 273 is adopted subject to the following changes:

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

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

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

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

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

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

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

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

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

(10) In 40 CFR §273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(11) In 40 CFR §273.5(a)(1), the reference to "40 CFR 261.4(b)(1)" is changed to "§335.1 of this title (relating to Definitions)."

(12) In 40 CFR §273.5(a)(2), the reference to "40 CFR 261.5" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)."

(13) In 40 CFR §273.6, the definitions of "Generator" and "On-site" are replaced with the corresponding definitions found in §335.1 of this title (relating to Definitions). Also, the definition of "Small Quantity Handler of Universal Waste" is changed to read "Small Quantity Handler of Universal Waste means a universal waste handler (as defined in this section) who accumulates less than 5,000 kilograms total of universal waste (batteries, pesticides, or thermostats, calculated collectively) at any time."

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

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

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

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

(18) In 40 CFR §273.20(a), the reference to "40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

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

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

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

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

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

(24) In 40 CFR §273.40(a), the reference to "40 CFR 262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and

Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

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

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

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

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

(29) In 40 CFR §273.60(a), the reference to "parts 264, 265, 266, 268, 270, and 124 of this chapter" is changed to "Title 30 Texas Administrative Code (relating to Environmental Quality)."

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

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

(32) In 40 CFR §273.80(b), the reference to "40 CFR 260.20(b)" is changed to "§20.15 of this title."

(33) In 40 CFR §273.81(a), the reference to "40 CFR 260.10" is changed to "§335.1 of this title (relating to Definitions)."

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

(1) To be successful, the petitioner must demonstrate to the satisfaction of the commission that regulation under the universal waste rule: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by

§20.15 of this title. The petition should also address as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

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

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

(d) Any waste not qualifying for management under 40 CFR part 273, as adopted by reference in this section, must be managed in accordance with applicable state regulations.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 25, 1997.