

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §335.1 and proposes new §335.261, concerning industrial solid waste and municipal hazardous waste.

EXPLANATION OF PROPOSED RULE

This proposal would adopt by reference new streamlined federal hazardous waste regulations governing the collection and management of certain widely generated wastes known as universal wastes. This proposal adopts by reference the Environmental Protection Agency's (EPA) Universal Waste Rule 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 proposed universal waste rule would 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 more than 5,000 kg 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 universal waste rule will also serve as a prototype to which other similar wastes may be added in the future. A petition process is included to allow persons to petition the commission to request the addition of new waste types. In addition to the commission's existing rulemaking petitioning process under 30 TAC §20.15, the proposed process consists of procedures for the commission to use in responding to petitions and factors to be used to evaluate whether a new waste type is appropriate to be added to the universal waste system.

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

Proposed new §335.261 adopts 40 Code of Federal Regulations Part 273 by reference as of 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 (c) sets forth the requirements for the petitioning process to add wastes to the universal waste rule.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect there will be fiscal implications for state and local governments as a result of enforcement of or compliance with the sections. The effect on state government will be a reduction in cost related to the regulation and oversight of waste generators and handlers who manage the types of waste to which the proposed sections are applicable and who qualify for the reduced levels of regulation afforded under these sections. The rule may also result in a small reduction in revenue to state government. Under the proposed rule, eligible wastes would not be counted in the totals that are otherwise reported to the commission and subject to annual generation fee assessment. The actual savings for any handler would be equivalent to \$2 per ton of hazardous waste covered under the proposed rule. It should be noted that only three narrowly defined wastes are covered by the rule and that many of the affected entities are small generators who, under the current fee schedule, pay a flat annual fee of \$100. For those handlers the total savings would not exceed the \$100 fee. The effect on local government will be a reduction in cost for those jurisdictions that generate or handle universal wastes and are subject to the proposed sections. These cost savings are anticipated to be similar to any savings realized by private entities qualified under this rule.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five years these sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections as proposed will be improvements in the collection, treatment and recycling of certain hazardous wastes and the elimination of regulations that have historically impeded the wide scale efforts for collection and recycling of hazardous waste. The proposed rule will facilitate programs developed to reduce the quantity of these wastes going to municipal solid waste landfills. This rule will provide the necessary flexibility to promote resource conservation, to improve implementation of the hazardous waste regulatory program, and to encourage recycling by providing incentives to collect these wastes. For the regulated community the cost of managing a waste under the universal waste rule will be lower than the cost under existing federal requirements for the same waste due to incremental savings in one or more of the following areas: 1) employee training, 2) maintenance cost for a contingency plan, 3) filing annual waste reports, 4) manifest completion and recordkeeping per shipment, and 5) land disposal restriction notification. In addition, shipping and disposal costs are reduced for universal wastes because common carriers can be used instead of hazardous waste transporters, and the one-year storage limit under the universal waste rule would allow handlers to ship less often. EPA has estimated the total annualized cost savings of this rule at \$76 million nationally. No estimate has been made of the amount of the total cost savings that is attributable solely to affected persons in Texas. There are no economic costs anticipated for any person, including any small business, required to comply with the sections as proposed.

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 the proposed rulemaking and found that the rules are subject to the Coastal Management Program and must be consistent with all applicable goals and policies of the Coastal Management Program.

The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found that the proposed rules are consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions,

and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities. Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the proposed rules will encourage safe and appropriate treatment and recycling of universal wastes and will remove universal wastes from the municipal solid waste stream, which will result in an overall environmental benefit across the state, including in coastal areas. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies.

The commission invites public comment on the consistency of the proposed rules.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on May 9, 1997 at 2:00 p.m. in Building F, Room 2210 of the commission's central office, located at 12100 North IH-35, Park 35 Technical Center, Austin, Texas 78753. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments must be received within 30 days following the date of this publication and should reference Rule Log No. 96139-335-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Jace Houston, Waste Policy and Regulations Division, (512) 239-4641.

STATUTORY AUTHORITY

The amendments and new section 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 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.

The proposed amendments and new section implement Texas Health and Safety Code, Chapter 361.

**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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 2, 1997.

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

§335.261

This new section 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 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.

This new section implements Texas Health and Safety Code Chapter 361.

§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, Subchapter B.

(2) The terms "U.S. Environmental Protection Agency" or "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, Subchapter B. This paragraph does not apply to 40 CFR §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).

(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 weight of evidence showing 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 proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on April 2, 1997.