

The commission adopts amendments to §335.6, concerning Notification Requirements, §335.9, concerning Recordkeeping and Annual Reporting Procedures Applicable to Generators, and §335.15, concerning Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities. Section 335.9 is adopted with changes to the proposed text as published in the July 22, 1997, issue of the *Texas Register* (22 TexReg 6839). Sections 335.6 and 335.15 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULES

The adopted changes mandate that Large Quantity Generators and Receivers use electronic software provided by the executive director for the submittal of notification and reporting data, unless the executive director has granted a written request to use paper forms or an alternative method. The rule modifications do not substantively change the notification or reporting requirements for Large Quantity Generators or Receivers, but streamline notification and reporting procedures, increasing the accuracy and timeliness of the Annual Waste Summary, Monthly Waste Receipt Summary, and Notice of Registration data through built-in checks in the electronic software. These changes also result in savings from data entry outsourcing of the reporting data.

The amendments to §335.6(a) - (c) add language to require that registered Large Quantity Generators use electronic notification software provided by the executive director. Subsections (a), (b), and (g) delete language which requires information to be submitted to the executive director in duplicate form. The rule also corrects grammatical errors within this section.

The amendments to §335.6(a) and (h) allow recyclers of industrial and hazardous waste to commence new recycling operations as soon as they receive confirmation from the agency, without having to wait the full 90 days, as it is currently stated in these subsections. The agency recommends this change in order to allow the regulated community to benefit from the agency's streamlined review process.

The amendments to §335.9(a)(2) add language to mandate that the Large Quantity Generators submit the Annual Waste Summary report by using software provided by the executive director. To help define reporting requirements, §335.9(b) is amended to add a cross-reference to §335.154, concerning Reporting Requirements for Owners and Operators. This amendment also clarifies historical agency interpretation of the rule and corrects grammatical errors within this section.

The amendments to §335.15(2) also add language to mandate that Receivers submit the Monthly Waste Receipt Summary report by using software provided by the executive director. To conform with federal regulations, §335.15(3) is amended to change the requirements in this section to pertain only to unmanifested hazardous waste. The amendment to this section also corrects grammatical errors.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules under Texas Government Code §2007.043. The following is a summary of that assessment. The adoption of the rule amendments will modify reporting procedures for the Large Quantity Generators and Receivers, will conform unmanifested hazardous waste reporting requirements to federal regulations, and will shorten

the waiting period between notification of intent to recycle and commencement of recycling activities.

Promulgation and enforcement of the rule amendments will not affect 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 will not have direct or significant adverse effect on any Coastal Natural Resource Areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed on August 21, 1997.

The following commenters submitted written comments on the proposed rules: Boeing Defense & Space - Corinth Co., Union Carbide Corporation, and Kaspar Wire Works, Inc.

Boeing commented that the current software for this activity is not compatible with the current standard for operating systems: Windows 95 and NT. At such time as the electronic reporting program is shown to be compatible with these operating systems, then it may be appropriate to require such reporting.

The commission disagrees with this comment. The current software is compatible with the current standard for operating Windows 95 and NT. The commission has made no change in response to this comment.

Union Carbide Corporation commented that it would support mandatory electronic reporting of such data as required by these hazardous waste reporting requirements if the proposal were amended to also allow the option of submitting a report in a commission-specified magnetic media format.

At one time, the commission allowed facilities to submit their data on diskette or magnetic media. The program was discontinued due to format inconsistencies and virus risk to the agency with no improvement in reducing errors. This type of submission did not streamline the notification and reporting procedures. The commission has made no change in response to this comment.

Union Carbide Corporation commented that this proposal would require that it manually reenter data about its wastes into a proprietary package. The commenter believes that this data reentry is guaranteed to cause the same kind of data entry quality concerns that the commission has raised with its own keyboarding, and will unnecessarily raise Union Carbide's data collection and storage costs.

The commission disagrees with this comment. The Windows 95 version of electronic reporting software will allow facilities to import data from company-wide software as well as from the DOS version of the electronic reporting software. Very little, if any, reentry of information will be required. The commission has made no change in response to this comment.

Kaspar Wire Works, Inc. commented that the electronic reporting program selected should not be the current electronic reporting program unless its shortcomings are corrected. The utility of the current electronic reporting program and its accuracy suffer because the up-to-date Notice of Registration (NOR) cannot be viewed within the program.

The commission agrees that the DOS version of the electronic reporting program does not allow an on-screen view of the NOR. The planned release of the Windows 95 version will feature a skeleton NOR of basic facility, waste, and waste management information. Therefore, the commission has made no change in response to this comment.

Kaspar Wire Works, Inc. mentioned that the proposed rules will require facilities to maintain extensive logs or paper duplicates of transactions for future reference, if the current electronic reporting program is used.

The commission disagrees with this comment. The Windows 95 version of the electronic reporting program uses a file name method that will not require the facility to keep an extensive log or paper duplicates of transactions. The commission has made no change in response to this comment.

Kaspar Wire Works, Inc. also commented that all screens related to a waste should show both the waste number and the waste name.

The commission agrees with this comment. The Annual Waste Summary section of the Windows 95 version of the electronic reporting program will have the first portion of the waste description along with the waste number displayed on the screen. The commission has made no change in response to this comment.

Kaspar Wire Works, Inc. commented that requiring the public to purchase computer equipment and to lease telephone lines for reporting information to the government may not be constitutional, and may not be within the legislated authority of the commission.

The commission disagrees with this comment. The commission recognizes that most large quantity generators have a computer and telephone line that meet the equipment specifications. A facility that is not able to obtain adequate equipment to report electronically may request the use of paper forms or an alternative method. The commission has made no change in response to this comment.

Kaspar Wire Works, Inc. commented that the requirement for electronic reporting should be accompanied by a decrease in fees charged to the reporter.

The commission believes this comment is beyond the scope of this rulemaking because the sections being proposed for adoption are related to recordkeeping and are not associated with the fees assessed to the Large Quantity Generators and Receivers.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Health and Safety Code, Solid Waste Disposal Act (the Act), §361.017 and §361.024, which authorizes the commission to adopt rules consistent with the general intent and purposes of the Act, and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste.

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

§§335.6, 335.9, 335.15

§335.6. Notification Requirements.

(a) Any person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (e), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director in writing or using electronic notification software provided by the executive director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. The executive director may require submission of information necessary to determine whether storage, processing, or disposal is compliant with the terms of this chapter. Required information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.

(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any changes or additional information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.

(c) Any person who generates hazardous waste in a quantity greater than the limits specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in any calendar month or greater than 100 kilograms in any calendar month of industrial Class 1 waste shall notify the executive director of such activity using electronic notification software or paper forms provided by the executive director. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. The executive director may require submission of information necessary to determine whether the storage,

processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title (relating to Permit Required), or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any such changes or additional information to that reported previously. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. If waste is recycled on-site or managed pursuant to §335.2(d) of this title (relating to Permit Required), the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

(1) - (5) (No change.)

(d) Any person who transports hazardous or Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director, except:

(1) industrial generators who generate less than 100 kilograms of Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) and who only transport their own waste; and

(2) municipal generators who generate less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste;

(e) - (f) (No change.)

(g) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter.

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §334.24 of this title or Subchapter H of this chapter must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(i) - (j) (No change.)

§335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators.

(a) Except with regard to nonhazardous recyclable materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous or industrial solid waste shall comply with the following.

(1) The generator shall keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal and which, at a minimum, includes the information described in subparagraphs (A) - (G) of this paragraph. These records may be maintained in any format, provided they are retrievable and easy to copy. The required records must be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to:

(A) - (G) (No change.)

(2) The generator shall submit to the executive director a complete and correct Annual Waste Summary detailing the management of each hazardous and Class 1 waste generated on-site during the reporting calendar year. The Annual Waste Summary shall also include the management of any hazardous or Class 1 waste generated in a year previous to the reporting year, but managed in the reporting calendar year. The Annual Waste Summary shall be submitted using electronic software or paper forms provided or approved by the executive director. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must submit the Annual Waste Summary using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative reporting method. Generators shall report as follows.

(A) Generators submitting their Annual Waste Summary on paper forms must do so on or before January 25 of the year following the reporting calendar year.

(B) Generators submitting their Annual Waste Summary electronically for the 1997 reporting year must do so on or before January 25, 1998.

(C) Generators submitting their Annual Waste Summary electronically for calendar years after 1997 must do so on or before March 1 of the year following the reporting calendar year. Upon written request by the generator, the executive director may authorize an extension to the report due date.

(3) Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:

(A) - (B) (No change.)

(C) a total of less than 1,200 kilograms of hazardous waste, and a total of less than 1,200 kilograms of Class 1 waste (2,400 kilograms or less of hazardous waste plus Class 1 waste combined) was generated during the year.

(4) (No change.)

(b) A generator who ships his hazardous waste off-site must also report the information specified in §335.71 of this title (relating to Biennial Reporting). Any generator who stores, processes, or disposes of hazardous waste on-site shall also submit an annual report in accordance with the

requirements of §335.114 of this title (relating to Reporting Requirements), or as provided in §335.154 of this title (relating to Reporting Requirements for Owners and Operators).

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

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

(1) (No change.)

(2) Except as provided in paragraph (6) of this section or as provided in §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), the owner or operator shall prepare a complete and correct Monthly Waste Receipt Summary for all manifested and unmanifested hazardous or Class 1 waste shipments received. The Monthly Waste Receipt Summary shall be submitted electronically, using software provided by the executive director. Upon written request by the receiver, authorization may be given by the executive director to use paper forms or an alternative reporting method. The Monthly Waste Receipt Summary shall be submitted to the executive director on or before the 25th of each month for wastes or manifests received during the previous month. (The appropriate abbreviations for method of storage, processing, and disposal of waste and for units of measure may be found on the form or accompanying instructions.) Any owner

or operator of a storage, processing, or disposal facility required to comply with this subsection shall prepare and submit a Monthly Waste Receipt Summary each month even if no waste was received.

(3) The owner or operator shall submit a report on forms provided or approved by the executive director summarizing the types and volumes of any hazardous waste received without manifests, or, in the case of shipments by rail or water (bulk shipments), without shipping papers. This report shall be submitted within 15 days of receiving the waste, regardless of quantity, and shall include the following information:

(A) the EPA identification number, name, and address of the facility;

(B) (No change.)

(C) the EPA identification number, name, and address of the generator and the transporter, if available;

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

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

(F) - (G) (No change.)

(4) (No change.)

(5) The period of record retention required by this section is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(6) (No change.)

This agency hereby certifies that the sections as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1997.