The Texas Natural Resource Conservation Commission (commission) adopts amendments to §335.1, concerning Definitions, and §335.2, concerning Permit Required; and a new §335.25, concerning Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses. New §335.25 is adopted with changes to the proposed text as published in the May 21, 1999 issue of the *Texas Register* (24 TexReg 3832). Amended §335.1 and §335.2 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULES

The adopted amendments and new section implement Senate Bill (SB) 1910, relating to Management of Poultry Carcasses, which was passed during the 75th Texas Legislative Session. SB 1910 added Subchapter H to Chapter 26 of the Texas Water Code (TWC). The amendments and new section establish requirements for the safe and adequate handling, storage, transportation, processing, and disposal of poultry carcasses in accordance with Subchapter H.

Section 335.1 was amended to include definitions for “extrusion,” “poultry,” “poultry carcasses,” and “poultry facility”.

Section 335.2 was amended to reference new §335.25 to show the relationship between the two sections with regard to requirements for permits or other authorizations.

New §335.25 identifies acceptable methods for processing and disposal of poultry carcasses; limits the storage of poultry carcasses to 72 hours before processing or disposal; requires that storage of carcasses be in a freezer, or a refrigeration unit at a temperature of 40 degrees Fahrenheit or less, if on-site storage is necessary for longer than 72 hours; and prohibits on-site burial of carcasses unless a major die-off of poultry exceeds the normal storage and processing capability of a poultry facility. The new section supersedes any provision of a permit or other authorization previously issued by the commission or its predecessor agencies which may have authorized on-site burial of poultry carcasses.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because, while it may be a major environmental rule, it does not meet the applicability criteria of a "major environmental rule" as defined in the act. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may 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. Since the rule will protect the environment and reduce risks to human health from environmental exposure and affect in a material way a sector of the economy, it meets the definition of a major environmental rule. However, §2001.0225 applies only to a major environmental rule the result of which is to:

(1) exceed a standard set by federal law, unless the rule is specifically required by state law;

(2) exceed an express requirement of state law, unless the rule is specifically required by federal law;

(3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or

(4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The intent of these amendments is to establish requirements for the safe and adequate storage, processing, and disposal of poultry carcasses. The elimination of on-site burial as a normal method for poultry carcass disposal is contained in state law. This rulemaking does not meet the applicability criteria of a "major environmental rule" because the amendments do not exceed a standard set by federal law, exceed an express requirement of state law, nor exceed a requirement of a delegation agreement. In addition, the changes are not adopted solely under the general rulemaking authority of the commission but are adopted to comply with the requirements of SB 1910, enacted by the 75th Legislature. No comments on the proposed regulatory impact analysis were received.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for the rule amendments and new rule pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the amendments and new rule is to implement new statutory requirements under SB 1910, 75th Legislature, for the safe and adequate management of poultry carcasses. The rule amendments and new rule will substantially advance the specific purpose by requiring persons who own or operate a poultry facility to have acceptable methods for the storage, processing and disposal of poultry carcasses. This rule establishes more stringent requirements than existing rules because the existing rules do not specifically pertain to some of the facilities covered under this rule. Promulgation and enforcement of this rule will not pose any burden, limitation or restriction beyond that which is required by state law. Property owners who raised poultry may still do so under this rule. The agency interprets existing law to prohibit poultry carcasses from being washed away during a storm event or otherwise managed in a manner which creates a nuisance. This rule provides property owners with greater information on how a poultry operation needs to manage its carcasses in order to comply with state law. In addition, this rule is needed in response to SB 1910 and provides the needed clarification to the agency's rules in order to continue to protect human health and the environment.

In view of the previously mentioned assessment, the commission has determined that this rulemaking does not constitute a taking.

COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that it is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 Texas Administrative Code (TAC) §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, and therefore required that applicable goals and policies of the CMP be considered during the rulemaking process.

The commission prepared a consistency determination for the rule amendments and new rule pursuant to 31 TAC §505.22 and found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are §501.12(1) ("to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs)") and §501.12(2) ("to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone"). The CMP policy applicable to the rulemaking is §501.14(d)(1)(I) ("New solid waste facilities and areal expansion of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq."). Promulgation and enforcement of these rules will not violate any standards identified in the applicable CMP goals and policy because the rules are designed to be protective of public health and the environment, and comply with applicable standards established under

the Solid Waste Disposal Act. No comments were received on the consistency of the rule amendments and new rule with the goals and policies of the CMP.

HEARING AND COMMENTERS

A public hearing was held on June 10, 1999, in Austin. The comment period closed June 21, 1999.

The Texas Poultry Federation (TPF) presented testimony at the hearing and subsequently submitted its comments in writing.

ANALYSIS OF COMMENTS

Ninety-seven commenters submitted comments on the proposal. The Texas Agricultural Extension Service (TAES) and the TPF were generally supportive of the proposal; however, each recommended a similar change. The Northeast Texas Municipal Water District commented concerning the failure of the proposed rule to address or clarify several issues. The Texas State Soil and Water Conservation Board expressed concern with the threshold for determining a major die-off. An individual recommended a change, and 91 other individuals and R & G Petty Farms commented in support of the proposal.

The TAES commented that it was well documented that microbial growth is controlled by temperatures below 40 degrees Fahrenheit and recommended that refrigeration below 40 degrees Fahrenheit be allowed for storage of carcasses instead of requiring freezing. TAES referenced United States Food and Drug Administration (FDA) regulations which required the storage of potentially hazardous foods

below 40 degrees Fahrenheit to limit microbial growth. The contention is that this temperature would still meet the criteria of SB 1910 in establishing requirements for safe and adequate storage of poultry carcasses. The TPF commented that refrigeration that chills to 40 degrees Fahrenheit will not allow for odors or pathogens to grow and recommended that consideration be given for this.

The commission notes that current FDA regulations require that potentially hazardous food be maintained at 41 degrees Fahrenheit or less. Therefore, in consideration of the FDA regulations and the recommendations of the commenters, the commission believes that storage of carcasses at a temperature of 40 degrees Fahrenheit or less, will provide safe and adequate storage of poultry carcasses. Storage at a temperature of 40 degrees or less, without freezing, will not only prevent odors and the growth of pathogens, but will also facilitate rendering and incineration. Accordingly, this option has been added to §325.25.

In response to the proposal to define a major die-off as a mortality rate of 0.3% or more per day of a facility's total poultry inventory, the TAES and TPF agreed that a mortality rate of 0.3% per day was an appropriate level for determining a major die-off. Their conclusions were based on a consideration that a poultry farm with six houses of 25,000 birds each would generate 450 carcasses at 0.3%, and if these were at a full-grown weight of 5.2 pounds each the total weight would be 2340 pounds which could be accommodated in an incinerator in 23.4 hours. This amount could also be accommodated in a composting facility. These numbers are only applicable to the last day of a flock's life. Younger birds would weigh less and thus there would be less pounds of carcasses to incinerate.

The commission appreciates the information provided which confirms the validity of using a mortality rate of 0.3% as the threshold for declaration of a major die-off. Although the commenters indicate that all mortality could be incinerated during a 24-hour period, it is not necessary to do so with the ability to store dead birds for up to 72 hours. Larger facilities may need to install additional or larger incinerators.

The Texas State Soil and Water Conservation Board commented that a mortality rate of 0.3% per day for a major die-off appeared to be excessive considering that the normal daily mortality in a typical broiler house of 16,000 birds with which its regional offices work is about 0.1%, equating to about a 20-bird-per-day mortality. The board further commented that using a rate of 0.3% per day for a 16,000-bird house would equate to 48 birds per day or 12.6% of the total original house inventory during the flock cycle, and this appears to be excessive for "normal" daily mortality.

The commission does not believe that a mortality rate of 0.3% per day is excessive as the threshold for a major die-off. It is not intended that the 0.3% be considered as a normal daily mortality, but as an infrequent, non-routine event. Other commenters consider this rate to be acceptable. Therefore, no change to the proposed rate has been made.

The Northeast Texas Municipal Water District (NETMWD) commented about the lack of proposed rules on the proper disposal of poultry litter, citing an immediate and ongoing threat to the water quality of the state due to runoff from areas where poultry litter has been improperly land-applied. NETMWD urges the commission to adopt rules providing for best management practices (BMPs) for the disposal

of poultry litter under the authority of Chapters 5 and 26 of the TWC and Chapter 361 of the Health and Safety Code.

The commission believes that management of poultry litter was not intended by the Legislature to be within the scope of this rulemaking. Subchapter B, Concentrated Animal Feeding Operations, of Chapter 321, Control of Certain Activities by Rule, of the commission's rules, already addresses concentrated animal feeding operations and contains adequate direction for land application of poultry wastes in connection with pollution prevention plans and best management practices. The commission's Regulatory Guide 326, Poultry Carcasses: Proper Disposal Under SB 1910, 75th Legislature, which was distributed to operators of poultry facilities, advises poultry operators of their responsibilities under SB 1910 and refers them to Subchapter B of Chapter 321 among other pertinent references. The commission therefore considers that no further action is necessary.

NETMWD commented that the proposed rules fail to set out the standards to be followed in burying poultry carcasses that result from a major die-off and urges the commission to adopt BMPs that must be followed when on-site burial is allowed.

The commission agrees that some guidance for on-site burial of poultry carcasses should be provided, and this will be provided in the updating of Regulatory Guide 326 which is in process. NETMWD commented that the proposed rules appear to create an ambiguity as to whether a permit is required for a poultry facility to dispose of poultry carcasses. NETMWD notes that proposed §335.25

does not specify what type of authorization is required but does provide some sort of executive director approval for alternative methods of carcass disposal. However, NETMWD does not believe that delegation of commission authority to the executive director under §5.122 of the TWC is authorized in this case.

The commission believes that the cross-referencing of §335.2, relating to Permit Requirements, and §335.25, relating to Handling, Storing, Processing, Transporting, and Disposal of Poultry Carcasses, is appropriate and adequate. Section 335.2(d) advises that no permit is required to store, process or dispose of nonhazardous industrial (which includes agricultural) solid waste on property owned or effectively controlled by the owner or operator of the operation. However, subsection (d) further advises the owner and operator that notification to the executive director of the planned on-site activity is required under §335.6, relating to Notification Requirements. Section 335.6(a) requires written notification to the executive director of the planned activity, and the executive director may request additional information, including waste management methods, to enable him to determine whether such activity is compliant with the terms of Chapter 335, relating to Industrial Solid Waste and Municipal Hazardous Waste. Section 335.6(b) establishes a continuing requirement to provide notice to the executive director of any change in waste management methods. Proposed §335.25 advised what types of activities are acceptable on site, with the stipulation that others may be acceptable if determined to be appropriate by the executive director. In view of the commenter's concern regarding the propriety of delegating to the executive director the responsibility for approving alternative methods for processing and disposal

of poultry carcasses under authority of TWC, §5.122, the commission withdraws the proposed delegation and retains the responsibility for such approvals.

One individual recommended that the 72-hour limit for on-site non-refrigerated storage of poultry carcasses be increased to 96 hours in order to facilitate a more orderly twice-a-week routine. The proposed twice-a-week schedule would actually result in 72 hours between two disposal days, and 96 hours for the other period.

The commission has not been provided the flexibility in the statute to vary the storage limitation. Therefore, no change to the 72-hour storage limit has been made.

R & G Petty Farms and 85 individuals commented in support of the proposed amendments and new section.

The commission acknowledges their comments.

STATUTORY AUTHORITY

The amendments and new section are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; TWC, §26.303, which directs the commission to adopt requirements for the safe and adequate handling, storage, transportation, and disposal of poultry carcasses; and 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, 335.2, 335.25

§335.1. Definitions.

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

(1) **Aboveground tank** - A device meeting the definition of tank in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(2) **Act** - The Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992).

(3) **Active life** - The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

(4) **Active portion** - That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion.")

(5) **Activities associated with the exploration, development, and protection of oil or gas or geothermal resources** - Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

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

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(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, §91.173; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A)-(C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United

States Environmental Protection Agency (EPA) pursuant to the Federal Solid Waste Disposal Act, as amended (42 United States Code, §6901 et seq.).

(6) **Administrator** - The administrator of the United States Environmental Protection Agency or his designee.

(7) **Ancillary equipment** - Any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or processing tank(s), between hazardous waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

(8) **Aquifer** - A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(9) **Authorized representative** - The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(10) **Battery** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(11) **Boiler** - An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance to be Classified as a Boiler).

(12) **Carbon regeneration unit** - Any enclosed thermal treatment device used to regenerate spent activated carbon.

(13) **Certification** - A statement of professional opinion based upon knowledge and belief.

(14) **Class 1 wastes** - Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination). Class 1 waste is also referred to throughout this chapter as Class I waste.

(15) **Class 2 wastes** - Any individual solid waste or combination of industrial solid waste which cannot be described as Hazardous, Class 1 or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination). Class 2 waste is also referred to throughout this chapter as Class II waste.

(16) **Class 3 wastes** - Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination). Class 3 waste is also referred to throughout this chapter as Class III waste.

(17) **Closed portion** - That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

(18) **Closure** - The act of permanently taking a waste management unit or facility out of service.

(19) **Commercial hazardous waste management facility** - Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an

integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(20) **Component** - Either the tank or ancillary equipment of a tank system.

(21) **Confined aquifer** - An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(22) **Consignee** - The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(23) **Container** - Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(24) **Containment building** - A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title (relating to Standards).

(25) **Contaminant** - Includes, but is not limited to, “solid waste,” “hazardous waste,” and “hazardous waste constituent” as defined in this subchapter, “pollutant” as defined in the Texas Water Code, §26.001, and Texas Health and Safety Code, §361.431, “hazardous substance” as defined

in the Texas Health and Safety Code, §361.003, and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, Texas Water Code, §§26.261-26.268.

(26) **Contaminated medium/media** - A portion or portions of the physical environment to include soil, sediment, surface water, ground water or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(27) **Contingency plan** - A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(28) **Control** - To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(29) **Corrective action management unit or CAMU** - An area within a facility that is designated by the commission under 40 Code of Federal Regulations (CFR) 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 the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action).

A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

(30) **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 (NACE) 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.

(31) **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.

(32) **Designated facility** - A Class I or hazardous waste storage, processing, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations, Parts 270 and 124; a permit from a state authorized in accordance with 40 Code of Federal Regulations Part 271 (in the case of hazardous waste); a permit issued pursuant to §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 pursuant to §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I 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.

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

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

(35) **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.

(36) **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.

(37) **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.

(38) **Drip pad** - An engineered structure consisting of a curbed, free-draining base, constructed of a 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.

(39) **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 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.

(40) **Environmental Protection Agency 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.

(41) **Environmental Protection Agency hazardous waste number** - The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations, Part 26l, Subpart D and to each characteristic identified in 40 Code of Federal Regulations, Part 26l, Subpart C.

(42) **Environmental Protection Agency identification number** - The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(43) **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 EPA limits for drinking water as published in the Federal Register.

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

(45) **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.

(46) **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.

(47) **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.

(48) **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 storage, processing, 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 storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action).

(49) **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 Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing 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).

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

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

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

(53) **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 III wastes only shall not be considered a generator.

(54) **Groundwater** - Water below the land surface in a zone of saturation.

(55) **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 EPA pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 26l. 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.

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

(57) **Hazardous waste** - Any solid waste identified or listed as a hazardous waste by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq., as amended.

(58) **Hazardous waste constituent** - A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations Part 261, Subpart D or a constituent listed in Table 1 of 40 Code of Federal Regulations §261.24.

(59) **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.

(60) **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.

(61) **In operation** - Refers to a facility which is processing, storing, or disposing of hazardous waste.

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

(63) **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.

(64) **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.

(65) **Individual generation site** - The contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

(66) **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 (HAFs) 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.

(67) **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.

(68) **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.

(69) **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.

(70) **Injection well** - A well into which fluids are injected. (See also "underground injection.")

(71) **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.

(72) **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.

(73) **International shipment** - The transportation of hazardous waste into or out of the jurisdiction of the United States.

(74) **Land treatment facility** - A facility or part of a facility at which 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.

(75) **Landfill** - A disposal facility or part of a facility where 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.

(76) **Landfill cell** - A discrete volume of a 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.

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

(78) **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 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 hazardous waste into the secondary containment structure.

(79) **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 hazardous waste, hazardous waste constituents, or leachate.

(80) **Management or hazardous waste management** - The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(81) **Manifest** - The uniform hazardous waste manifest form, Form TWC-0311, and, if necessary, TWC-0311B, furnished by the executive director to accompany shipments of municipal hazardous waste or Class I industrial solid waste.

(82) **Manifest document number** - A number assigned to the manifest by the commission for reporting and recordkeeping purposes.

(83) **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, 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).

(84) **Movement** - That hazardous waste transported to a facility in an individual vehicle.

(85) **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.

(86) **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.

(87) **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 §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 Code of Federal Regulations §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.")

(88) **Off-site** - Property which cannot be characterized as on-site.

(89) **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.

(90) **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.

(91) **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.")

(92) **Operator** - The person responsible for the overall operation of a facility.

(93) **Owner** - The person who owns a facility or part of a facility.

(94) **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 Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing 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.

(95) **PCBs or polychlorinated biphenyl compounds** - Compounds subject to Title 40, Code of Federal Regulations, Part 761.

(96) **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 storage, processing, or disposal facility in accordance with specified limitations.

(97) **Person** - Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

(98) **Personnel or facility personnel** - All persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

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

(100) **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 definition 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 §§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;

(xii) used oils - (See definition for "used oil" in this section); and

(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 United States Code §§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.

(101) **Pile** - Any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(102) **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.

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

(104) **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.

(105) **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.

(106) **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.

(107) **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 hazardous waste, designed to change the physical, chemical, or biological character or composition of any 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 Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended.

(108) **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.

(109) **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.

(110) **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).

(111) **Regional administrator** - The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

(112) **Remediation** - The act of eliminating or reducing the concentration of contaminants in contaminated media.

(113) **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 the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action). 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 the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title (relating to Corrective Action for Solid Waste Management Units).

(114) **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 storage, processing, or disposal.

(115) **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 EPA or state approved corrective action.

(116) **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.

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

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

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

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

(121) **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 Btu/lb of sludge treated on a wet-weight basis.

(122) **Small quantity generator** - A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

(123) **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 pursuant to the 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), 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 pursuant to 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 pursuant to 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) - (14), as amended through August 6, 1998, at 63 FedReg 42110, by 40 CFR §261.4(a)(16), as amended through May 26, 1998 at 63 FedReg 28556, by 40 CFR §261.4(a)(18) - (19), as amended through August 6, 1998, at 63 FedReg 42110, 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).

(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; or

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph.

(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) 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 would 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)(16)). 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)(16).

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

Figure 1: 30 TAC §335.1(D)(iv).

(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; or

(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)(16) apply rather than this provision.

(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 twelve 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) 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 Environmental Protection Agency, as described in 40 CFR §§261.2(d)(1) - 261.2(d)(2).

(H) 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.

(I) 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.

(J) 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 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

(124) **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.

(125) **Spill** - The accidental spilling, leaking, pumping, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

(126) **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.

(127) **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 hazardous waste for transport to hazardous waste storage, processing, 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.

(128) **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.

(129) **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.

(130) **Tank system** - A hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(131) **Thermal processing** - The processing of 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 hazardous waste. Examples of thermal processing are incineration, molten salt,

pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning.")

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

(133) **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.

(134) **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.

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

(136) **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.

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

(138) **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 CFR §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.

(139) **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.

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

(141) **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.")

(142) **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.

(143) **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 hazardous waste without posing a threat of release of hazardous waste to the environment. Waste and Municipal Hazardous Waste except as otherwise specified in § 335.261 of this title.

(144) **Universal waste** - Any of the hazardous wastes defined as universal waste under §335.261(b)(13)(F) that are managed under the universal waste requirements of §335.261 of this title (relating to Universal Waste Rule).

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

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

(147) **Unsaturated zone or zone of aeration** - The zone between the land surface and the water table.

(148) **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.

(149) **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 (CESQG) 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) and 40 CFR Part 279 (Standards for Management of Used Oil).

(150) **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.

(151) **Water (bulk shipment)** - The bulk transportation of municipal hazardous waste or Class I industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(152) **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.

(153) **Zone of engineering control** - An area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to groundwater or surface water.

§335.2. Permit Required.

(a) Except with regard to storage, processing, or disposal to which subsections (c)-(h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Natural Resource Conservation Commission or its predecessor agencies, the Texas Department of Health, or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the Texas Natural Resource Conservation Commission (commission) approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities which satisfied this requirement by filing an application on or before November 19, 1980, with the United States Environmental Protection Agency are not required to submit a separate application with the Texas Department of Health. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §§6901 et seq., that render the facility subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no

later than six months after the date of publication of regulations by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards set forth in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the United States Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations, §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an “other source” with respect to other plants and operations owned by the same person.);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an “other source” with respect to other plants and operations owned by the same person.);

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit, or a wastewater treatment unit;

(4) the collection, storage, or processing of nonhazardous industrial solid waste, if the waste is collected, stored, or processed as part of a treatability study;

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of 10 days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment; or

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the Clean Water Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of that permit.

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b)-(d) of this title (relating to Purpose, Scope, and

Applicability) or for the storage of hazardous waste under the provisions of 40 Code of Federal Regulations §261.4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste which is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements set out at 40 Code of Federal Regulations §261.4(e) and (f), as amended and adopted in the Code of Federal Regulations through February 18, 1994, at 59 FedReg 8362, which are adopted herein by reference.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill which has qualified for interim status pursuant to 40 Code of Federal Regulations, Part 270, Subpart G, and which has complied with the standards set forth in Subpart E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), by complying with the notification and information requirements as set forth in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of Title

40, Code of Federal Regulations, §265.301(a). In accordance with §335.6 of this title (relating to Notification Requirement), such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing permit or site development plan applicable to the facility or a portion of the facility;

(2) PCB wastes subject to regulation by 40 Code of Federal Regulations, Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

(7) radioactive or nuclear waste materials, receipt of which would require a license from the Texas Department of Health or Texas Natural Resource Conservation Commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under § 330.136(b)(6)(B)-(E) of this title (relating to Disposal of Special Wastes). Authorizations obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit application, failure of the facility to operate the facility in compliance with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or as otherwise provided by law.

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 Code of Federal Regulations, §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under 40 Code of Federal Regulations, §270.1(c)(5) and (6). If a post-closure permit is required, the permit must address applicable provisions of 40 Code of Federal Regulations, Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) provisions relating to Groundwater Monitoring, Unsaturated Zone Monitoring,

Corrective Action, and Post-closure Care Requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the Environmental Protection Agency (EPA) imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title (relating to Notification Requirements).

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the definitions and requirements of §335.261 of this title (relating to Universal Waste Rule).

§335.25. Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses.

(a) Acceptable methods for disposal of poultry carcasses include the following storage, processing, and disposal methods:

(1) placement in a landfill permitted by the commission to receive municipal or industrial solid waste;

(2) composting, as defined in §332.2 of this title (relating to Definitions), and as further described in §332.23 of this title (relating to Operational Requirements);

(3) cremation or incineration;

(4) extrusion;

(5) rendering;

(6) cooking for swine food; and

(7) any other method the commission determines to be appropriate.

(b) Prior to disposition by any method listed in subsection (a) of this section, poultry facilities may:

(1) store poultry carcasses on site for no more than 72 hours provided that storage is in a varmint-proof receptacle to prevent odor, leakage, or spillage, but

(2) shall freeze, or refrigerate at a temperature of 40 degrees Fahrenheit or less, any poultry carcasses which require on-site storage for more than 72 hours.

(c) Poultry carcasses may not be disposed of by burial on-site except in the event of a major die-off that exceeds the capacity of a poultry facility to store and process poultry carcasses by the normal means used by the facility. A mortality rate of 0.3% or more per day of the facility's total poultry inventory shall be deemed a major die-off for the purposes of this section. This subsection supersedes any provisions of a permit or other authorization issued by the commission or its predecessor agencies which may have authorized on-site burial of poultry carcasses. This section does not authorize violation of any applicable regulations or laws.

(d) Transportation of poultry carcasses to an off-site location for final disposition shall be in accordance with applicable local, state or federal regulations or laws.