The Texas Natural Resource Conservation Commission (commission) proposes 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.

EXPLANATION OF PROPOSED RULES

The proposed amendments and new section will implement Senate Bill (SB) 1910, relating to Management of Poultry Carcasses, which was passed during the 75th Texas Legislative Session. Senate Bill 1910 added §§26.301, 26.302 and 26.303, Subchapter H, to the Texas Water Code. The amendments and new section will establish requirements for the safe and adequate handling, storage, transportation, processing, and disposal of poultry carcasses.

Section 335.1, concerning Definitions, will be amended to include definitions for “extrusion,” “poultry,” “poultry carcasses,” and “poultry facility. SB 1910 limited the definition of “poultry” to apply only to chickens and ducks. SB 1910 defined poultry, poultry carcasses and poultry facility. Although it mentioned extrusion, it did not define it. The definition has therefore been developed from literature explaining the process.

Section 335.2, concerning Permit Required, will be amended to reference new §335.25, concerning Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses, to show the relationship between the two sections with regard to requirements for permits or other authorizations.

Proposed new §335.25, concerning Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses, limits the storage of poultry carcasses to 72 hours before processing or disposal, and requires that the poultry carcasses be stored in a varmint-proof container. Storage in a freezer is required if on-site storage is necessary for longer than 72 hours. The poultry carcasses must ultimately be composted, cremated or incinerated, extruded, rendered, cooked for swine food, managed in some other method the executive director deems appropriate, or disposed of in a permitted municipal or industrial solid waste landfill. On-site burial is prohibited unless a major die-off exceeds the normal storage and processing capability of a poultry facility. The commission seeks comments concerning what should be considered "normal storage and processing capability" at a poultry facility. The commission considers normal storage and processing capability to be the capability of a facility to routinely compost, incinerate, or otherwise process or provide adequate storage of the daily bird mortality under a 72-hour storage limitation.

For the purposes of this rule, a major die-off is proposed to be a mortality rate of 0.3% or more per day of a facility's total poultry inventory. The selection of the 0.3% rate resulted from a recommendation from the Texas Agricultural Extension Service which was based on information that all mortality management systems (incinerators, composters, or freezers) are designed to manage slightly above "normal" daily mortality which, on average, is 0.3% per day.

The proposed rule, if adopted, will supersede 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. The authority to supersede the previously authorized ability to bury poultry

carcasses on-site is based on the language in SB 1910 which specifically prohibits burial on-site unless there is a major die-off. The commission has already begun to notify those affected permittees of the prohibition in SB 1910. In addition, the prohibition in SB 1910 does not go into effect until March 31, 1999 or the effective date of the commission's rules implementing SB 1910, whichever is later. Permit holders who are affected by the prohibition in SB 1910 will have the time necessary to modify their processes dealing with major poultry die-offs at their facilities.

FISCAL NOTE

Bob Orozco, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments to Chapter 335 are in effect, there will be no significant fiscal implications for state government or units of local government as a result of the administration or enforcement of the proposed amendments. The proposed amendments incorporate and implement procedures for the safe and adequate handling, storage, transportation, processing, and disposal of poultry carcasses in accordance with SB 1910, enacted by the 75th Texas Legislature.

Until recently, on-site burial was used routinely as a poultry waste management practice but is no longer allowed because of the risk of groundwater contamination. SB 1910 required the Texas Natural Resource Conservation Commission (commission) to develop rules for the safe and adequate disposal of poultry carcasses. SB 1910 listed composting, cremation or incineration, extrusion, rendering, cooking for swine food, management by some other method the commission deems appropriate, or disposal in a permitted municipal solid waste landfill as methods to be included as acceptable for disposal of poultry carcasses. SB 1910 also specified that commission rules authorize the on-site burial of poultry

carcasses only in the event of a major die-off that exceeds the capacity of a poultry facility to handle and dispose of poultry carcasses by the normal means used by the facility. On-site burial is prohibited unless a major die-off occurs that equals or exceeds 0.3% or greater per day of a facility's total poultry inventory.

PUBLIC BENEFIT

Mr. Orozco has also determined that for each year of the first five years the proposed amendments to Chapter 335 are in effect, the public benefit anticipated from enforcement of and compliance with these rules will be improved health and safety practices for the handling, storage, transportation, processing, and disposal of poultry carcasses, and decreased risk of groundwater contamination. The fiscal implications to individuals and small business are contained in the Small Business Analysis Section of this fiscal note.

SMALL BUSINESS ANALYSIS

The intent of the proposed amendments to Chapter 335 is to implement the provisions of SB 1910 and provide as much flexibility as possible for the handling, storage, transportation, processing, and disposal of poultry carcasses. No single method described in the proposed amendments is mandatory for the disposal of poultry carcasses; however, on-site burial is no longer allowed by Texas Water Code §26.303 except when a major die-off occurs that exceeds the capacity of a poultry facility to handle and dispose of poultry carcasses by the normal means used by the facility. Thus, it is not legal to reduce the effect of this on-site prohibition on small businesses. Texas industry produces poultry using both company-owned and contract farms. On contract farms, the birds are owned by the contractor and the

farm raises them for the contractor. The three largest contractors in Texas are Pilgrim, Tyson, and Sanderson. In 1996, 78 farms in Texas were company-owned and 1,230 were contracted farms.

Assuming that small businesses are independent producers, costs associated with the proposed amendments could be incurred by small businesses if their current waste management methodology includes on-site burial. Since on-site burial is no longer allowed, it is anticipated that an alternative methodology must be developed and implemented. It is anticipated that an on-site permitted municipal or industrial solid waste landfill will be cost prohibitive for most small businesses. It is also anticipated that extrusion, rendering, or cooking for swine food will be cost prohibitive for most small poultry businesses unless it is a method currently in use by the waste generator. Therefore, the alternatives to on-site burial that have been considered in this analysis are incineration, composting, and transportation from the waste generating facility to another location for authorized disposal.

The proposed amendments limit the on-site storage of poultry carcasses to 72 hours before processing or disposal and require that the poultry carcasses be stored in a varmint-proof container. Storage in a freezer is required if on-site storage is necessary for longer than 72 hours. It is estimated that freezer units cost approximately $7,000 per unit plus electricity.

It is estimated that the cost of incineration equipment is approximately $9,500 per unit plus fuel with a capability to process 100 pounds of waste per hour. It should be noted that use of incineration may be exempt from state permitting requirements if setback distances contained in Chapter 106 of the commission's rules, and particulate matter concentrations standards in Chapter 111 and the National

Ambient Air Quality Standards can be met. It is anticipated that poultry operations with restricted space and setback distances from the nearest property line of less than 700 feet will not currently qualify for exemption from state permitting requirements. Amendments to the rules currently under consideration may reduce the setback distances by increasing the height of the incinerator stacks. For example, poultry operations with restricted space may have to extend the incinerator stacks to meet the proposed minimum setback of 100 feet. Stock incinerators typically have a stack height of 12 to 15 feet. Compliance with the minimum setback of 100 feet could require up to a six foot extension of the stack. The commission estimates that extending the stacks could cost approximately $300 per foot.

It is estimated that the cost of processing poultry carcasses using composting would be approximately $23,000 for the structure with 8 composting bins and a maximum capacity for 400 birds per day or approximately 2,000 pounds per day.

The cost of transporting poultry waste off site would depend on the distance from the poultry farm to the waste disposal facility, the amount of waste generated, and the proximity of other waste producers who could, together, decrease the cost of transporting carcasses to a landfill or composting facility. It is estimated that the commercial cost of transporting poultry carcasses would be in the range of $100 to $150 per hour for transportation to a disposal facility, plus $300 to $400 per year for dumpster rental. The cost of bags for the daily collection of dead birds is approximately 30 to 40 cents per bag, and each bag can hold approximately 2 cubic feet of waste. The mortality rate for a major die-off of birds is approximately 0.3% per day, or 48 birds per day, for a flock of 16,000 birds. It is estimated that an average of 7 bags per day of waste would be required for each flock. There would be an additional cost

of $4.90 to $6.90 per cubic yard for landfilling, or approximately $2.94 to $4.14 per cubic yard for composting. Assuming that this waste is picked up every third day, a farm with a single flock continuously in production would have a dumpster containing approximately 14 cubic feet of waste at pick-up. Assuming that the disposal facility is within 30 miles of the waste generator, and the collection truck collects 75% of its 25 cubic yard capacity, the costs for commercial transportation could be prorated among 19 waste generators (16,000-bird flocks). The estimated transportation costs for each waste producer for transporting waste to a landfill or composting facility would be in the range of $651 to $976 per year per 16,000-bird farm. The total costs associated with disposal for each 16,000-bird flock would be in the range of $2,300 to $3,200 per year. Some economies are likely for larger producers. Based on this data, it is estimated that, for a small producer with one flock in continuous production, the costs of disposal by transporting the waste off-site would be in the range of $1.13 to $1.58 per $100 in sales. If the small business transports its waste to the disposal facility, the cost decreases to 81 cents to $1.09 per $100 in sales.

Mr. Orozco's analysis indicates that incineration or transportation off site may be the most cost-effective method of disposal unless a landfill is in very close proximity to the poultry farm. The selection of an authorized disposal methodology remains the option of the waste generator. The costs presented here are meant to quantify the estimated costs of alternative methods most likely to be used by small businesses as an alternative to on-site burial. The methods described here are not meant to limit the options available to small business. The proposed amendments specify that another alternative methodology may be used that is deemed appropriate by the executive director.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed 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 would 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 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 proposed rulemaking does not meet the applicability criteria of a "major environmental rule" because the proposed 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 proposed changes are not proposed solely under the general rulemaking authority of the commission but are proposed to comply with the requirements of SB 1910, enacted by the 75th Legislature.

Request for Public Comment: The commission seeks public comment on the Draft Regulatory Impact Analysis.

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 Senate Bill 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 above assessment, the commission has determined that this rulemaking does not constitute a taking.

COASTAL MANAGEMENT PROGRAM

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

Preliminary Consistency Determination: The commission has prepared a consistency determination for the proposed rule amendments and new rule pursuant to 31 TAC §505.22 and has found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the proposed 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 proposed rulemaking is §501.14(d)(1)(I), which states that "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.

Request for Public Comment: The commission seeks public comment on the consistency of the proposed rule amendments and new rule with the goals and policies of the Coastal Management Plan.

PUBLIC HEARING

A public hearing on this proposal will be held June 10, 1999, at 10:00 a.m. in Room 5108 of Texas Natural Resource Conservation Commission Building F, located at 12100 Park 35 Circle, Austin. The

hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments may be submitted by mail to Bettie Bell, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087; or by fax to (512) 239-4808. All comments must be received by May 24, 1999, and should reference Rule Log No. 97157-335-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Hector H. Mendieta at (512) 239-6694.

STATUTORY AUTHORITY

The amendments and new section are proposed under Texas Water Code, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; Texas Water Code, §5.122, which provides the commission with the authority to delegate to the executive director the commission's authority to act on certain matters; Texas Water Code, §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.

The proposed amendments and new section implement Texas Water Code, Chapter 26, Subchapter H.

**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) - (46) (No change.)

(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) [(47)] **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) [(48)] **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) [(49)] **Food-chain crops** - Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

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

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

(53) [(52)] **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) [(53)] **Groundwater** - Water below the land surface in a zone of saturation.

(55) [(54)] **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) [(55)] **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) [(56)] **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) [(57)] **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) [(58)] **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) [(59)] **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) [(60)] **In operation** - Refers to a facility which is processing, storing, or disposing of hazardous waste.

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

(63) [(62)] **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) [(63)] **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) [(64)] **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) [(65)] **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) [(66)] **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) [(67)] **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) [(68)] **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) [(69)] **Injection well** - A well into which fluids are injected. (See also "underground injection.")

(71) [(70)] **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) [(71)] **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) [(72)] **International shipment** - The transportation of hazardous waste into or out of the jurisdiction of the United States.

(74) [(73)] **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) [(74)] **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) [(75)] **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) [(76)] **Leachate** - Any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(78) [(77)] **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) [(78)] **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) [(79)] **Management or hazardous waste management** - The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(81) [(80)] **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) [(81)] **Manifest document number** - A number assigned to the manifest by the commission for reporting and recordkeeping purposes.

(83) [(82)] **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) [(83)] **Movement** - That hazardous waste transported to a facility in an individual vehicle.

(85) [(84)] **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) [(85)] **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) [(86)] **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) [(87)] **Off-site** - Property which cannot be characterized as on-site.

(89) [(88)] **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) [(89)] **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) [(90)] **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) [(91)] **Operator** - The person responsible for the overall operation of a facility.

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

(94) [(93)] **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) [(94)] **PCBs or polychlorinated biphenyl compounds** - Compounds subject to Title 40, Code of Federal Regulations, Part 761.

(96) [(95)] **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) [(96)] **Person** - Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

(98) [(97)] **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) [(98)] **Pesticide** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(100) [(99)] **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) [(100)] **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) [(101)] **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) [(102)] **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) [(103)] **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) [(104)] **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) [(105)] **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) [(106)] **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) [(107)] **Regional administrator** - The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

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

(113) [(109)] **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) [(110)] **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) [(111)] **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) [(112)] **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) [(113)] **Run-off** - Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

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

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

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

(121) [(117)] **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) [(118)] **Small quantity generator** - A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

(123) [(119)] **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) [(120)] **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) [(121)] **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) [(122)] **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) [(123)] **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) [(124)] **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) [(125)] **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) [(126)] **Tank system** - A hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(131) [(127)] **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) [(128)] **Thermostat** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(133) [(129)] **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) [(130)] **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) [(131)] **Transit country** - Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(136) [(132)] **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) [(133)] **Transporter** - Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(138) [(134)] **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) [(135)] **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) [(136)] **Treatment zone** - A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(141) [(137)] **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) [(138)] **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) [(139)] **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) [(140)] **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) [(141)] **Universal waste handler** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

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

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

(148) [(144)] **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) [(145)] **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) [(146)] **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) [(147)] **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) [(148)] **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) [(149)] **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) - (l) (No change.)

**§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 executive director 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 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.