

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts the amendment to §335.1, Definitions. Section 335.1 is adopted *with changes* to the proposed text as published in the December 1, 2000 issue of the *Texas Register* (25 TexReg 11889).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The amendment expands the number of exemptions from the definition of a solid waste currently allowed under Chapter 335. The amendment includes an exemption for the recycling of certain nonhazardous materials, and an exclusion for certain condensates as promulgated by the United States Environmental Protection Agency (EPA) in the April 15, 1998 *Federal Register* (63 FR 18504). The amendment also includes a change to conform to 40 Code of Federal Regulations (CFR) §261.2(a)(2)(iv) concerning military munitions and corrections to cross-references.

The adopted rule is designed to be protective of human health and the environment, while at the same time introducing greater flexibility to the commission's rules. The rule adds a self-implementing exemption from the definition of "solid waste" for certain recycling activities involving application of nonhazardous materials to the land or involving their use in materials which are applied to the land. The rule also eliminates the need to perform case-by-case determinations in every instance that such an exemption applies.

The rule, as adopted, applies only to materials that are legitimately and beneficially recycled. It does not apply to materials which are intended to be applied to the land (e.g., as fertilizers or soil amendments) at more than their maximum beneficial rates, nor does it apply to materials which, if

applied to the land, would be subject to the Texas Commercial Fertilizer Act. The rule does not apply to materials which would constitute hazardous waste, but instead only applies to materials which would be nonhazardous industrial solid waste, if discarded. Finally, the rule does not apply to contaminated soils or other contaminated media.

SECTION BY SECTION DISCUSSION

Section 335.1(128)(H) is amended to specifically allow materials that are applied to the land or products produced from such materials to be excluded from being a “solid waste” if they meet the criteria under clauses (i) - (viii). Paragraph (124) has been changed to adopted paragraph (128) by an earlier adoption.

In response to public comment received on the proposed rule, §335.1(128)(H)(vii) is adopted with changes to the proposed text, as discussed in detail in the RESPONSE TO COMMENTS section of this preamble. The proposal contained language basically requiring that each constituent in the recycling material be normally found in the raw material that it is replacing in approximately the same concentrations, or that the material meet Class 3 waste criteria. The adopted language has more specificity, including requirements to meet certain waste classifications or other specific commission standards.

Section 335.1(128)(H)(viii) is also adopted with changes to the proposed text, as discussed in detail in the RESPONSE TO COMMENTS section of this preamble. The requirements have been reworded for clarity to require 75% recycling on an annual or biennial basis, depending on type of storage, rather

than requiring no more than 25% of the annual production be accumulated for a total of 365 days from the time of generation.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

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 it does not meet the definition of a “major environmental rule” as defined in the statute.

“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. The amendment includes an exemption from the definition of a solid waste for certain nonhazardous materials that are recycled in a manner involving land application, and an exclusion for certain condensates. This rule does not authorize materials to be applied to the land that would otherwise be prohibited from land application. Therefore, the rule does not 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.

Texas Government Code, §2001.0225, requires a state agency to prepare a regulatory analysis of a major environmental rule in certain circumstances. A regulatory analysis must be prepared if a rule will: 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.

As explained below, a regulatory analysis is not required for this rulemaking because this rule does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and the federal government, and is not being adopted solely under the general powers of the agency.

The Rule Does Not Exceed a Standard Set by Federal Law

The requirements of this rule which provide an exemption from the definition of solid waste for land application of certain recycled nonhazardous materials are not subject to federal regulation.

Accordingly, there are no applicable standards set by federal law that are exceeded by these requirements.

The requirements of this rule which relate to federal military munitions and the exclusion of certain condensates are being implemented to maintain equivalency with federal law and do not exceed any federal law standards.

The Rule Does Not Exceed an Express Requirement of State Law

The requirements of this rule (relating to recycled nonhazardous materials, excluded condensates, and military munitions) are being adopted pursuant to the commission's statutory responsibility under Texas

Health and Safety Code (THSC), §361.017 (relating to Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste) and THSC, §361.024 (relating to Rules and Standards). The rule is consonant with state law and does not exceed it.

The Rule Does Not Exceed a Requirement of a Delegation Agreement

The commission is not a party to a delegation agreement with the federal government relating to the requirements set forth in the rule. Accordingly, there is no delegation agreement requirement exceeded by this rule.

The Rule is Not Being Adopted Solely Under the Agency's General Powers

The commission is adopting this rule under the specific statutory authority of THSC, §361.017 and THSC, §361.024, in addition to the general powers of Texas Water Code (TWC), §5.103 (relating to Rules) and TWC, §5.105 (relating to General Policy). Accordingly, this rule is not being adopted solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this rule pursuant to Texas Government Code, §2007.043. The specific purpose of the rule is to update the commission's rule to conform with certain federal regulations and to establish environmentally protective uniform and specific criteria by which materials which would otherwise be regulated as nonhazardous industrial wastes can be exempt from being regulated as such, including when such materials are recycled by being applied to the land or used as ingredients in materials which are applied to the land. The rule substantially advances this

purpose by adopting changes conforming with certain federal regulations and by providing a set of environmentally protective criteria to be applied in the determination of whether a material meets the “land application” exemption. Promulgation and enforcement of this rule will not affect private real property because the proposed rule creates exemptions which allow greater flexibility in the recycling of certain materials, and otherwise conforms to federal regulations. The rule does not affect a landowner’s right to property that would otherwise exist in the absence of the rule. Therefore, the rule does not constitute a takings under Texas Government Code, §2007.043.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed this rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this rule pursuant to 31 Texas Administrative Code (TAC) §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies include the construction and operation of solid waste storage, processing, and disposal facilities, such that new solid waste facilities and areal expansions 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 (the Act), 42 United States Code (USC), §§6901 *et seq.* Promulgation and enforcement of this rule will be consistent with the applicable CMP goals and policies because the rule will update the commission’s requirements to conform to certain federal regulations

and will establish environmentally protective uniform and specific criteria by which certain materials which are currently classified as nonhazardous industrial solid wastes can be exempted from being classified as such. Therefore, the rule will protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also serves to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are 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 Act, 42 USC, §§6901 *et seq.*

HEARING AND COMMENTERS

The commission did not hold a public hearing on the proposed rule. The comment period for the proposal closed at 5:00 p.m., January 17, 2001. Written comments were submitted by: Alcoa, Inc.; Association of Electric Companies of Texas, Inc. (AECT); Association of General Contractors of Texas (AGC of Texas); Baker Botts, L.L.P. (Baker Botts) The Inland Group, L.L.C. (Inland); Reliant Energy; Texas Chemical Council (TCC); Texas Department of Transportation (TxDOT); Texas Mining and Reclamation Association (TMRA); TXU Electric Generation (TXU); and Vernor Material & Equipment Co., Inc. (Vernor).

RESPONSE TO COMMENTS

Comment

AGC of Texas requested that the commission not adopt these rules and instead continue to use current guidance. AGC of Texas commented that, if the commission proceeds with adoption, that Criteria VII of the proposed rule, §335.1(124)(H)(vii), is too inflexible and restrictive, and would stifle the

innovations in the recycling of environmentally safe materials. Alcoa expressed general support for the rulemaking, but commented that Criteria VII of the proposed rule is overly restrictive and would therefore potentially inhibit the legitimate recycling of many materials. AECT, Reliant Energy and TXU expressed general support for the rulemaking, and submitted comments requesting a modification to the language of Criteria VII. AECT and Reliant Energy suggested that Criteria VII be changed to add specific concentration limits for certain constituents rather than requiring the material to meet Class 3 waste levels for these constituents. TXU suggested changes similar to those from AECT and Reliant Energy.

Response

In response to these comments, the commission is changing the language of proposed §335.1(124)(H)(vii), which is now adopted §335.1(128)(H)(vii), to approximate the suggested language. The proposal contained language basically requiring that each constituent in the recycling material be normally found in the raw material that it is replacing in approximately the same concentrations, or that the material meet Class 3 waste criteria. The adopted language has more specificity, and reads as follows: “(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land, and the material, as generated: (I) is a Class 3 waste under Chapter 335, Subchapter R of this title (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and (II) for the metals listed in subclause (I) of this clause: (-a-) is a Class 2 or Class 3 waste under

Chapter 335, Subchapter R of this title (relating to Waste Classification); and (-b-) does not exceed a concentration limit under §312.43(b)(3), Table 3; and.”

The commission believes that this is protective of human health, the environment, and waters in the state, and is sufficiently flexible to allow a greater range of nonhazardous industrial materials to be exempt from being classified as a solid waste. The rule incorporates criteria, used to classify industrial solid wastes, in Chapter 335, Subchapter R, as well as land application standards located in §312.43(a)(2)(B).

Comment

Inland and Vernor expressed general support for the proposed rule. However, they commented that the rule should be broadened to exclude from regulation as a solid waste industrial materials which contain only minor amounts of total petroleum hydrocarbons (TPH), particularly when the materials are used as road-base materials. They suggested that this issue might be addressed by incorporating into the rule certain criteria from the Texas Risk Reduction Program (TRRP) relating to TPH levels.

Response

The commission considered referencing the TRRP rule in the adopted rule, but ultimately declined to for the following reasons. First, the TRRP rule applies to Chapter 335 closures of waste management units and remediation of contaminated media (affected property) containing releases of chemicals of concern, and does not apply to recycling materials. To this end, adopted §335.1(128)(H) expressly excepts from the rule contaminated soils which are being relocated for

use in accordance with §350.36 and other contaminated media. Second, the TRRP risk evaluation utilizes a tiered approach to account for greater site specificity. The commission prefers the adopted revision to Criteria VII because it is a more straightforward approach.

The TPH limits included in the adopted rule will not unduly inhibit the legitimate recycling of TPH-containing materials. First, these materials are largely contaminated media, which may qualify to be relocated and reused under 30 TAC §350.36. Second, many nonhazardous industrial materials such as asphalt and solid asphaltic materials which are solids at standard temperature and pressure are not “petroleum substances” as defined by §335.1(67). Such materials are therefore excluded from the TPH limits included within the adopted rule. Third, many nonhazardous industrial materials may legitimately be recycled under §335.24. Fourth, the generator can petition the executive director for a case-by-case exemption from the requirements of clause (vii)(I) or (II)(a) under the variance provisions of §335.514. The commission is not making changes to the proposed rule in response to these comments.

Comment

Inland and Vernor also commented that Criteria VII of the proposed rule is too restrictive for constituents other than TPH and that it should be made more flexible.

Response

The commission notes, in response to suggestions made by AECT, Reliant Energy and TXU, that it has incorporated more flexible language into Criteria VII to deal with arsenic, cadmium,

chromium, lead, mercury, nickel, and selenium as well as to deal with total dissolved solids, by requiring that the metals concentrations meet Class 2 or Class 3 waste levels and certain Chapter 312 standards relating to land application for beneficial use, rather than Class 3 waste levels.

Comment

Vernor also commented that Criteria VI of the proposed rule which provides that, “The recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation,” could be interpreted so as to cause certain materials to fail to meet Criteria VI simply because they are mixed with one or more other materials. Vernor gives an example in which a recycled material is mixed with raw materials such as sand or cement in order to create road base material.

Response

The commission notes that commercial products are commonly combined to form mixtures which are useable for various purposes (e.g., the creation of road base material). The fact that a recycled material is mixed with a commercial product such as sand or cement would not be sufficient to cause it to fail to meet Criteria VI of the adopted rule. The commission further notes that the point at which a material is to be evaluated to determine if it meets the criteria of the adopted rule is the point of generation, and not after the material is mixed with other materials. The commission is not making changes to the proposed rule in response to this comment.

Comment

Inland commented that the scope of the rule should be expanded to include recycled materials that are used as fill material or for land reclamation. Inland commented that 30 TAC §330.2 conditionally excludes from the definition of solid waste certain materials (soil, dirt, rock, sand, etc.) used as fill material.

Response

The commission disagrees with this comment. The proposed rule was not meant to include materials simply because they are recycled by being placed or put onto the land. Rather, it was meant to exempt certain industrial materials that closely resemble commercial products, and which would otherwise be regulated as solid wastes if recycled by being applied to the land or used in products applied to the land. The commission notes that there is an existing exclusion under §335.1(128)(A)(ii) for uncontaminated soil, dirt, rock, sand, and other natural or manmade 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 commission is not making changes to the proposed rule in response to this comment.

Comment

TCC commented that the agency has allowed several materials that are applied to the land or used as ingredients in products applied to the land to be exempt from the definition of solid waste by classifying them as co-products. The commenter stated that such determinations by the agency are spelled out in letters that contain complex and detailed risk evaluations based on use-specific conditions, and that the

practice of issuing these letters is preferable because the rule would exempt generators from any reporting requirements and oversight by the commission. Alcoa, AGC of Texas, and TMRA submitted similar comments. AGC of Texas commented that relying on guidance allows flexibility and stimulates innovation to a greater degree than would the proposed rule. The TMRA commented that the proposed rule is not necessary given the sufficiency of existing co-product determinations based upon agency guidance.

Response

The commission agrees in part and disagrees in part with these comments. The commission believes that the practice of designating certain nonhazardous industrial materials as co-products is a legitimate exercise of the commission's authority. However, the adopted rule sets out certain criteria for beneficial recycling and provides the advantage of being a self-implementing exemption. With regard to lack of reporting and oversight, the commission notes that, since the mid 1980's, approximately 31 self-implementing exemptions from the definition of solid waste have been incorporated into commission rules (e.g., 30 TAC §335.1(128)(A)(i) - (iv), (D)(i)(II), (ii)(II), (iii), (iv), and (F)). The commission's experience with self-implementing exemptions has been that they work as intended and are not misused. Not only does a self-implementing exemption allow generators the flexibility to recycle materials that would otherwise be regulated as solid wastes, it also streamlines the process by eliminating unnecessary case-by-case reviews by the executive director. The criteria which otherwise would be utilized by the executive director in reviewing an exemption request have been clearly and prescriptively articulated in the adopted

rule, and create the basis upon which an agency enforcement action could be based. The commission is not making changes to the proposed rule in response to this comment.

Comment

The TCC commented that Criteria VII of the proposed rule lists two ways that a generator can demonstrate that materials do not present an increased risk to human health, the environment, and waters in the state, and that the use of the word “can” does not limit generators to the specific requirements of Criteria VII to make such a demonstration.

Response

The commission agrees with this comment, and the changes made to Criteria VII remove the word “can.”

Comment

The TCC commented that the proposed rule is based on the guidance in TNRCC Guidance Document RG-240 which was based on EPA guidance that EPA never formalized into regulatory language, and it is not appropriate for the commission to incorporate it into its rules.

Response

The commission disagrees with this comment. Over the past decade, the aforementioned EPA guidance has been very useful to the executive director in evaluating whether recycling activities are appropriate and legitimate. This EPA guidance forms a substantial portion of the criteria

currently found in RG-240, which are essentially the same criteria that have been used by the executive director since April 1995 to evaluate whether certain nonhazardous industrial materials are legitimate co-products. No change to the proposed rule has been made as the result of this comment.

Comment

TCC commented that the non-waste criteria guidance found in RG-240 is already self-implementing. The commenter stated that producers and distributors will continue to seek agency concurrence with their determinations primarily as marketing tools.

Response

The commission disagrees with this comment for several reasons. First, experience with other self-implementing rule exemptions suggests that, while producers and distributors still seek commission concurrence, they are more likely to seek concurrence if a self-implementing rule did not exist. The commission believes that requests for concurrence will be minimized in the case of this adopted rule, particularly because it contains detailed criteria for determining whether a nonhazardous industrial material is exempt from being a solid waste. Second, given the detailed nature of the adopted rule (particularly with the incorporation of the adopted changes to Criteria VII), the commission anticipates that only a few requests for concurrence will be received. For these reasons, the commission is making no change to the proposed rule in response to this comment.

Comment

TxDOT commented that recycling material that meets the exemption should be considered a waste until the point at which it is recycled, that the commission should continue to require a generator to list all wastes on the generator's Notice of Registration (NOR), and that notifications of recycling should still be required. TxDOT also asked whether materials that exit the definition of solid waste would be audited by the agency.

Response

The commission agrees in part and disagrees in part with these comments. The commission agrees that generators should list their wastes on the generator's NOR, but disagrees that recycling material that meets the exemption should be classified as waste until the point at which it is recycled. As is the case with other self-implementing exemptions from the definition of a solid waste, generators would not be subject to the notification requirements of §335.6 and would therefore not be required to have a waste code on their NOR for materials excluded under the rule. The commission's response to the question regarding agency audits of materials that exit the definition of solid waste is that, under §335.1(128)(I), 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. The commission believes it has sufficient authority to take all action necessary to protect human health, the environment, and the waters in the state, including taking appropriate enforcement action against those who do not comply with the exemptions. The commission has made no change to the proposed rule in response to this comment.

Comment

TxDOT commented that the proposed rule would allow all exempt material to exit all solid waste management controls, and that as a result, the end user (e.g., TxDOT) loses an opportunity to inquire about whether exempted materials are being legitimately and beneficially recycled.

Response

The commission disagrees with this comment. The rule has no bearing on TxDOT's opportunities or ability to inquire about materials or adopt standards for materials that are used in projects under its jurisdiction in order to determine their environmental impact. The commission has made no change to the proposed rule in response to this comment.

Comment

TxDOT commented that the commission should develop specific requirements for waste generators to follow to prove that their waste meets each of the eight criteria of the rule.

Response

The commission does not agree that the rule needs further requirements for waste generators to follow. The commission notes that the criteria of the adopted rule are very specific, particularly with the change made under adopted Criteria VII. The commission has made no change to the proposed rule in response to this comment.

Comment

Both TCC and TxDOT commented that the proposed rule would potentially exempt generators from oversight by the commission.

Response

The commission disagrees with this comment. Under §335.1(128)(I), 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. The commission believes it has sufficient authority to take all action necessary to protect human health, the environment, and the waters in the State, up to and including taking appropriate

enforcement action against those who do not comply with the exemptions. The commission has made no change to the proposed rule in response to this comment.

Comment

Alcoa commented that, by specifically mentioning the several materials to which the commission has previously granted “co-product” status (e.g., certain types of foundry sand, fly ash, bottom ash, and steel slag) in the December 1, 2000 issue of the *Texas Register*, the commission intended to document approval of existing, case-by-case demonstrations of co-products that have previously been granted by the executive director. TMRA commented that, if the proposed rule is adopted, the commission should more clearly recognize the sufficiency of existing co-product determinations.

Response

The commission agrees with these comments, subject to the following discussion. The intent of the commission in specifically mentioning certain industrial materials in the preamble language of the December 1, 2000 *Texas Register* was to acknowledge that “co-product” status has been granted to certain materials by the executive director. The “co-product” status of those materials remains valid because the determinations were based on extensive evaluations which concluded that the uses of the materials as proposed are protective of human health and the environment.

Accordingly, there is no need to revisit these determinations. However, any further solid waste determinations would need to be done under any applicable provisions of the adopted rule. No change to the proposed rule language has been made in response to these comments.

Comment

Both TMRA and Baker Botts commented that they had concerns about the accumulation limits found in Criteria VIII of the proposed rule. Baker Botts expressed concern that there is no definition of “protective storage” nor is there a reference to any regulatory or other guidance regarding what the term means. Baker Botts queried whether there are: 1.) acceptable forms of storage based on the material being stored (in other words, whether there are differing types of protective storage required, depending on the type of material); and 2.) will all recycling materials require such protective storage or will certain materials not require such storage at all?

Response

The commission responds that there are several ways recycling materials can be stored in a protective manner. These include, but are not limited to, silos, tanks or tank-like devices, permanent coverings such as roofs, temporary coverings such as secured tarps, storage bunkers, berms, or secure pits. All of these structures are designed to prevent the material from entering the environment in an uncontrolled and unauthorized manner. The commission believes that measures which accomplish this would be sufficient to satisfy the protective storage requirements of Criteria VIII. It is up to the person storing the material to decide whether to use protective storage, as it is but one of two options under adopted Criteria VIII. The commission has made no change to the proposed rule in response to this comment.

Comment

TMRA commented that there should be more flexibility introduced into Criteria VIII of the proposed

rule. TMRA indicated that the 25% annual maximum is too restrictive on industrial generators because of year-to-year fluctuations in the market for many materials, and that if the commission does decide to adopt the 25% annual maximum, then it should allow industrial generators to use an average of accumulation rates over a period of several years, and in any case, no less than five years.

Response

The commission agrees in part and disagrees in part with these comments. The commission notes that the period of one-year, and the percentage of 25%, are based upon language in §335.17(a)(8). The commission has long used this standard for determining whether a material is being accumulated speculatively. This is also the standard used by the EPA for the same purpose. The commission believes that it should be well within a generator's means to recycle at least 75% of a material for which there is a significant and legitimate market within a one- or two-year period of time, depending on the type of storage. The commission believes that materials for which this is not the case much more closely resemble wastes, as opposed to materials which have some demonstrable recycling value, and should be regulated as wastes rather than recycling materials. The commission has reworded the proposed language for clarification and to provide additional flexibility by stating that at least 75% of the annual production of the recycling material must be recycled or transferred to a different site and recycled on a one- or two-year basis, depending on the type of storage.

Comment

TMRA commented that additional record keeping and tracking requirements are not warranted or

appropriate for legitimate co-products, and that any such additional requirements would defeat the purpose of both the rule and the previous “co-product” designations granted by the executive director.

Response

The commission agrees with the comment. Industrial materials that are exempt from being solid wastes should not be subject to additional record keeping requirements and tracking requirements under the commission’s rules, assuming there is no ongoing enforcement action. The commission has made no change to the proposed rule in response to this comment.

STATUTORY AUTHORITY

The amendment is adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rule necessary to carry out its powers and duties under the provisions of TWC or other laws of this state; and under the Act, THSC, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

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

§335.1

§335.1. Definitions.

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

(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 units'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:

(i) process heaters (units that transfer energy directly to a process stream), and

(ii) 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 261, Subpart D and to each characteristic identified in 40 Code of Federal Regulations, Part 261, 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) **Explosives or munitions emergency** - A situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an

improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(48) **Explosives or munitions emergency response** - All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(49) **Explosives or munitions emergency response specialist** - An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal (EOD), technical escort unit (TEU), and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(50) **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.

(51) **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).

(52) **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).

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

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

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

(56) **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.

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

(58) **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 261. 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.

(59) **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.

(60) **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.

(61) **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.

(62) **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.

(63) **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.

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

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

(66) **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.

(67) **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.

(68) **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.

(69) **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.

(70) **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.

(71) **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.

(72) **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.

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

(74) **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.

(75) **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.

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

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

(78) **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.

(79) **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.

(80) **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.

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

(82) **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.

(83) **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.

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

(85) **Manifest** - The waste shipping document which accompanies and is used for tracking the transportation, disposal, treatment, storage, or recycling of shipments of hazardous wastes or Class 1 industrial solid wastes. The form used for this purpose is TNRCC-0311 (Uniform Hazardous Waste Manifest) which is furnished by the executive director or may be printed through the agency's "Print Your Own Manifest Program."

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

(87) **Military munitions** - All ammunition products and components produced or used by or for the DOD or the United States Armed Services for national defense and security, including

military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term “military munitions”:

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(88) **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).

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

(90) **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.

(91) **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.

(92) **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.”)

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

(94) **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.

(95) **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.

(96) **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.")

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

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

(99) **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.

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

(101) **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.

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

(103) **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.

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

(105) **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 paragraph 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.

(106) **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.

(107) **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.

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

(109) **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.

(110) **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.

(111) **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.

(112) **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.

(113) **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.

(114) **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.

(115) **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).

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

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

(118) **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).

(119) **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.

(120) **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.

(121) **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.

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

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

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

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

(126) **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.

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

(128) **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) - (19) as amended May 11, 1999 in 64 FedReg 25408, subject to the changes in this clause, 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). For the purposes of the exclusion under 40 CFR §261.4(a)(16), as amended June 19, 1998 at 63 FedReg 33782, 40 CFR §261.38 is revised as follows, with “30 TAC §335.1(123)(A)(iv)” meaning “§335.1(123)(A)(iv) of this title (relating to Definitions)”:

(I) in the certification statement under 40 CFR §261.38(c)(1)(i)(C)(4), the reference to “40 CFR §261.38” is changed to “40 CFR §261.38, as revised under 30 TAC §335.1(123)(A)(iv),” and the reference to “40 CFR §261.28(c)(10)” is changed to “40 CFR §261.38(c)(10)”;

(II) in 40 CFR §261.38(c)(2), the references to “§260.10 of this chapter” are changed to “§335.1 of this title (relating to Definitions),” and the reference to “parts 264 or 265 of this chapter” is changed to “Chapter 335, Subchapter E of this title (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities)”;

(III) in 40 CFR §261.38(c)(3), (4), and (5), the references to “parts 264 and 265, or §262.34 of this chapter” are changed to “Chapter 335, Subchapter E of this title

(relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or §335.69 of this title (relating to Accumulation Time)";

(IV) in 40 CFR §261.38(c)(5), the reference to “§261.6(c) of this chapter” is changed to “§335.24(e) and (f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)”;

(V) in 40 CFR §261.38(c)(7), the references to “appropriate regulatory authority” and “regulatory authority” are changed to “executive director”;

(VI) in 40 CFR §261.38(c)(8), the reference to “§262.11 of this chapter” is changed to “§335.62 of this title (relating to Hazardous Waste Determination and Waste Classification)”;

(VII) in 40 CFR §261.38(c)(9), the reference to “§261.2(c)(4) of this chapter” is changed to “§335.1(123)(D)(iv) of this title (relating to Definitions)”; and

(VIII) in 40 CFR §261.38(c)(10), the reference to “implementing authority” is changed to “executive director.”

(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;

(iii) considered inherently waste-like, as explained in subparagraph (E)

of this paragraph; or

(iv) a military munition identified as a solid waste in 40 CFR

§266.202.

(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) Except for materials described in subparagraph (H) of this paragraph, 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)(17)). 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)(17)).

(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(128)(D)(iv)

Figure 1: 30 TAC §335.1(128)(D)(iv)
TABLE 1

| | Use Constituting Disposal S.W. Def. (D)(i)(1) | Energy Recovery/Fuel S.W. Def. (D)(ii)(2) | Reclamation S.W. Def. (D)(iii)(3)² | Speculative Accumulation S.W. Def. (D)(iv)(4) |
|---|--|--|--|--|
| Spent materials (listed hazardous & not listed characteristically hazardous) | * | * | * | * |
| Spent materials (nonhazardous)¹ | * | * | * | * |
| Sludges (listed hazardous in 40 CFR §261.31 or §261.32) | * | * | * | * |
| Sludges (not listed characteristically hazardous) | * | * | | * |
| Sludges (nonhazardous)¹ | * | * | | * |
| By-products (listed hazardous in 40 CFR §261.31 or §261.32) | * | * | * | * |
| By-products (not listed characteristically hazardous) | * | * | | * |
| By-products (nonhazardous)¹ | * | * | | * |
| Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous) | * | * | | |
| Scrap metal other than excluded scrap metal (see §335.17(9)) (hazardous) | * | * | * | * |

| | | | | |
|--|---|---|---|---|
| Scrap metal other than excluded scrap metal (see §335.17(9)) (nonhazardous)¹ | * | * | * | * |
|--|---|---|---|---|

NOTE: The terms "spent materials", "sludges", "by-products", "scrap metal" and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

¹These materials are governed by the provisions of §335.24(h) only.

²Except as provided in 40 CFR §261.4(a)(17) for mineral processing secondary materials

(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;

(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)(17) apply rather than this provision; or

(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 12 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) Except for materials described in subparagraph (H) of this paragraph, 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) With the exception of contaminated soils which are being relocated for use under §350.36 of this title (relating to Relocation of Soils Containing Chemicals of Concern for Reuse Purposes) and other contaminated media, materials that would otherwise be identified as nonhazardous solid wastes if disposed of are not considered solid wastes when recycled by being applied to the land or used as ingredients in products that are applied to the land, provided these materials can be shown to meet all of the following criteria:

(i) a legitimate market exists for the recycling material as well as its products;

(ii) the recycling material is managed and protected from loss as would be raw materials or ingredients or products;

(iii) the quality of the product is not degraded by substitution of raw material/product with the recycling material;

(iv) the use of the recycling material is an ordinary use and it meets or exceeds the specifications of the product it is replacing without treatment or reclamation, or if the recycling material is not replacing a product, the recycling material is a legitimate ingredient in a production process and meets or exceeds raw material specifications without treatment or reclamation;

(v) the recycling material is not burned for energy recovery, used to produce a fuel or contained in a fuel;

(vi) the recycling material can be used as a product itself or to produce products as it is generated without treatment or reclamation;

(vii) the recycling material must not present an increased risk to human health, the environment, or waters in the state when applied to the land or used in products which are applied to the land, and the material, as generated:

(I) is a Class 3 waste under Chapter 335, Subchapter R of this title (relating to Waste Classification), except for arsenic, cadmium, chromium, lead, mercury, nickel, selenium, and total dissolved solids; and

(II) for the metals listed in subclause (I) of this clause:

(-a-) is a Class 2 or Class 3 waste under Chapter 335,
Subchapter R of this title (relating to Waste Classification); and

(-b-) does not exceed a concentration limit under
§312.43(b)(3), Table 3; and

(viii) notwithstanding the requirements under §335.17(a)(8) of this title
(relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(I) at least 75% (by weight or volume) of the annual
production of the recycling material must be recycled or transferred to a different site and recycled on
an annual basis; and

(II) if the recycling material is placed in protective storage,
such as a silo or other protective enclosure, at least 75% (by weight or volume) of the annual
production of the recycling material must be recycled or transferred to a different site and recycled on a
biennial basis.

(I) 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.

(J) 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.

(K) 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 of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

(129) **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.

(130) **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.

(131) **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.

(132) **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.

(133) **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.

(134) **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.

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

(136) **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."

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

(138) **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.

(139) **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.

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

(141) **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.

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

(143) **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.

(144) **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.

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

(146) **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.")

(147) **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.

(148) **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.

(149) **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 Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

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

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

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

(153) **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.

(154) **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).

(155) **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.

(156) **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.

(157) **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.

(158) **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.