

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§335.9, 335.10, 335.15, 335.112, 335.115, 335.117, 335.152, 335.155, 335.159 and repeal of §§335.114 and 335.154, concerning Industrial Solid Waste and Municipal Hazardous Waste. Sections 335.9, 335.10, 335.15, 335.112, and 335.152 are adopted with changes to the proposed text and §§335.115, 335.117, 335.155, 335.159 and the repeals of §§335.114 and §335.154 are adopted without changes to the proposed text as published in the February 5, 1999, issue of the *Texas Register* (24 TexReg 678) and will not be republished.

EXPLANATION OF ADOPTED RULES

This rule adoption is needed to make state rules no more stringent than federal rules in accordance with commission policy; to continue an ongoing regulatory reform effort by the commission to reduce unnecessary reporting requirements; and to modify the state hazardous waste program to reflect a federal manifest exemption, thereby establishing equivalency with federal regulations and retaining Texas authorization to operate aspects of the federal hazardous waste program.

The rulemaking will reduce the reporting frequency for interim status and permitted Resource Conservation and Recovery Act (RCRA) hazardous waste storage, processing, and disposal facilities; provide an exemption from manifesting for transport of hazardous waste over right-of-ways on or adjacent to contiguous properties; and correct a wording error.

The adopted reporting amendments and repeals are part of an ongoing regulatory reform effort to reduce unnecessary reporting requirements for hazardous waste management facilities. The adopted

rule amendments will reduce the reporting frequency for interim status and permitted Resource Conservation and Recovery Act (RCRA) hazardous waste storage, processing, and disposal facilities from state required annual reporting to federally required biennial reporting. The commission has determined that this information is not necessary on an annual basis and that the federal biennial reporting frequency is satisfactory for state information requirements.

The United States Environmental Protection Agency (EPA) has also promulgated in 62 Federal Register (FedReg) 6622-6657, February 12, 1997, an exemption from manifesting for transport of hazardous waste over right-of-ways on contiguous properties (properties touching along a boundary) in Title 40 Code of Federal Regulations (CFR) §262.20(f). Under 40 CFR §271.21(e), states, such as the State of Texas, having final RCRA authorization must modify their program to reflect federal program changes and submit the modifications to the EPA for approval. Establishing equivalency with federal regulations will enable the commission to retain authorization to operate aspects of the hazardous waste program. Incorporating the federal manifesting exemption into state rules will also make state rules no more stringent than the federal rules in accordance with commission policy. In addition, removing barriers to consolidation of waste in one central area should reduce the possibility that the public and the environment could come into contact with hazardous waste because one waste consolidation area is easier to control and can be better located than numerous smaller areas.

Section 335.9(b), as proposed, is amended by adding this sentence: "Any waste related information that has already been submitted by generators under the requirements of this section or §335.71 need not be included in the reports from permitted or interim status facilities under 40 CFR §264.75 or

§265.75.” This amendment was made to indicate that waste related information submitted in generator annual and biennial reports (§335.71) does not have to be repeated in permitted or interim status facility biennial reports.

Section 335.10(h), as proposed, is amended to insert the two words “or private” that were omitted from the requirement as it appears in federal rule, 40 CFR §262.20(f). This corrects an inadvertent omission.

Section 335.15(7), as proposed, is amended to do some minor wording improvement and to add that the biennial report required by §264.75 or §265.75 must be submitted to the executive director in letter format rather than by EPA form. The information is currently submitted in letter format. This amendment will save the regulated community the cost of changing their current systems and will impose no additional cost on the commission.

Section 335.112(a)(4), as proposed, is amended by adding that the form specified in the federal rule should not be used and that the required information should be submitted to the executive director in letter format. The information is currently submitted in letter format. This amendment will save the regulated community the cost of changing their current systems and will impose no additional cost on the commission.

Section 335.152(a)(4), as proposed, is amended by adding that the form specified in the federal rule should not be used and that the required information must be submitted to the executive director in

letter format. The information is currently submitted in letter format. This amendment will save the regulated community the cost of changing their current systems and will eliminate possible confusion internal to the commission due to a reporting format change.

As a result of these amendments, the commission will expect to receive biennial reports from permitted hazardous waste processing, storage, and disposal facilities with the information required in 40 CFR §264.75(a), (b), and (g)-(j) and from interim status facilities with the information required in §265.75(a), (b), and (f)-(j).

SMALL BUSINESS ANALYSIS

The commission has reviewed the adopted rulemaking in light of Texas Government Code (the Code), §2006.002, requirements and has determined that there is no adverse economic effect on small businesses because the rulemaking reduces certain reporting and manifesting requirements for businesses, large and small.

FINAL REGULATORY IMPACT ANALYSIS

The rule adoption would 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 because the rule conforms certain state rules to match the federal hazardous waste regulations, which in turn provides benefits to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state, as explained below. The benefit from conforming certain state rules to

match the federal hazardous waste regulations is derived from proposing to provide for (1) an exemption from manifesting requirements for transport of hazardous waste over right-of-ways on contiguous properties, and (2) a reduction in certain reporting requirements for hazardous waste storage, processing, and disposal facilities. The incorporation of the manifesting exemption and the reduction in reporting requirements would provide a benefit to the economy, sectors of the economy, productivity, competition, and jobs by lessening regulatory requirements, thus costing certain companies less. The rule also would provide a benefit, as opposed to an adverse effect in a material way, to the environment and the public health and safety of the state and affected sectors of the state, by providing for enhanced consistency between federal and state waste regulatory requirements, which leads to improvements in the management of hazardous waste and hazardous waste facilities. Another way of explaining this benefit is that the federal regulations to which the state rules are being conformed are protective of the environment and public health and safety. In the case of the manifesting exemption, for example, the environment and public health and safety would be benefitted because there would be a reduced possibility that the environment or public would come into contact with hazardous waste, since, by removing barriers to consolidation of wastes in one central area, the waste would not be as "spread out" over numerous smaller areas. Thus, the waste could more readily be consolidated in one central area that is easier to control and can be more suitably located than numerous smaller areas. In addition, this adopted rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules pursuant to the Code §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to reduce state hazardous waste reporting requirements that are more stringent than federal rules, to incorporate a federal manifesting exemption into the state rules, and to correct a wording error. The rules will substantially advance this specific purpose by amendments to 30 TAC Chapter 335, §§335.9, 335.10, 335.15, 335.112, 335.115, 335.117, 335.152, 335.155, 335.159 and repeal of §§335.114 and §335.154, concerning Industrial Solid Waste and Municipal Hazardous Waste. Promulgation and enforcement of these rules will not burden private real property because they reduce state regulatory requirements. Real property is not the subject of these rules and, therefore, the rule changes do not affect real property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that the adoption is a rulemaking 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 adopted rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs). Applicable policies are construction and operation of solid waste treatment, storage, 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, 42 United States Code Annotated, §§6901 et seq. Promulgation and enforcement of this adopted rule would be consistent with the applicable CMP goals and policies because the rule amendments would conform certain of the commission's rules to the federal hazardous waste regulations, thereby serving to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also thereby serving 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 Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq. In addition, the adopted rule does not violate any applicable provisions of the CMP's stated goals and policies.

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed March 8, 1999. Written comments were submitted by the Texas Chemical Council (TCC).

ANALYSIS OF COMMENTS

The TCC pointed out the omission of two words in §335.10(h).

The commission agrees with this comment because this was an inadvertent omission of two words from 40 CFR §262.20(f). The two missing words have been added in this adoption.

The TCC also questioned which reporting form or mechanism the commission would employ for the Biennial Report. The TCC recommended the continued use of the commission report forms instead of the EPA Form 8700-13B, Biennial Report Form.

The commission agrees with this comment. Currently, much of the information that generators would use to complete the EPA form is reported to the commission electronically and is used by the commission for multiple purposes. Switching to the EPA form could result in less efficient information management, overlapping reporting requirements and increase the reporting burden (cost of changing systems, confusion over requirements) not only for reporters, but also for the commission. Amendments in this adoption to §§335.15(7), 335.112(a)(4), and 335.152(a)(4) require processing, storage, and disposal facilities to continue providing their biennial reports in letter format to the benefit of both the regulated community and the commission.

After discussion of their comments with the TCC by phone, they requested that §335.9(b) be further amended to indicate that waste related generator information provided under §335.9 and §335.71 do not also have to be provided in the processing, storage, and disposal facility biennial report required under 40 CFR §264.75 or §265.75.

The commission agrees with the comment because it is current commission policy that information does not have to be submitted more than once. Additional language has been added to §335.9(b) in this adoption that will address the TCC concerns. Language has also been added to the

adoption preamble to clarify exactly which information the commission expects to receive as a result of the requirements in 40 CFR §264.75 or §265.75.

STATUTORY AUTHORITY

This rule amendment is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule amendment is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

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

§§335.9, 335.10, 335.15

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

(a) (No change.)

(b) A generator who ships his hazardous waste off-site must also report the information specified in §335.71 of this title (relating to Biennial Reporting). Any waste related information that has already been submitted by generators under the requirements of this section or §335.71 need not be included in the reports from permitted or interim status facilities under 40 CFR §264.75 or §265.75.

§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.

(a) Except as provided in subsection (g) and (h) of this section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste process, storage, or disposal facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1) - (6) (No change.)

(b) - (g) (No change.)

(h) No manifest and no marking in accordance with §335.67(b) of this title (related to Marking) is required for hazardous waste transported on a public or private right-of-way within or along the border of contiguous property under the control of the same person, even if such contiguous property is divided by a public or private right-of-way. However, in the event of a hazardous waste discharge on a public or private right-of-way, the generator or transporter must comply with the requirements of §335.93 of this title (relating to Hazardous Waste Discharges).

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

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

(1) - (6) (No change.)

(7) Information which has already been submitted by permitted or interim status facilities under the requirements of this section need not be included in the reports required by 40 CFR §264.75 or §265.75 (relating to Biennial Reports); these biennial reports must be submitted to the executive director in letter format rather than by EPA form.

**SUBCHAPTER E : INTERIM STANDARDS FOR OWNERS AND OPERATORS OF
HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES
§§335.112, 335.115, 335.117**

STATUTORY AUTHORITY

This rule amendment is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule amendment is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

§335.112. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 265 (including all appendices to Part 265) (except as otherwise specified herein) are adopted by reference as amended and adopted in the CFR through June 1, 1990, at 55 FedReg 22685 and as further amended as indicated in each paragraph of this section:

(1) - (3) (No change.)

(4) Subpart E - Manifest System, Recordkeeping and Reporting (as amended through January 29, 1992, at 57 FedReg 3492), except 40 CFR §§265.71, 265.72, 265.76, and 265.77; the biennial report required by 40 CFR §265.75 must be submitted to the executive director in letter format rather than by EPA form;

(5) - (22) (No change.)

(b) - (c) (No change.)

§335.115. Additional Reports.

In addition to submitting the waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities), the owner or operator must also report to the executive director:

(1) - (4) (No change.)

§335.117. Recordkeeping and Reporting.

(a) Unless the groundwater is monitored to satisfy the requirements of 40 Code of Federal Regulations §265.93(d)(4), the owner or operator must:

(1) (No change.)

(2) Report the following groundwater monitoring information to the executive director:

(A) (No change.)

(B) Quarterly, during the initial year of groundwater monitoring, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(2) and (3) for each groundwater monitoring well. Annually thereafter, concentrations or values of the parameters listed in 40 Code of Federal Regulations §265.92(b)(3) for each groundwater monitoring well, along with the required evaluations for these parameters under 40 Code of Federal Regulations §265.93(b). The owner or operator must separately identify any significant differences from initial background found in the upgradient wells, in accordance with 40 Code of Federal Regulations §265.93(c)(1). In addition, concentration of the groundwater quality parameters listed in 40 Code of Federal Regulations §265.92(b)(2) shall be reported annually.

(C) As a part of the annual report, results of the evaluation of groundwater surface elevations under 40 Code of Federal Regulations §265.93(f), and a description of the response to that evaluation where applicable.

(b) If the groundwater is monitored to satisfy the requirements of 40 Code of Federal Regulations §265.93(d)(4), the owner or operator must:

(1) (No change.)

(2) Annually, until final closure of the facility, submit to the executive director a report containing the results of his groundwater quality assessment program which includes, but is not limited to, the calculated (or measured) rate of migration of hazardous waste or hazardous waste constituents in the groundwater during the reporting period.

(c) - (d) (No change.)

**SUBCHAPTER E : INTERIM STANDARDS FOR OWNERS AND OPERATORS OF
HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES**

§335.114

STATUTORY AUTHORITY

This rule repeal is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule repeal is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

§335.114. Reporting Requirements.

**SUBCHAPTER F : PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF
HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES
§§335.152, 335.155, 335.159**

STATUTORY AUTHORITY

This rule amendment is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule amendment is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

§335.152. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 264 (including all appendices to Part 264) are adopted by reference as amended and adopted in the Code of Federal Regulations through June 1, 1990, at 55 FedReg 22685 and as further amended and adopted as indicated in each paragraph of this section:

(1) - (3) (No change.)

(4) Subpart E - Manifest System, Recordkeeping, and Reporting (as amended through January 29, 1992, at 57 FedReg 3462), except 40 CFR §§264.71, 264.72, 264.76 and 264.77; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6); the biennial report required by 40 CFR §264.75 must be submitted to the executive director in letter format rather than by EPA form;

(5) - (20) (No change.)

(b) - (d) (No change.)

§335.155. Additional Reports.

In addition to submitting the waste reports described in §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners and Operators of Storage, Processing, or Disposal Facilities), the owner or operator must also report to the executive director:

(1) - (3) (No change.)

§335.159. Hazardous Constituents.

(a) The commission will specify in the compliance plan the hazardous constituents to which the groundwater protection standard of §335.158 of this title (relating to Groundwater Protection Standard) applies. Hazardous constituents are constituents identified in Appendix VIII of 40 Code of Federal Regulations Part 261 that have been detected in groundwater in the uppermost aquifer underlying a regulated unit and that are reasonably expected to be in or derived from waste contained in a regulated unit, unless the commission has excluded them under subsection (b) of this section.

(b) - (c) (No change.)

**SUBCHAPTER F : PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF
HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL FACILITIES**

§335.154

STATUTORY AUTHORITY

This rule repeal is adopted under the Texas Water Code §5.103, which provides the commission authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and §26.011, which requires the commission to control the quality of water by rule. This rule repeal is also adopted under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and hazardous municipal waste, to adopt rules consistent with Chapter 361, and to adopt rules when adopting, repealing, or amending any agency statement of general applicability that interprets or prescribes law or policy or describes the procedure or practice requirements of the agency.

§335.154. Reporting Requirements for Owners and Operators.