

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§335.7, 335.112, 335.152, 335.167, and 335.179 and adopts new §335.128, concerning industrial solid waste and municipal hazardous waste. The amendments and new rule are adopted without changes to the proposed text as published in the October 22, 1999 issue of the *Texas Register* (24 TexReg 9240) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

Changes have been adopted in Chapter 335 as the result of ongoing efforts by the commission for regulatory reform. The adopted changes focus on financial assurance and are based upon a two-step process. The first step involved identification of all commission programs which contain a financial assurance component and transfer of those requirements into 30 TAC Chapter 37. The second step involved processing of the rules to eliminate redundant requirements, to remove duplicative mechanisms, and to consolidate provisions whenever possible. Modifications are simultaneously adopted in coordination with 30 TAC Chapters 37, 305, 324, 330, 331, 334, and 336. Entities who are required to provide financial assurance are specifically instructed to do so in each relevant, technical chapter. Those requirements that are overseen by the commission's technical program staff, such as the calculation of closure, post closure, and corrective action costs, will remain in the technical rule chapters. Each technical chapter refers the reader to Chapter 37 for the rules pertaining to financial assurance and to the financial assurance mechanisms.

The financial assurance rules being adopted are consolidated in accordance with the commission's ongoing regulatory reform initiative. For example, previously, several programs had rules with a

separate subchapter concerning financial assurance and the allowed mechanisms. Frequently, the requirements were repetitive and identical. These adopted rules consolidate financial requirements to reduce duplicative language while retaining the integrity of the previous requirements. The owner or operator must comply with the requirements of closure, the requirements of post closure, and the requirements of corrective action, or any combination of the three, as is appropriate for the particular activity conducted at the type of facility or site being considered. The mere consolidation, or inclusion, of all three types of activities in a single rule section does not alter the scope of the applicability of the rule, nor does it impose a more or less stringent regulation.

The financial assurance rules are also being adopted for clarification in accordance with the commission's ongoing regulatory reform initiative. For example, the adopted rules clarify and use cross-references to indicate that the owner or operator is subject to the provisions of the relative technical chapters, the general subchapters of Chapter 37, the mechanism requirements, the mechanism wordings, and the specific program subchapters of Chapter 37.

The rule adoption is for simplification and clarification and involves few substantive changes in the procedures and criteria to be used by the commission and the regulated community for providing financial assurance and other associated activities that are regulated under this chapter. Substantive changes are minimal and occur, when necessary, for the purposes of consolidation, clarification, compatibility, and consistency with commission and federal requirements, and for protection of human health and the environment. Substantive changes in the regulations were specifically articulated in the proposal preamble published in the October 22, 1999 issue of the *Texas Register* to make those

instances easily identifiable. In general, the adoption of these rules involve organization, editorial modifications, reordering requirements into a more logical sequence, and correcting cross-reference citations.

Texas law requires the commission to adopt rules requiring financial assurance for various program areas including Texas Health and Safety Code (HSC), §361.085 for solid waste, hazardous waste, and permitted facilities.

The purpose of the financial assurance requirements is to assure that adequate funds will be readily available to cover the costs of closure, post closure, and corrective action associated with certain types of facilities. Financial assurance is important for two primary reasons. First, to prevent delays in addressing environmental needs at facilities, owners and operators need to have funds that are readily available. Moreover, if the owner or operator lacks sufficient funds, environmental needs may have to be addressed through state or federal cleanup funds rather than by the entity responsible for the facility. Additionally, some programs require liability coverage to protect third parties from bodily injury and property damage that may result from a permittee's waste management activities.

The adopted amendments are necessary to maintain consistency of commission rules and to fulfill the statutory mandates requiring financial assurance.

SECTION BY SECTION DISCUSSION

Corrections to the proposed rules for Chapter 335 were published in the *Texas Register* on November 26, 1999 (24 TexReg 10606). The changes were primarily to include a statutory authority reference. The corrections are included in the adopted rule text. There were no other additional modifications made during this rulemaking between the proposed rule text and the adopted rule language of Chapter 335.

FINAL REGULATORY IMPACT ANALYSIS

This rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a “major environmental rule” as defined in the Administrative Procedure Act. Although the rules are adopted to protect the environment and reduce risk to human health, this rulemaking is not a major environmental rule because it 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. The rules do not adversely affect in a material way the aforementioned aspects of the state because, generally, the adopted changes are made to the financial assurance rules for the purposes of consolidation and organization. In the few instances where substantive changes are being adopted, there are no such changes which modify the procedures and criteria used by the commission and the regulated entities in such a manner that the adopted rules are a “major environmental rule.” The adopted rules provide better-written, better-organized, and easier to use financial assurance rules, which in turn provides an overall benefit 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. The economy, a sector of the economy, productivity,

competition, or jobs, are not adversely affected in a material way by the few adopted substantive changes. In fact, the adoption should benefit the economy, a sector of the economy, and productivity by clarifying existing requirements and by making the rules easier to understand. As the previously existing rules were protective of human health and the environment, this adoption does not decrease the protection of the environment or human health. More simply stated, the adoption revises the commission's rules in a manner which could provide a benefit to the economy while enhancing the protection of the environment and public health and safety.

Furthermore, these rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The rules do not exceed a standard set by federal law because one of the purposes of this rulemaking is to adopt state rules which are accordant with the corresponding federal regulations. Any requirements in the rules are in accord with the corresponding federal regulations, and they do not exceed an express requirement of state law because they implement state law provisions to require financial assurance. This adoption does not exceed the requirements of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program because there is no federal financial assurance program. There are, however, federal financial assurance requirements for many of the delegated programs and these rules are consistent with the corresponding federal financial assurance requirements. The adoption is not made solely under the general powers of the commission, but is also made under the requirements of specific state law that allows the commission to provide these programs. Finally, these rules are not adopted on an emergency basis to protect the environment or to reduce risks to human health.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these rules under Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the rulemaking is to delete obsolete language, to make the rules consistent with commission and federal rules, and to implement the commission's guidelines on regulatory reform as well as to provide clarifications to existing rule language. Promulgation and enforcement of the rules does not create a burden on private real property. There are few significant, new requirements being added. In the few instances where substantive changes are being adopted, there are no such changes which modify the financial assurance rules, procedures, or criteria in such a manner that a burden on private real property is modified or created. A landowner's rights in private real property will not be affected by the adoption of these rules.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed the rulemaking for consistency with the Texas Coastal Management Program's (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the rules are subject to the CMP and must be consistent with applicable CMP goals and policies which are found in 31 TAC §501.12 and §501.14. The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of Coastal Natural Resource Areas (CNRAs). CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities. In particular, the CMP policy most applicable to these rules is 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

This rulemaking is related to financial assurance, which in turn impacts the issuance of permits, including those permits relating to solid waste facilities. Thus, this rulemaking is subject to the CMP. The commission has prepared a consistency determination for the rules pursuant to 31 TAC §505.22 and has found that this rulemaking is consistent with the applicable CMP goals and policies. The commission determined that the rule adoption is consistent with the applicable CMP goals and policies because the modification implemented by these adopted rules is insignificant in relationship to the CMP and has no impact upon CNRAs.

The adoption does contain minor, substantive changes. In the few instances where a substantive change is made, it is for the purpose of achieving consistency with state and federal law and to achieve consistency with commission rules. However, the commission has determined that these adopted rules do not have a direct or significant, adverse effect on CNRAs. This adoption does not change the technical permitting requirements of waste facilities nor change the amount of financial assurance that must be demonstrated. Instead, this financial assurance rule adoption addresses the means by which demonstrations of financial assurance can be made.

Because this rule adoption does not modify the amount of financial assurance to be demonstrated for permits for owners and operators of hazardous waste storage, processing, or disposal facilities,

promulgation and enforcement of these rules has no new effect on the CNRAs. The rules continue having their original effect, which is to require demonstrations of financial assurance in order to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs, and also the rules continue 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 comply with standards established under the Solid Waste Disposal Act, 42 United States Code, §§6901 et seq.

The CMP goal applicable to the rules is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Because this rule adoption does not change the amount of financial assurance required by the previously existing rules, the rules are consistent with the applicable CMP goal. CMP policies applicable to the rules include the administrative policies and the policies for specific activities related to construction and operation of solid waste treatment, storage, and disposal facilities.

Promulgation and enforcement of these rules is consistent with the applicable CMP goals and policies because the adoption does not change the amount of financial assurance required in the previously existing rules. The rule modifications do not relax the existing requirements which encourage safe and appropriate storage, management, and treatment of hazardous waste, and thereby the rule modifications result in no substantive effect on the management of coastal areas of the state. In addition, these rules do not violate any applicable provisions of the CMP's stated goals and policies. Therefore, in compliance with 31 TAC §505.22(e), the commission affirms that these rules are consistent with CMP

goals and policies, and the rules have no new impact upon the coastal area.

HEARING AND COMMENTERS

A public hearing was not requested or held concerning these rules. The public comment period closed November 22, 1999 at 5:00 p.m. central standard time. Written comments were not received regarding this chapter. However, comments were received regarding other rule chapters associated with this rulemaking. Those comments as well as the changes that are being made throughout the associated promulgation are described and discussed in the adoption preambles for Chapters 37, 305, 324, and 331 being simultaneously published in this issue of the *Texas Register*.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Water Code (TWC), §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendment is also adopted under the Solid Waste Disposal Act in HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste, hazardous waste, and permitted facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the

commission.

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

§335.7

§335.7. Financial Assurance Required.

Authority to store, process, or dispose of industrial solid waste or municipal hazardous waste pursuant to a permit issued by the commission is contingent upon the execution and maintenance of financial assurance for the amount(s) specified in its permit in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), which provides for the closing of the solid waste storage, processing, or disposal facility in accordance with the permit issued for the facility and all other rules of the commission. The commission may require the execution and maintenance of financial assurance in accordance with Chapter 37, Subchapter P of this title for the closing of any solid waste facility exempt from the requirement of a permit under this chapter, but subject to the requirement of a permit under the Texas Water Code, Chapter 26. Persons storing, processing, or disposing of hazardous waste are subject to further requirements concerning financial assurance and closure and post-closure contained in Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities). If the executive director determines that there is a significant risk to human health and the environment from sudden or nonsudden accidental occurrences resulting from the operations of a solid waste storage, processing, or disposal facility, the owner or operator may be required to provide coverage for sudden and/or nonsudden accidental occurrences in

accordance with Chapter 37, Subchapter P of this title.

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

§335.112, §335.128

STATUTORY AUTHORITY

The amendment and new section are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state. The amendment and new section are also adopted under the Solid Waste Disposal Act in HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste, hazardous waste, and permitted hazardous waste facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

§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) Subpart B--General Facility Standards (as amended through April 12, 1996, at 61 FedReg 16290);
- (2) Subpart C--Preparedness and Prevention;
- (3) Subpart D--Contingency Plan and Emergency Procedures, except 40 CFR §265.56(d);
- (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, 265.75, 265.76, and 265.77;
- (5) Subpart F--Groundwater Monitoring (as amended through December 23, 1991, at 56 FedReg 66369), except 40 CFR §265.90 and §265.94;
- (6) Subpart G--Closure and Post-Closure (as amended through August 18, 1992, at 57 FedReg 37194); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);
- (7) Subpart H--Financial Requirements (as amended through September 16, 1992, at 57 FedReg 42832); except 40 CFR §§265.140, 265.141, 265.142(a)(2), 265.142(b)-(c), 265.143(a)-(g),

265.144(b)-(c), 265.145(a)-(g), 264.146, 265.147(a)-(d), 265.147(f)-(k), 265.148, 265.149, and
265.150;

(8) Subpart I--Use and Management of Containers;

(9) Subpart J--Tank Systems (as amended through August 31, 1993, at 58 FedReg
46040);

(10) Subpart K--Surface Impoundments (as amended through August 18, 1992, at 57
FedReg 37194-37282);

(11) Subpart L--Waste Piles (as amended through January 29, 1992, at 57 FedReg
3493), except 40 CFR §265.253;

(12) Subpart M--Land Treatment, except 40 CFR §§265.272, 265.279, and 265.280;

(13) Subpart N--Landfills (as amended through July 10, 1992, at 57 FedReg 30658),
except 40 CFR §§265.301(f)-265.301(i), 265.314, and 265.315;

(14) Subpart O--Incinerators (as amended through February 21, 1991, at 56 FedReg
7208);

(15) Subpart P--Thermal Treatment (as amended through July 17, 1991, at 56 FedReg 32692);

(16) Subpart Q--Chemical, Physical, and Biological Treatment;

(17) Subpart R--Underground Injection;

(18) Subpart W--Drip Pads (as amended through December 24, 1992, at 57 FedReg 61492);

(19) Subpart AA--Air Emission Standards for Process Vents (as amended through June 13, 1997, at 62 FedReg 32451);

(20) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through June 13, 1997, at 62 FedReg 32451);

(21) Subpart DD--Containment Buildings (as amended through August 18, 1992, at 57 FedReg 37194); and

(22) The following appendices contained in 40 CFR Part 265:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24,

1994, at 59 FedReg 13891);

(B) Appendix III--EPA Interim Primary Drinking Water Standards;

(C) Appendix IV--Tests for Significance; and

(D) Appendix V--Examples of Potentially Incompatible Waste.

(b) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes:

(1) The term "regional administrator" is changed to the "executive director" of the Texas Natural Resource Conservation Commission or to the commission, consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5, Subchapter B;

(2) The term "treatment" is changed to "processing";

(3) References the Resource Conservation and Recovery Act, to §3008(h) are changed to the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (concerning Corrective Action);

(4) References to 40 CFR §§260.10, 264.90, 264.101, 270.41, or 270.42, are changed

to §335.1 of this title (relating to Definitions), §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), §305.62 of this title (relating to Amendment), or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), respectively;

(5) References to 40 CFR, Part 264, Subpart F, are changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title (relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(6) References to 40 CFR, Part 265, Subpart F, are changed to include §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 CFR, Part 265, Subpart F, except §265.90 and §265.94; and

(7) References to the EPA are changed to the Texas Natural Resource Conservation Commission.

(c) A copy of 40 CFR, Part 265 is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

§335.128. Financial Assurance.

(a) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility subject to this subchapter, the owner or operator must:

(1) establish financial assurance for the amount of the closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), in addition to the requirements specified in §335.112(a)(7) of this title (relating to Standards).

(2) establish financial assurance for the amount of the post closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title, in addition to the requirements specified in §335.112(a)(7) of this title, if the facility:

(A) includes a disposal facility;

(B) includes a pile, and/or surface impoundment from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to

such facilities in §335.112 of this title;

(C) includes a tank system that is required under §335.112 of this title to meet the requirements for landfills;

(D) includes a containment building that is required under §335.112 of this title to meet the requirements for landfills; or

(E) is notified by the executive director of the need for post closure financial assurance for another type of unit.

(b) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility or a group of such facilities subject to this subchapter, the owner or operator must establish financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities in a manner that meets the requirements of Chapter 37 of this title (relating to Financial Assurance).

(c) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility containing a surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit used to manage hazardous waste or a group of such facilities subject to this subchapter, the owner or operator must establish financial assurance for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities in a

manner that meets the requirements of Chapter 37 of this title.

(d) If the executive director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a hazardous industrial solid waste facility that is not a surface impoundment, landfill, or land treatment facility, the owner or operator may be required to comply with subsection (c) of this section.

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

§§335.152, 335.167, 335.179

STATUTORY AUTHORITY

The amendments are adopted under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the laws of this state.

The amendments are also adopted under the Solid Waste Disposal Act in HSC, §361.017, which provides the commission with the authority to manage industrial solid waste and hazardous municipal waste; HSC, §361.024, which provides the commission with the authority to adopt any rules and establish standards of operation for the management of solid waste; and HSC, §361.085, which provides the commission with the authority to require financial assurance demonstrations for solid waste, hazardous waste, and permitted hazardous waste facilities.

Together, these statutes authorize the commission to adopt any rules necessary to carry out its powers and duties under TWC and other laws of Texas and to establish and approve all general policy of the commission.

§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) Subpart B--General Facility Standards (as amended through April 12, 1996, at 61 FedReg 16290); in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C--Preparedness and Prevention;

(3) Subpart D--Contingency Plan and Emergency Procedures, except 40 CFR §264.56(d);

(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);

(5) Subpart G--Closure and Post-Closure (as amended through August 18, 1992, at 57 FedReg 37194); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H--Financial Requirements (as amended through June 10, 1994, in 59

FedReg 29958); except 40 CFR §§264.140, 264.141, 264.142(a)(2), 264.142(b)-(c), 264.143(a)-(h), 264.144(b)-(c), 264.145(a)-(h), 264.146, 264.147(a)-(d), 264.147(f)-(k), 264.148, 264.149, 264.150, and 264.151; and subject to the following limitations: Facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.142(a), 264.144(a), and 37.6031(c) of this title (relating to Financial Assurance Requirements for Liability).

(7) Subpart I--Use and Management of Containers;

(8) Subpart J--Tank Systems (as amended through August 31, 1993, at 58 FedReg 46040);

(9) Subpart K--Surface Impoundments (as amended and adopted through January 29, 1992, at 57 FedReg 3462), except 40 CFR §264.221 and §264.228:

(A) References to 40 CFR §264.221 are changed to §335.168 of this title (relating to Design and Operating Requirements);

(B) References to 40 CFR §264.228 are changed to §335.169 of this title (relating to Closure and Post Closure Care);

(10) Subpart L--Waste Piles (as amended and adopted through January 29, 1992, at 57 FedReg 3462), except 40 CFR §264.251;

(11) Subpart M--Land Treatment, except 40 CFR §264.273 and §264.280;

(12) Subpart N--Landfills (as amended through November 18, 1992, at 57 FedReg 54452), except 40 CFR §§264.301, 264.310, 264.314 and 264.315;

(13) Subpart O--Incinerators (as amended through February 21, 1991 at 54 FedReg 7207); and

(14) Subpart S--Corrective Action for Solid Waste Management Units (as amended through February 16, 1993 at 58 FedReg 8683);

(15) Subpart W--Drip Pads (as amended through December 24, 1992 at 57 Federal Regulations 61492);

(16) Subpart X--Miscellaneous Units;

(17) Subpart AA--Air Emission Standards for Process Vents (as amended through June 13, 1997, at 62 FedReg 32451);

(18) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through June 13, 1997, at 62 FedReg 32451);

(19) Subpart DD--Containment Buildings (as amended through August 18, 1992, at 57 FedReg 37194); and

(20) The following appendices contained in 40 CFR Part 264:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24, 1994, at 59 FedReg 13891);

(B) Appendix IV--Cochron's Approximation to the Behrens-Fisher Students' T-Test;

(C) Appendix V--Examples of Potentially Incompatible Waste;

(D) Appendix VI--Political Jurisdictions in Which Compliance With §264.18(a) Must Be Demonstrated; and

(E) Appendix IX--Ground-Water Monitoring List (as amended through June 13, 1997, at 62 FedReg 32451).

(b) The provisions of 40 CFR §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201-335.206 of this title (relating to Location Standards for Hazardous Waste

Storage, Processing, or Disposal). A copy of 40 CFR §264.18(b) is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

(c) The regulations of the United States Environmental Protection Agency (EPA) that are adopted by reference in this section are adopted subject to the following changes.

(1) The term "regional administrator" is changed to the "executive director" of the Texas Natural Resource Conservation Commission or to the commission, consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5, Subchapter B.

(2) The term "treatment" is changed to "processing."

(3) References to §3008(h) of the Resource Conservation and Recovery Act are changed to the Texas Solid Waste Disposal Act, Texas Health and Safety Code (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action).

(4) References to 40 Code of Federal Regulations §§260.10, 264.90, 264.101, 270.41, or 270.42, are changed to §335.1 of this title (relating to Definitions), §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), §305.62 of this title (relating to Amendment), or §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), respectively.

(5) References to 40 Code of Federal Regulations Part 264 Subpart F are changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response), §335.157 of this title (relating to Required Programs), §335.158 of this title (relating to Groundwater Protection Standard), §335.159 of this title (relating to Hazardous Constituents), §335.160 of this title (relating to Concentration Limits), §335.161 of this title (relating to Point of Compliance), §335.162 of this title (relating to Compliance Period), §335.163 of this title (relating to General Groundwater Monitoring Requirements), §335.164 of this title relating to Detection Monitoring Program), §335.165 of this title (relating to Compliance Monitoring Program), §335.166 of this title (relating to Corrective Action Program), and §335.167 of this title (relating to Corrective Action for Solid Waste Management Units).

(6) References to 40 Code of Federal Regulations Part 265 Subpart F are changed to include §335.116 of this title (relating Applicability of Groundwater Monitoring Requirements) and §335.117 of this title (relating to Recordkeeping and Reporting), in addition to the reference to 40 Code of Federal Regulations Part 265 Subpart F, except §265.90 and §265.94.

(7) References to the EPA are changed to the Texas Natural Resource Conservation Commission.

(d) A copy of 40 Code of Federal Regulations Part 264 is available for inspection at the library of the Texas Natural Resource Conservation Commission, located on the first floor of Building A at 12100 Park 35 Circle, Austin.

§335.167. Corrective Action for Solid Waste Management Units.

(a) The owner or operator of a facility seeking a permit for the processing, storage, or disposal of hazardous waste must institute corrective action as necessary to protect human health and the environment for all releases of hazardous waste or constituents from any solid waste management unit at the facility, regardless of the time at which waste was placed in such unit.

(b) Corrective action will be specified in the compliance plan under §305.401 of this title (relating to Groundwater Compliance Plan) and in accordance with this section, 40 Code of Federal Regulations Part 264 Subpart S, and §335.152 of this title (relating to Standards). The plan will contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit or plan. Financial assurance for such corrective action shall be established and maintained in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities) in an amount acceptable to the executive director.

(c) The owner or operator must implement corrective actions beyond the facility boundary, where necessary to protect human health and the environment, unless the owner or operator demonstrates to the satisfaction of the executive director that, despite the owner's or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. The owner/operator is not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be

determined on a case-by-case basis. Financial assurance for such corrective action shall be established and maintained in accordance with Chapter 37, Subchapter P of this title, in an amount acceptable to the executive director.

§335.179. Financial Assurance.

(a) Before a permit may be issued, amended, extended, or renewed for a solid waste facility for storage, processing, or disposal of hazardous waste, the commission shall determine the type or types of financial assurance which may be used by the applicant to comply with applicable regulations.

(b) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility subject to this subchapter, the permittee must:

(1) establish financial assurance for the amount of the closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities), in addition to the requirements specified in §335.152(a)(6) of this title (relating to Standards); and

(2) establish financial assurance for the amount of the post closure cost estimate in a manner that meets the requirements of Chapter 37, Subchapter P of this title, in addition to the requirements specified in §335.152(a)(6) of this title, if the facility:

(A) includes a disposal facility;

(B) includes a pile, and/or surface impoundment from which the owner or operator intends to remove the wastes at closure, to the extent that these sections are made applicable to such facilities in §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments)) and 40 Code of Federal Regulations, §264.258;

(C) includes a tank system that is required under §335.152 of this title, to meet the requirements for landfills;

(D) includes a containment building that is required under §335.152 of this title, to meet the requirements for landfills; or

(E) is notified by the executive director of the need for post closure financial assurance for another type of unit.

(c) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility or a group of such facilities subject to this subchapter, the owner or operator must establish financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities in a manner that meets the requirements of Chapter 37 of this title (relating to Financial Assurance).

(d) Before hazardous waste may be stored, processed, or disposed of at a solid waste facility

containing a hazardous waste surface impoundment, landfill, land treatment facility, or disposal miscellaneous unit used to manage hazardous waste or a group of such facilities subject to this subchapter, the owner or operator must establish financial assurance for nonsudden liability coverage for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities in a manner that meets the requirements of Chapter 37 of this title.

(e) If the executive director determines that there is a significant risk to human health and the environment from nonsudden accidental occurrences resulting from the operations of a facility that is not a surface impoundment, landfill, or land treatment facility, the owner or operator may be required to comply with subsection (d) of this section.