

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §335.1, Definitions; §335.41, Purpose, Scope and Applicability; §335.61, Purpose, Scope and Applicability; §335.91, Scope; §335.111, Purpose, Scope, and Applicability; §335.112, Standards; and §335.152, Standards. The commission also proposes new §335.271, Purpose, Scope, and Applicability; and §335.272, Standards.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The primary reason for the proposed amendments is to adopt the military munitions rule promulgated by the United States Environmental Protection Agency (EPA) in the February 12, 1997 issue of the *Federal Register*, at 62 FedReg 6622. The proposal includes conforming changes to the commission's rules that are needed to establish equivalency with the federal regulations, which will enable the State of Texas to increase its level of authorization to operate aspects of the federal hazardous waste program in lieu of the EPA. The proposed rules would also make needed administrative revisions, improvements to readability, and correction of internal cross-references.

The federal military munitions regulations proposed for adoption resulted from several years of consultation between EPA, the United States Department of Defense (DOD), states, and citizens groups. This effort responded to a congressional mandate to develop a regulatory system to identify when conventional and chemical military munitions become a hazardous waste regulated under the Resource Conservation and Recovery Act (RCRA) and to provide for the safe storage and transportation of such waste. A complete history of this process, including supporting documentation and comments is available from EPA as indicated at 62 FedReg 6622.

The major issues addressed in the federal regulations are: (1) At what point does an unused munition become a hazardous waste? Specifically, at what point do unused munitions slated for destruction first become subject to regulation under RCRA? (2) Should hazardous waste management standards apply to the use of munitions in weapons testing or military training exercises? (3) How do hazardous waste regulations apply to emergencies involving military munitions and explosives and non-military explosives? (4) In what way (if any) do RCRA requirements apply to unexploded ordnance and environmental contamination at military ranges, especially ranges that are closed or transferred? (5) Once it has been determined that a munition is a hazardous waste for regulatory purposes, what management standards are needed to ensure safe transportation and storage, while protecting human health and the environment?

The proposed definition of “military munition” and the proposed rules which determine whether a military munition is a solid waste are the substance of this proposal. This proposal would seek to clarify the regulatory status of unused military munitions by identifying the specific circumstances under which an unused military munition is considered to be a solid waste.

These proposed amendments conform the commission’s rules to the federal military munitions regulation. This proposal will identify when conventional and chemical military munitions become a solid waste subject to hazardous waste determination, and provide for the safe storage and transport of this waste. The proposal would also provide rules for emergency responses involving both military and non-military munitions and explosives; and treatment, storage, disposal, and transportation standards for waste military munitions.

The federal munitions regulation provides an exemption for all generators and transporters of hazardous waste, not just the military, from manifest requirements for the transportation of hazardous waste on public or private right-of-ways on or along the border of contiguous properties, under the control of the same person, regardless of whether the contiguous properties are divided by right-of-ways. However, this part of the federal regulations was adopted by the commission on April 28, 1999, (in §335.10(h)), effective May 20, 1999; therefore, it is unnecessary for the commission to address the contiguous property manifest exemption in this proposal.

SECTION BY SECTION DISCUSSION

This proposal adds three new definitions to §335.1 to clarify the proposed exemption from hazardous waste permitting for immediate responses to threats involving munitions or other explosives. The proposed new definitions: “explosives or munitions emergency,” “explosives or munitions emergency response,” and “explosives or munitions emergency response specialist” reflect the federal munitions regulations at 40 Code of Federal Regulations (CFR) §260.10 and §261.2.

Proposed §335.1(47) would add the definition of “explosives or munitions emergency” to specify the types of emergencies that will be subject to the military munitions rule. The proposed definition describes what constitutes an emergency and clarifies that an emergency situation includes suspect situations with significant uncertainties, including improvised explosive devices. The proposed definition of explosives or munitions emergency also states that the newly defined “explosives or munitions emergency response specialist” is responsible for determining whether an emergency exists.

Proposed §335.1(48) would add the definition of “explosives or munitions emergency response” to specify the criteria under which an emergency response involving military munitions or explosives becomes subject to the military munitions rule in 40 CFR §266.24. An explosives or munitions emergency response would include all immediate response activities identified and carried out by the emergency response specialist to eliminate the threat. The proposed definition also provides that: 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; 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 explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

Proposed §335.1(49) would add the definition of “explosives or munitions emergency response specialist” to describe the required qualifications that a person must have to properly handle explosives or munitions emergencies. Included within this proposed definition are all military and non-military personnel trained in the identification, handling, treatment, transport, and destruction of explosives or conventional and chemical military munitions.

In order to account for the proposed addition of the new definitions in §335.1(47) - (49), currently existing §335.1(47) - (83) is proposed to be renumbered §335.1(50) - (86).

Proposed §335.1(87) would add the definition of “military munitions” to describe the specific components that are and are not military munitions. New §335.1(87) is proposed to conform to the federal definition of “military munitions,” finalized in 40 CFR §260.10 and would establish the basis for the proposed special procedures and management standards for waste military munitions. The proposed term “military munitions” would include all types of both conventional and chemical ammunition products and their components, produced by or for the military for national defense and security. This definition would clarify that military munitions may be under the control of the United States Department of Energy (DOE), the United States Coast Guard (Department of Transportation), and the National Guard (which includes the State National Guard), as well as the DOD and its various components. Other parties under contract or acting as an agent for DOD, are included as long as they are managing “military munitions.” The proposed definition of “military munitions” lists examples of military munitions components, including propellants, explosives, pyrotechnics, bulk chemical warfare, and riot control agents, warheads, cluster munitions and dispensers, demolition charges, rockets, guided and ballistic missiles, bombs, mines, grenades, mortar rounds, artillery and small arms ammunition, torpedoes, and chemical munitions.

The proposed new definition would exclude wholly inert items and improvised explosive devices, i.e. homemade bombs (which are non-military). Nuclear weapons, nuclear devices, and nuclear components thereof, are also excluded.

In order to account for the proposed addition of the new definitions under §335.1(47) - (49) and §335.1(87), currently existing §335.1(84) - (154) are proposed to be renumbered §335.1(88) - (158).

A conforming change to the definition of “solid waste” is being proposed in another rulemaking by the commission. Under that separate rulemaking, §335.1(124)(B) is proposed to be amended by adding clause (iv) which adds military munition identified as a solid waste under 40 CFR §266.202 to the list of materials which are considered to be discarded material. This separate proposed amendment is a change to conform to the federal regulations promulgated by EPA on February 12, 1997 at 62 FedReg 6621.

Proposed §335.41(d)(2) is reorganized into §335.41(d)(2)(A) - (D) to improve readability of the distinct requirements for interim status and permitted facilities regarding hazardous waste processing or containment activities during and after an immediate response. References to interim and permitting standards are corrected in new §335.41(d)(2)(A) and (B), providing the applicable state rules, rather than federal regulations. Additionally, superfluous wording is proposed to be removed from §335.41(d)(2)(C).

Proposed §335.41(d)(2) would add a specific exemption from hazardous waste management general provision for persons engaged in processing or containment activities during the response to an immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in §335.1. This exemption would address the potential for delays and confusion regarding the application of permitting requirements to an explosives or munitions emergency. The objective of the federal regulation to which this amendment would conform is to remove regulatory impediments to the safe and prompt

management of explosives or munitions emergencies. This exemption is further explained in proposed §335.41(d)(2)(D), which would allow removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. Recordkeeping requirements are proposed in new §335.41(d)(2)(D), including retention of records for three years identifying the dates of the response, the persons responding, the type and description of material addressed, and its disposition.

Proposed §335.41(a) would amend the phrase “Code of Federal Regulations (CFR)” by adding the appropriate acronym “(CFR).” Subsequent occurrences of “Code of Federal Regulations” within this section are proposed to be replaced with “CFR” for the purpose of improved readability.

Proposed §335.41(e)(2) would delete the out-of-date reference to the Texas Department of Health.

Proposed §335.41(j) is corrected by changing the phrase “§335.261 of this title” to “Subchapter H, Division 5 of this chapter.”

Proposed §335.61(h), would exempt federal, state and local officials and authorized munitions emergency response specialists, answering to an explosives or munitions emergency, from the requirements to comply with the generator standards of Chapter 335, Subchapter C (Standards Applicable to Generators of Hazardous Waste). This exemption would address the potential for delays and confusion regarding the application of generator requirements to an explosives or munitions emergency. The objective of the federal regulation to which this amendment conforms is to remove

regulatory impediments to the safe and prompt management of explosives or munitions emergencies.

Proposed new §335.91(f) provides an exemption for transporters who are responding during an explosives or munitions emergency from the requirements of Chapter 335 Subchapter D (Standards Applicable to Transporters of Hazardous Waste). As discussed above, this proposed exemption is intended to allow prompt response to explosives emergencies when necessary.

Proposed §335.91(g) would incorporate the non-emergency transportation directives provided in 40 CFR §266.203, proposed for adoption by reference in new Chapter 335, Subchapter H, Division 6 (relating to Military Munitions). A conditional exemption from RCRA regulation for waste non-chemical military munitions in transportation is provided within 40 CFR §266.203. The EPA has evaluated the DOD tracking and security system, and has determined that it is at least as effective as the RCRA manifest in assuring that waste munitions are tracked from “cradle to grave.” The agency views this conditional exemption to be protective of human health and the environment. The proposed exemption is conditional in that the stipulations of the rule must be met or the transporter would be required to comply with the transportation standards under Chapter 335, Subchapter D (Standards Applicable to Transporters of Hazardous Waste).

Proposed §335.111(a) is amended to add the phrase “except as specifically provided for in §335.41 of this title (relating to Purpose, Scope, and Applicability).” This amendment would provide a cross-reference to exemptions from interim status and permitting requirements, including the proposed exemption for response to an explosives or munitions emergency.

Section 335.112, Standards, is proposed for amendment in §335.112(a)(4) to update the adoption by reference of 40 CFR Part 265, Subpart E - Manifest System, Recordkeeping, and Reporting. The proposed amendment would incorporate the exemption from manifest requirements for owners and operators of off-site facilities with respect to waste military munitions that are conditionally exempt by 40 CFR §266.203(a) from the transporter standards in Chapter 335, Subchapter D.

Proposed §335.112(a)(22) would incorporate by reference 40 CFR Part 265, Subpart EE-Hazardous Waste Munitions and Explosives Storage requirements which provide design, operating, closure, and post-closure care standards for owners and operators who store non-military or military waste munitions in storage units. Subpart EE controls are necessary for the storage of waste munitions which were previously unregulated and for waste military munitions that are not managed in compliance with existing controls. Adoption of this federal regulation would ensure the safe storage of waste munitions while at the same time, not unnecessarily duplicating or impeding existing regulation and handling of such wastes.

Proposed §335.112(a)(23) is renumbered without wording changes.

Proposed §335.112(b)(4) is rewritten with additions to provide a more complete translation between federal regulations and the appropriate state rule equivalents. This amendment would provide the necessary correlation between state rules and corresponding federal regulations. The proposed additional cross-reference translations are as follows: references to 40 CFR §265.1 are changed to §335.111 of this title (relating to Purpose, Scope and Applicability); 40 CFR Parts 260 through 270

means the commission's rules including but not limited to Chapter 50 of this title (relating to Action on Applications and Other Authorizations), Chapter 305 of this title (relating to Consolidated Permits), Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), as applicable; and references to 40 CFR §264.310 are changed to §335.174 of this title (relating to Closure and Post Closure Care (Landfills)).

Proposed §335.112(b)(5) and (6) would provide a translation between federal regulations and the appropriate state rule equivalents as follows: references to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) are changed to §335.112(a)(3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator); references to 40 CFR §§265.71, 265.72, 265.76 and 265.77 are changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.12(c)(1) and (2) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.

Section §335.112(b)(5) - (7) is proposed to be renumbered to §335.112(b)(7) - (9). Superfluous commas are removed from proposed §335.112(b)(7) and (8).

Section 335.152, Standards, is proposed to update §335.152(a)(4), which is the incorporation of 40 CFR Part 264, Subpart E - Manifest System, Recordkeeping, and Reporting, with exceptions. The update would incorporate the exemption from manifest requirements for owners and operators of off-

site facilities with respect to waste military munitions that are conditionally exempt by 40 CFR §266.203(a), proposed for adoption by reference under Subchapter H, Division 6, from the transporter standards in Chapter 335, Subchapter D.

Proposed §335.152(a)(20) would incorporate by reference 40 CFR Part 264, Subpart EE requirements. This amendment would provide design, operating, closure, and post-closure care standards for owners and operators who store non-military or military waste munitions in storage units which were previously unregulated. Subpart EE controls are necessary for the storage of waste munitions that are not already regulated and for waste military munitions that are not managed in compliance with existing controls. This amendment would ensure the safe storage of waste munitions while at the same time, not unnecessarily duplicating or impeding existing regulation and handling of such wastes.

Section 335.152(a)(21) is renumbered without wording changes.

Proposed §335.152(c)(4) is rewritten with additions to provide a more complete translation between federal regulations and the appropriate state rule equivalents. The proposed additional cross-reference translations are as follows: references to 40 CFR §264.1 are changed to §335.151 of this title (relating to Purpose, Scope and Applicability); 40 CFR Parts 260 through 270 means the commission's rules including, but not limited to, Chapter 50 of this title (relating to Action on Applications and Other Authorizations), Chapter 305 of this title (relating to Consolidated Permits), Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), as applicable; and references to 40 CFR §264.310 are changed to §335.174 of this title (relating to Closure and Post Closure Care

(Landfills)).

Proposed §335.152(c)(5) and (6) is added to provide a translation between federal regulations and the appropriate state rule equivalents. This section is a necessary when a state rule is effective in place of a federal regulation that is cited in a federal regulation which is adopted by reference. Proposed additional cross-references are as follows: references to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) are changed to §335.112(a)(3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator); references to 40 CFR §§265.71, 265.72, 265.76, and 265.77 are changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.12(c)(1) and (2) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.

Section 335.152(c)(5) - (7) is proposed to be renumbered to §335.152(c)(7) - (9). Proposed §335.152(c)(7) and (8) is edited to replace the phrase “Code of Federal Regulations” with the acronym “CFR” and to include commas as necessary in the federal regulation citation.

New Chapter 335, Subchapter H, Division 6, is proposed to adopt by reference the requirements for waste military munitions provided in 40 CFR Part 266. The proposed division would incorporate by reference 40 CFR §266.202, Definition of Solid Waste, which determines when a military munition is a solid waste. Also proposed for incorporation by reference are transportation, treatment, storage, and

disposal standards for solid waste military munitions. The transportation and storage standards would exempt non-chemical munitions from hazardous waste transporter and storage requirements as long as they are subject to the DOD shipping controls and to the jurisdiction of the DOD Explosives Safety Board for storage requirements.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, there will be fiscal implications which are not anticipated to be significant for any single unit of state and local government as a result of administration or enforcement of the proposed rules.

The proposed rules exclude from the definition of military munitions any non-nuclear components of nuclear weapons until those components have been sanitized under the Atomic Energy Act of 1954, as amended. After sanitization, the components may be characterized as military munitions and, once discarded, are solid wastes subject to state jurisdiction. Those components that are solid wastes and are also determined to be hazardous will be regulated as hazardous waste by the state. The proposed rules also identify circumstances for exemptions to the proposed regulations during emergency situations involving both military and non-military munitions and explosives. Additionally, the proposed rules allow for military and non-military facilities to apply for a new permit or permit amendment/modification to store waste munitions in units that are not currently regulated.

The proposed rules include storage design, operating, closure, and post-closure care standards for waste storage units not previously regulated. If post-closure care is necessary, additional control measures may also be required if new storage units are permitted. Closure as a landfill and post-closure care generally require control measures. It is unlikely that cost related to closure will be incurred during the period of this fiscal note. These storage requirements of the rule proposal apply to military and non-military facilities. There are 180 permitted hazardous waste facilities in Texas. Of the approximately 180 facilities, 28 DOD sites, and the DOE Pantex facility, as well as sites under the United States Coast Guard, the National and State Guard, National Aeronautics and Space Administration, the Federal Bureau of Investigation, and the Bureau of Alcohol, Tobacco, and Firearms jurisdiction may be affected by the proposed rules. The proposed rules allow for military and non-military facilities to apply for a new permit or permit amendment to obtain a new munitions storage unit not currently regulated. A minimum \$2,050 fee will be required to receive the new or amended permit. Additionally, the facility will incur the costs of preparing and complying with the permit modification.

PUBLIC BENEFIT AND COSTS

Mr. Davis also has determined for each year of the first five years the proposed rules are in effect, the public benefit anticipated from enforcement of and compliance with the proposed rules will be increased public protection through the clarification of state jurisdiction of military munitions in Texas. There will be fiscal implications not anticipated to be significant to individuals and businesses as a result of administration and enforcement of the proposed rules.

The proposed rules identify when conventional and chemical military munitions become hazardous

wastes under the state industrial solid waste rules and provide for the safe storage and transport of such waste. The proposed rules also identify circumstances for exemptions to hazardous waste regulations during emergency situations involving both military and non-military munitions and explosives.

Additionally, the proposed rules authorize storage of waste munitions in types of storage units that are currently not regulated.

The proposed rules include storage design, operating, closure, and post-closure care standards for waste storage units not previously regulated. If post-closure care is necessary, additional control measures may also be required if new storage units are permitted. Closure as a landfill and post-closure care generally require control measures. It is unlikely that cost related to closure will be incurred during the period of this fiscal note. These storage requirements that the rule proposes apply to military and non-military facilities. Of the approximate 180 hazardous waste facilities in Texas, there is at least one private company, which is currently permitted to store and process hazardous waste explosives from oil field operations, which will be affected by the proposed rules. The proposed rules will allow this facility the flexibility to manage waste explosives in new types of storage units if they so chose. However, applicability is not limited to currently permitted facilities. A minimum \$2,050 fee will be required if a facility chooses to apply for a new, amended, or modified permit to authorize a hazardous waste storage unit. Additionally, the facility will incur the costs of preparing and complying with the new permit modification.

There will be no adverse economic impacts to any small or micro-business as a result of implementing the proposed rules. The proposed rules apply to military and non-military hazardous waste facilities, and generators and transporters of hazardous waste, none of which are known to be small or micro-businesses.

The proposed rules identify when conventional and chemical military munitions become hazardous wastes under the state industrial solid waste rules and provide for the safe storage and transport of such waste. The proposed rules also identify circumstances for exemptions to the proposed regulations during emergency situations involving both military and non-military munitions and explosives. Additionally, the proposed rules allow for military and non-military facilities to apply for a new permit or permit amendment/modification to store waste munitions in units that are not currently regulated.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of the 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 act. The proposal 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. The proposed amendments will provide the ability to make required changes to permits to allow facilities to store hazardous munitions waste in additional types of units. The proposed amendments do not meet the definition of a “major environmental rule” as defined in the Texas Government Code, since §2001.0225 only applies to a major environmental rule, the result of which is

to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The commission concludes that a regulatory analysis is not required in this instance because the proposed rules do not trigger any of the four criteria in §2001.0225.

The proposed rules do not exceed a standard set by federal law.

The requirements of these rules are being implemented to maintain equivalency with federal law (federal military munitions rule, 62 FedReg 6622 *et seq.*) and do not exceed any federal standards.

The proposed rules do not exceed an express requirement of state law.

The requirements of these rules seek to carry out the commission's statutory responsibility under Texas Health and Safety Code (THSC), §361.017 (relating to the commission's jurisdiction over industrial solid and hazardous municipal waste) and §361.024 (relating to rules and standards). The rules seek to comply with the relevant specific state law and not to exceed it.

The proposed rules do not exceed a delegation agreement or contract between the state and the federal government.

The commission is not a party to a delegation agreement with the federal government concerning a state

or federal program that would be applicable to requirements set forth in the rules. Accordingly, there are no delegation agreement requirements that could be exceeded by these rules.

The proposed rules are not adopted solely under the general powers of the agency.

The commission is adopting these rules under the general powers of the agency, Texas Water Code (TWC), §5.103 (relating to rules) and §5.105 (relating to general policy), as well as under certain specific statutory authority of the agency, THSC, §361.017 and §361.024. Accordingly, these rules are not being adopted solely under the general powers of the agency.

TAKINGS IMPACT ASSESSMENT

The commission has performed a preliminary assessment of these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of the proposed rules is to ensure that Texas' state hazardous waste rules on military munitions waste are equivalent to the federal regulations after which they are patterned. The proposed rules will substantially advance this stated purpose by adopting federal regulations by reference or by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations.

The proposal contains two sets of requirements that are considered to be more stringent than current requirements: (1) the requirement that military installations retrieve munitions fired off-range or keep a record of the event, and (2) the requirement that military personnel responding to immediate threats involving military munitions maintain records of the response. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rules

that are more stringent than current requirements because this is an action that is reasonably taken to fulfill an obligation mandated by federal law. Under RCRA, §3009, authorized states such as Texas are required to review and, if necessary, modify their hazardous waste regulatory programs when EPA promulgates standards that are more stringent or broader in scope than existing federal standards.

The proposal contains two sets of provisions which are less stringent than existing standards: (1) the manifesting exemption for the off-site shipment of unused waste munitions from one military installation to another, and (2) the conditional exemption for waste munitions storage. Promulgation and enforcement of these less stringent rules will not affect private real property because the proposed rules provide regulatory relief, rather than adding requirements. Thus, this portion of the subject regulations does not affect a landowners rights in private real property.

The rest of the requirements in this proposal are neither more nor less stringent than current regulatory requirements. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to these requirements because this is an action that is reasonably taken to fulfill an obligation mandated by federal law. See 62 FedReg 6649.

In summary, the commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because, for a certain portion of the proposal, this is an action that is reasonably taken to fulfill an obligation mandated by federal law, which is exempt under Texas Government Code, §2007.003(b)(4); and for the remaining portion of the proposal, promulgation and enforcement of the rules will not affect private real property which is the subject of

the rules and thus does not affect a landowners rights in private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will, therefore, require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal 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 these rules is consistent with the applicable CMP goals and policies because the proposed rule amendments will update and enhance the commission's rules concerning military munitions for certain hazardous and industrial solid waste facilities. In addition, the proposed rules do not violate any applicable provisions of the CMP's stated goals and policies. The commission invites public comment on the consistency of

the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be mailed to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13807, Austin, Texas 78711-3087. All comments should reference Rule Log Number 1999-080-335-WS. Comments must be received by 5:00 p.m., January 8, 2001. For further information, please contact Ray Austin, Policy and Regulations Division, (512) 239-6814.

STATUTORY AUTHORITY

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

The proposed amendment implements THSC, Chapter 361.

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

(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) [(47)] **Extrusion** - A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(51) [(48)] **Facility** - Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several storage, processing, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (Corrective Action).

(52) [(49)] **Final closure** - The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating

to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

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

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

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

(56) [(53)] **Generator** - Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class III wastes only shall not be considered a generator.

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

(58) [(55)] **Hazardous industrial waste** - Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the EPA pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 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) [(56)] **Hazardous substance** - Any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 Code of Federal Regulations, Part 302.

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

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

(62) [(59)] **Hazardous waste management facility** - All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or

disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(63) [(60)] **Hazardous waste management unit** - A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

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

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

(66) [(63)] **Incinerator** - Any enclosed device that:

(A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or

(B) meets the definition of infrared incinerator or plasma arc incinerator.

(67) [(64)] **Incompatible waste** - A hazardous waste which is unsuitable for:

(A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or

(B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

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

(69) [(66)] **Industrial furnace** - Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a

chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

(70) [(67)] **Industrial solid waste** - Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

(71) [(68)] **Infrared incinerator** - Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

(72) [(69)] **Inground tank** - A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

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

(74) [(71)] **Inner liner** - A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(75) [(72)] **Installation inspector** - A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

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

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

(78) [(75)] **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) [(76)] **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) [(77)] **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) [(78)] **Leachate** - Any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

(82) [(79)] **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) [(80)] **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) [(81)] **Management or hazardous waste management** - The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

(85) [(82)] **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) [(83)] **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) [(84)] **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) [(85)] **Movement** - That hazardous waste transported to a facility in an individual vehicle.

(90) [(86)] **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) [(87)] **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) [(88)] **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) [(89)] **Off-site** - Property which cannot be characterized as on-site.

(94) [(90)] **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) [(91)] **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) [(92)] **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) [(93)] **Operator** - The person responsible for the overall operation of a facility.

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

(99) [(95)] **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) [(96)] **PCBs or polychlorinated biphenyl compounds** - Compounds subject to Title 40, Code of Federal Regulations, Part 761.

(101) [(97)] **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) [(98)] **Person** - Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.]

(103) [(99)] **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) [(100)] **Pesticide** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(105) [(101)] **Petroleum substance** - A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this definition for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances - i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels - a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes but is not limited to stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines - i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels - i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils - i.e., Number 1-D, Number 1, Number 2-D,
and Number 2;

(vi) residual fuel oils - i.e., Number 4-D, Number 4-light, Number 4,
Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils - i.e., Grade O-GT, Grade 1-GT, Grade 2-
GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils - i.e., kerosene, mineral seal oil, long-time
burning oils, 300 oil, and mineral colza oil;

(ix) lubricants - i.e., automotive and industrial lubricants;

(x) building materials - i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials - i.e., transformer oils and
cable oils;

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

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

(106) [(102)] **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) [(103)] **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) [(104)] **Poultry** - Chickens or ducks being raised or kept on any premises in the state for profit.

(109) [(105)] **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) [(106)] **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) [(107)] **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) [(108)] **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) [(109)] **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) [(110)] **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) [(111)] **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) [(112)] **Regional administrator** - The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

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

(118) [(114)] **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) [(115)] **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) [(116)] **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) [(117)] **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) [(118)] **Run-off** - Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

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

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

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

(126) [(122)] **Sludge dryer** - Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge

itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

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

(128) [(124)] **Solid Waste** -

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface

improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended; or

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §261.4(a)(1) - (14), as amended through August 6, 1998, at 63 FedReg 42110, by 40 CFR

§261.4(a)(16), as amended June 19, 1998 at 63 FedReg 33782, subject to the changes in this clause, by 40 CFR §261.4(a)(17), as amended May 11, 1999 at 64 FedReg 25408, by 40 CFR §261.4(a)(18) - (19), as amended through August 6, 1998, at 63 FedReg 42110, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste). 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; or

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

of this paragraph.

(C) Materials are solid wastes if they are abandoned by being:

(i) disposed of;

(ii) burned or incinerated; or

(iii) accumulated, stored, or processed (but not recycled) before or in

lieu of being abandoned by being disposed of, burned, or incinerated.

(D) Materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 CFR §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 CFR §261.33, not listed in §261.33 but that exhibit one or more of the hazardous waste characteristics, or would be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(16)). Materials without an asterisk in Column 3 of Table 1 are not solid wastes when reclaimed (except as provided under 40 CFR §261.4(a)(16)).

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

Figure: 30 TAC §335.1(128)(D)(iv) [Figure: 30 TAC §335.1(124)(D)(iv)]

Figure: 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)(16) 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; or

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(16) apply rather than this provision.

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process

through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator

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

(H) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(I) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 CFR §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(J) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

(129) [(125)] **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) [(126)] **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) [(127)] **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) [(128)] **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) [(129)] **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) [(130)] **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) [(131)] **Tank system** - A hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(136) [(132)] **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) [(133)] **Thermostat** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(138) [(134)] **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) [(135)] **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) [(136)] **Transit country** - Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(141) [(137)] **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) [(138)] **Transporter** - Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

(143) [(139)] **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) [(140)] **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) [(141)] **Treatment zone** - A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

(146) [(142)] **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) [(143)] **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) [(144)] **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) [(145)] **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) [(146)] **Universal waste handler** - Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

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

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

(153) [(149)] **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) [(150)] **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) [(151)] **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) [(152)] **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) [(153)] **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) [(154)] **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.

SUBCHAPTER B: HAZARDOUS WASTE MANAGEMENT

GENERAL PROVISIONS

§335.41

STATUTORY AUTHORITY

The amended section is proposed under 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 provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements THSC, Chapter 361.

§335.41. Purpose, Scope and Applicability.

(a) The purpose of this chapter is to implement a state hazardous waste program which controls from point of generation to ultimate disposal those wastes which have been identified by the administrator of the United States Environmental Protection Agency (EPA) in 40 Code of Federal Regulations (CFR) Part 261.

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

(d) 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) do not apply to:

(1) the owner or operator of an elementary neutralization unit or a wastewater treatment unit as defined in §335.1 of this title (relating to Definitions), provided that if the owner or operator is diluting hazardous ignitable (D001) wastes (other than the D001 High TOC Subcategory defined in 40 CFR [Code of Federal Regulations] §268.40, Table Treatment Standards for Hazardous Wastes), or reactive (D003) waste, to remove the characteristic before land disposal, the owner/operator must comply with the requirements set out in 40 CFR [Code of Federal Regulations] §264.17(b);

(2) persons engaged in processing or containment activities during immediate response to a discharge of a hazardous waste; an imminent and substantial threat of discharge of hazardous waste; [or] a discharge of a material which, when discharged, becomes a hazardous waste; or an immediate threat to human health, public safety, property, or the environment, from the known or suspected presence of military munitions, other explosive material, or an explosive device, as determined by an explosive or munitions emergency response specialist as defined in §335.1 of this title, except that:

(A) an owner or operator of a facility otherwise regulated under Subchapter E of this chapter must comply with all applicable requirements of §335.112(a)(2) and (3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by

Emergency Coordinator);

(B) an owner or operator of a facility otherwise regulated under Subchapter F of this chapter must comply with all applicable requirements of §335.152(a)(2) and (3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator); [such person must comply with all applicable requirements of 40 Code of Federal Regulations, Part 264, Subparts C and D, and 40 Code of Federal Regulations, Part 265, Subparts C and D.]

(C) any [Any] person who continues or initiates hazardous waste processing or containment activities after the immediate response is over is subject to all applicable requirements of Subchapter E of this chapter [the Chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) (incorporating by reference 40 Code of Federal Regulations Part 265)], Subchapter F of this chapter [(relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) (incorporating by reference 40 Code of Federal Regulations Part 264)] and Chapter 305 of this title (relating to Consolidated Permits); and

(D) in the case of an explosives or munitions emergency response, if a federal, state, tribal, or local official acting within the scope of his or her official responsibilities, or an explosives or emergency response specialist, determines that immediate removal of the material is necessary to protect human health or the environment, that official or specialist may authorize the removal of the material or waste by transporters who do not have EPA identification numbers and without the preparation of a manifest. In the case of emergencies involving military munitions, the

responding military emergency response specialist's organizational unit must retain records for three years identifying the dates of the response, the responsible persons responding, the type and description of material addressed, and its disposition:

(3) persons adding absorbent material to waste in a container, as defined in §335.1 of this title [(relating to Definitions)] and persons adding waste to absorbent material in a container, provided that these actions occur at the time that waste is first placed in the container, and that in the case of permitted facilities, 40 CFR [Code of Federal Regulations] §§264.17(b), 264.171, and 264.172 are complied with, and for all other facilities, 40 CFR [Code of Federal Regulations] §§265.17(b), 265.171, and 265.172 are complied with.

(4) (No change.)

(e) Subchapter E of this chapter [(relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities)] does not apply to:

(1) (No change.)

(2) the owner or operator of a solid waste facility [under the jurisdiction of the Texas Department of Health] who stores, processes or disposes of hazardous waste received from a conditionally exempt small quantity generator.

(f) The following requirements apply to residues of hazardous waste in containers:

(1) (No change.)

(2) For purposes of determining whether a container is empty under this subsection, the following provisions apply:

(A) a container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as an acute hazardous waste listed in 40 CFR [Code of Federal Regulations] §§261.31, 261.32 or 261.33(e) is empty if:

(i) - (iii) (No change.)

(B) (No change.)

(C) a container or an inner liner removed from a container that has held an acute hazardous waste listed in 40 CFR [Code of Federal Regulations] §§261.31, 261.32 or 261.33(e) is empty if:

(i) - (iii) (No change.)

(g) - (i) (No change.)

(j) Except as specified in Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule), Subchapters B-F and O of this chapter [(relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to

Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Land Disposal Restrictions)] and Chapter 305 of this title [(relating to Consolidated Permits)] do not apply to universal wastes, universal waste handlers, or universal waste transporters as defined in §335.261 of this title (relating to Universal Waste Rule).

Universal wastes are not fully regulated hazardous wastes, but are subject to regulation under Subchapter H, Division 5 of this chapter [(relating to Universal Waste Rule)].

**SUBCHAPTER C: STANDARDS APPLICABLE TO
GENERATORS OF HAZARDOUS WASTE**

§335.61

STATUTORY AUTHORITY

The amended section is proposed under 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 provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements THSC, Chapter 361.

§335.61. Purpose, Scope and Applicability.

(a) - (g) (No change.)

(h) The requirements of this subchapter do not apply to persons responding to an explosives or munitions emergency in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

**SUBCHAPTER D: STANDARDS APPLICABLE TO TRANSPORTERS
OF HAZARDOUS WASTE**

§335.91

STATUTORY AUTHORITY

The amended section is proposed under 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 provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements THSC, Chapter 361.

§335.91. Scope.

(a) - (e) (No change.)

(f) The regulations in this chapter do not apply to transportation during an explosives or munitions emergency response conducted in accordance with §335.41(d)(2) of this title (relating to Purpose, Scope and Applicability).

(g) 40 CFR §266.203, as adopted by reference under Subchapter H, Division 6 of this chapter (relating to Military Munitions), identifies how the requirements of this subchapter apply to military

munitions classified as solid waste under 40 CFR §266.202.

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

§335.111, §335.112

STATUTORY AUTHORITY

The amended sections are proposed under 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 provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendments implement THSC, Chapter 361.

§335.111. Purpose, Scope, and Applicability.

(a) The purpose of this subchapter is to establish minimum requirements that define the acceptable management of hazardous waste prior to the issuance or denial of a hazardous waste permit and until certification of final closure or, if the facility is subject to post-closure requirements, until post-closure responsibilities are fulfilled. This subchapter and the standards of 40 Code of Federal Regulations §264.552 and §264.553 apply to owners and operators of hazardous waste storage, processing or disposal facilities who have fully complied with the requirements for interim status under the Resource Conservation and Recovery Act, §3005(e), except as specifically provided for in §335.41 of this title (relating to Purpose, Scope and Applicability).

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

§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 February 12, 1997 at 62 FedReg 6622 [January 29, 1992 at 57 FedReg 3492]), except 40 CFR §§265.71, 265.72, 265.75, 265.76, and 265.77;

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

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

(22) Subpart EE - Hazardous Waste Munitions and Explosives Storage (as amended through February 12, 1997, at 62 FedReg 6622); and

(23) [(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) - (3) (No change.)

(4) References to:

(A) 40 CFR §260.10 are changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.90 are changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(C) 40 CFR §264.101 are changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(D) 40 CFR §270.41 are changed to §305.62 of this title (relating to Amendment);

(E) 40 CFR §270.42 are changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee);

(F) 40 CFR §265.1 are changed to §335.111 of this title (relating to Purpose, Scope and Applicability);

(G) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited, to Chapter 50 of this title (relating to Action on Applications and Other Authorizations), Chapter 305 of this title (relating to Consolidated Permits), Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), as applicable; and

(H) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post Closure Care (Landfills)).

[(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 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) are changed to §335.112(a)(3) of this title (relating to Standards) and §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(6) References to 40 CFR §§265.71, 265.72, 265.76, and 265.77 are changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.12(c)(1) and (2) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.

(7) [(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)];

(8) [(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

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

(c) (No change.)

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

§335.152

STATUTORY AUTHORITY

The amended section is proposed under 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 provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed amendment implements THSC, Chapter 361.

§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 February 12, 1997 at 62 FedReg 6622 [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) - (18) (No change.)

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

(20) Subpart EE - Hazardous Waste Munitions and Explosives Storage (as amended through February 12, 1997, at 62 FedReg 6622); and

(21) [(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) (No change.)

(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) - (3) (No change.)

(4) References to:

(A) 40 CFR §260.10 are changed to §335.1 of this title (relating to Definitions);

(B) 40 CFR §264.90 are changed to §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(C) 40 CFR §264.101 are changed to §335.167 of this title (relating to Corrective Action for Solid Waste Management Units;

(D) 40 CFR §270.41 are changed to §305.62 of this title (relating to Amendment);

(E) 40 CFR §270.42 are changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee);

(F) 40 CFR §264.1 are changed to §335.151 of this title (relating to Purpose, Scope and Applicability);

(G) 40 CFR Parts 260 - 270 means the commission's rules including but not limited to Chapter 50 of this title (relating to Action on Applications and Other Authorizations), Chapter 305 of this title (relating to Consolidated Permits), Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), as applicable; and

(H) 40 CFR §264.310 are changed to §335.174 of this title (relating to Closure and Post Closure Care (Landfills)).

[(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 CFR Part 264, Subpart D are changed to §335.152(a)(3) of this title (relating to Standards) and §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).

(6) References to 40 CFR §§264.71, 264.72, 264.76, and 264.77 are changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), §335.12(c)(1) and (2) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), and §335.155 of this title (relating to Additional Reports), respectively.

(7) [(5)] References to 40 CFR [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).

(8) [(6)] References to 40 CFR [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 CFR [Code of Federal Regulations] Part 265, Subpart F, except §265.90 and §265.94.

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

(d) (No change.)

**SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND
SPECIFIC TYPES OF FACILITIES**

DIVISION 6: MILITARY MUNITIONS

§335.271, §335.272

STATUTORY AUTHORITY

The new sections are proposed under 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 provisions of the TWC or other laws of this state; and under Texas Health and Safety Code (THSC), Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

The proposed new sections implement THSC, Chapter 361.

§335.271. Purpose, Scope, and Applicability.

(a) The purpose of this division is to adopt regulations which identify when military munitions become a solid waste, and if these wastes are also hazardous under this division or 40 Code of Federal Regulations Part 261, the management standards that apply to these wastes.

(b) Unless otherwise specified in the regulations adopted in this division, all applicable requirements of the commission's rules, including, but not limited to, Chapter 305 of this title (relating to Consolidated Permits) and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal

Hazardous Waste), apply to waste military munitions.

§335.272. Standards.

(a) The regulations contained in 40 Code of Federal Regulations (CFR) Part 266 Subpart M, as amended through February 12, 1997, at 62 FedReg 6622 are adopted by reference, subject to the changes indicated in subsection (b) of this section.

(b) Reference to:

(1) August 12, 1997 is changed to the effective date of this rule;

(2) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapter 50 of this title (relating to Action on Applications and Other Authorizations), Chapter 305 of this title (relating to Consolidated Permits), and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), as applicable;

(3) 40 CFR Parts 260 - 279 means the commission's rules including, but not limited, to Chapter 50 of this title, Chapter 305 of this title, Chapter 328 of this title (relating to Waste Minimization and Recycling), and Chapter 335 of this title, as applicable;

(4) 40 CFR §260.10 is changed to §335.1 of this title (relating to Definitions);

(5) 40 CFR §261.2 is changed to the definition of “solid waste” in §335.1 of this title);

(6) 40 CFR §262.10(i) is changed to §335.61(h) of this title (relating to Standards

Applicable to Generators of Hazardous Waste);

(7) 40 CFR §263.10(e) is changed to §335.91(f) of this title (relating to Standards

Applicable to Transporters of Hazardous Waste);

(8) 40 CFR §§264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) are changed to §335.41(d)(2)

of this title (relating to Hazardous Waste Management General Provisions);

(9) 40 CFR §270.61 is changed to §335.402 of this title (related to Emergency Actions

Concerning Hazardous Waste);

(10) Resource Conservation and Recovery Act (RCRA) §1004(27) is changed to Texas

Health and Safety Code (THSC), §361.003(34) (related to the definition of Solid Waste);

(11) RCRA §3004(u) is changed to Texas Water Code (TWC), §7.031(a) and (b)

(relating to Corrective Action Relating to Hazardous Waste);

(12) RCRA §3008(h) is changed to TWC, §7.031(c) - (e) (relating to Corrective

Action Relating to Hazardous Waste);

(13) RCRA §7003 is changed to THSC, §361.272 (relating to Administrative Orders Concerning Imminent and Substantial Endangerment), THSC, §361.273 (relating to Injunction as Alternative to Administrative Order), THSC, §361.301 (relating to Emergency Order), TWC, §26.121, (relating to Unauthorized Discharges Prohibited.)