The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§335.1, 335.4, 335.10 - 335.12, 335.17 - 335.19, 335.21, 335.112, 335.152, 335.504, and 335.602; and proposes new §§335.26, 335.27, 335.32, and 335.701 - 335.706.

Background and Summary of the Factual Basis for the Proposed Rules

The federal hazardous waste program is authorized under the Resource Conservation and Recovery Act of 1976 (RCRA), §3006. States may obtain authorization from the United States Environmental Protection Agency (EPA) to administer the hazardous waste program. State authorization is a rulemaking process through which the EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of the EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. State RCRA programs must always be at least as stringent as the federal requirements.

Since the beginning of the federal hazardous waste program, Texas has continuously participated in the EPA's authorization program. To maintain RCRA authorization, the commission must adopt regulations to meet the minimum standards of federal programs administered by the EPA. Because the federal regulations undergo regular revision, the commission adopts new regulations regularly to meet the changing federal regulations.

Texas received authorization of its hazardous waste "base program" under RCRA on December 26, 1984. Texas received authorization for revisions to its base hazardous waste program on February 17, 1987 (Clusters I and II). Texas submitted further revisions to its hazardous waste program and received final authorization of those revisions on March 15, 1990; July 23, 1990; October 21, 1991;, December 4, 1992; June 27, 1994; November 26, 1997; October 18, 1999; September 11, 2000; June 14, 2005 (parts of Clusters III - X); March 5, 2009 (parts of Clusters XI - XV); May 7, 2012 (parts of Clusters IX and XV - XVIII); and September 3, 2014 (parts of Clusters XIX, XX and XXI). In addition, Texas submitted an authorization package to the EPA for parts of Clusters XXI, XXII, and XXIII in March 2015. The EPA is currently reviewing this authorization package.

The commission proposes in this rulemaking certain parts of RCRA Rule Clusters XXIII (Checklists 231 and 232) and XXIV (Checklist 233) that implement revisions to the federal hazardous waste program which the EPA made between February 7, 2014, and January 13, 2015. Both mandatory and optional federal rule changes in these clusters are proposed to be adopted. Adoption of Checklists 231, 232 and part of Checklist 233 of the federal rule changes is mandatory to maintain RCRA authorization. Although not necessary to maintain authorization, the EPA recommends that optional federal regulatory changes be incorporated into the state rules. Establishing equivalency with

federal regulations will enable Texas to operate all aspects of the federal hazardous waste program in lieu of the EPA.

The commission further proposes to amend the definition of "Solid waste" to promulgate a new exclusion from regulation as a solid waste for certain steel slag which was added by House Bill (HB) 2598, 84th Texas Legislature, 2015 and codified in Texas Health and Safety Code (THSC), §361.040. All proposed rule changes are discussed further in the Section by Section Discussion portion of this preamble.

Section by Section Discussion

In addition to the proposed amendments associated with this rulemaking, various stylistic, non-substantive changes have been made to update rule language to current *Texas Register* style and format requirements. These changes are non-substantive and generally not specifically discussed in this preamble.

§335.1, Definitions

Definition of Solid Waste Rule

The commission proposes to amend §335.1 to incorporate rule changes to the definition of "Solid waste" made by the EPA in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). Three exclusions from the definition of solid waste are proposed for incorporation into §335.1. These exclusions are: the generator controlled exclusion, the

verified recycler exclusion, and the remanufacturing exclusion. All of the exclusions apply to hazardous secondary materials (e.g., listed by-products, listed sludges and spent materials) when the materials are recycled by being reclaimed.

The generator controlled exclusion excludes hazardous secondary materials from the definition of "Solid waste" if they are generated and legitimately reclaimed within Texas. Generators that wish to take advantage of this exclusion must satisfy specific criteria. These criteria include: 1) notification to the executive director of the reclamation of the hazardous secondary materials; 2) development of an effective emergency preparedness and response plan to ensure that the hazardous secondary materials are properly contained in order to prevent releases to the environment, and if releases should occur, implementation of the emergency preparedness and response plan to respond to and deal with the release; 3) specific criteria for evaluating the legitimacy of the reclamation process; 4) recordkeeping requirements for the generator of the hazardous secondary materials; and 5) that the hazardous secondary materials not be speculatively accumulated.

The verified recycler exclusion excludes hazardous secondary materials from the definition of "Solid waste" if they are transferred from the generators located in Texas to verified reclamation facilities located in Texas. Owners and operators of verified reclamation facilities that wish to take advantage of this exclusion must satisfy specific

criteria. These criteria include: 1) notification to the executive director of the reclamation of the hazardous secondary materials; 2) development of an effective emergency preparedness and response plan to ensure that the hazardous secondary materials are properly contained in order to prevent releases to the environment, and if releases should occur, implementation of the emergency preparedness and response plan to respond to and deal with the release; 3) specific criteria for evaluating the legitimacy of the reclamation process; 4) recordkeeping requirements for the generator of the hazardous secondary materials; 5) that the hazardous secondary materials not be speculatively accumulated; 6) that the facility that reclaims the hazardous secondary materials have either a RCRA permit or a solid waste variance; and 7) that the verified reclamation facility and intermediate facilities that manage the hazardous secondary materials prior to arrival at the verified reclamation facility establish and maintain financial assurance prior to acceptance of hazardous secondary materials.

The remanufacturing exclusion excludes specified spent solvents from the definition of "Solid waste" when the spent solvents are generated in Texas and regenerated in Texas. Generators that wish to take advantage of this exclusion must satisfy specific criteria. These criteria include: 1) that the spent solvent(s) being regenerated be one or more of the solvents specified in the exclusion; 2) notification to the executive director of the reclamation of the hazardous secondary materials; 3) that the generators of the spent solvents, the facilities to which the spent solvents are sent to be remanufactured, and the

uses to which the solvents that result from the remanufacturing process are those specified in the exclusion; 4) recordkeeping requirements for the generator and remanufacturer of the spent solvents; 5) that tanks and containers in which the spent solvents are held meet specific technical standards; 6) that all equipment, vents, and tanks involved in the remanufacturing of the spent solvents are managed in accordance with requirements specified in the exclusion; and 7) that the spent solvents not be speculatively accumulated.

Incorporation of the exclusions into Chapter 335 requires: 1) adding definitions; 2) updating and renumbering existing definitions; 3) expanding the scope of variances from classification as a solid waste; 4) incorporating specific criteria to evaluate the legitimacy of the reclamation activities; 5) updating the criteria and standards for submittal and evaluation of applications for variances from classification as a solid waste; and 6) adding criteria, standards, and notification requirements for submittal and evaluation of requests for non-waste determinations.

These changes will be consistent with the EPA's new standards and criteria for variances from classification as a solid waste and non-waste determinations by updating references to exclusions from the definition of a "Solid waste" to include changes to the federal regulations that became effective on January 13, 2015, and by adding specific standards for the management of hazardous secondary materials.

Promulgation of THSC, §361.040 (HB 2598)

The commission further proposes promulgating a new exclusion from regulation as a solid waste for certain steel slag that was added by HB 2598, and codified in THSC, §361.040. THSC, §361.040 prevents the commission from regulating steel slag as a solid waste if the steel slag has not been discarded and is either an intended output of or the result of the use of an electric arc furnace to make steel, is introduced into the stream of commerce, and is managed as an item of commercial value, which may include a controlled use in a manner constituting disposal.

Electronic Manifest Rule

In the February 7, 2014, issue of the *Federal Register* (79 FR 7518), the EPA established new requirements authorizing the use of electronic manifests (or e-Manifests) as a means to track offsite shipments of hazardous waste from a generator's site to the site of the receipt and disposition of the hazardous waste. The commission proposes rule changes to conform to the EPA's rules, thereby allowing persons the ability to participate in the EPA's e-Manifest system, including Class 1 waste. These proposed amendments are part of an effort by the EPA to transition the nation to electronic manifests for hazardous waste shipment and therefore would establish the legal equivalence of EPA Forms 8700-22 (Manifest), 8700-22A (Continuation Sheet) and the electronic format (e-Manifest) as defined in 40 Code of Federal Regulations (CFR) §260.10 (Definitions).

See the Section by Section Discussion of §335.10 for additional information.

Cathode Ray Tube Rule

In the June 26, 2014, issue of the *Federal Register* (79 FR 36220), the EPA revised requirements for export provisions of the Cathode Ray Tube (CRT) rule that was promulgated on July 28, 2006. Specifically, the commission proposes rule changes that would revise certain provisions for the export of CRTs for reuse and recycling in order to ensure safe management of these materials.

Revisions to §335.1, Definitions

The commission proposes renumbering definitions in §335.1 to add ten definitions. The definitions to be added are: "Cathode ray tube (CRT) exporter," "Contained," "Electronic manifest or e-Manifest," "Electronic manifest system or e-Manifest system," "Hazardous secondary material," "Hazardous secondary materials generator," "Intermediate facility," "Land-based unit," "Remanufacturing," and "User of the electronic manifest system."

The commission proposes to amend §335.1 to add the definition of "Cathode ray tube (CRT) exporter" as proposed §335.1(20) and renumber subsequent definitions accordingly. Specifically, this amendment would conform to federal regulations promulgated in the June 26, 2014, issue of the *Federal Register* (79 FR 36220) by

adding the definition of "Cathode ray tube (CRT) exporter" that is consistent with the definition of " CRT exporter" in 40 CFR §260.10.

The commission proposes to amend §335.1 to add the definition of "Contained" as proposed §335.1(33) and renumber subsequent definitions accordingly. This addition pertains to new management and storage requirements for certain hazardous waste recycling activities when qualifying for exclusions from the new, federal definition of solid waste for hazardous secondary materials. Specifically, this amendment would conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Contained" that is consistent with the definition of "Contained" in 40 CFR §260.10.

The commission proposes to amend §335.1 to add the definition of "Electronic manifest or e-Manifest" as §335.1(50) and renumber subsequent definitions accordingly. This change is part of an effort by the EPA to transition the nation to electronic manifests for hazardous waste shipment and would establish that the electronic format (e-Manifest) is legally equivalent with the paper EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet). Specifically, this amendment would conform to federal regulations promulgated in the February 7, 2014, issue of the *Federal Register* (79 FR 7518) by adding the definition of "Electronic manifest or e-Manifest" that is consistent with the definition of "Electronic manifest (or e-Manifest)" in 40 CFR §260.10. See the Section by

Section Discussion of §335.10 for additional information.

The commission proposes to amend §335.1 to add the definition of "Electronic manifest system or e-Manifest system" as proposed §335.1(51) and renumber subsequent definitions accordingly. Specifically, this amendment would conform to federal regulations promulgated in the February 7, 2014, issue of the *Federal Register* (79 FR 7518) by adding the definition of "Electronic manifest system or e-Manifest system" consistent with the definition of "Electronic Manifest System (or e-Manifest System)" in 40 CFR §260.10. See the Section by Section Discussion of §335.10 for additional information.

The commission proposes to amend renumbered §335.1(61), the definition of "Facility," to expand the scope of the current definition to include management of hazardous secondary material. Specifically, this amendment would conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by revising the current definition of "Facility" to be consistent with the definition of "Facility" in 40 CFR §260.10.

The commission proposes to amend §335.1 to add the definition of "Hazardous secondary material" as proposed §335.1(70) and to renumber subsequent definitions accordingly. Specifically, this amendment conforms to federal regulations promulgated

in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Hazardous secondary material" that is consistent with the definition of "Hazardous secondary material" in 40 CFR §260.10.

The commission proposes to amend §335.1 to add the definition of "Hazardous secondary material generator" as §335.1(71) and to renumber subsequent definitions accordingly. Specifically, this amendment would conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Hazardous secondary material generator" that is consistent with the definition of "Hazardous secondary material generator" in 40 CFR §260.10.

The commission proposes to amend §335.1 to add the definition of "Intermediate facility" as §335.1(89) and to renumber subsequent definitions accordingly. Specifically, this amendment would conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Intermediate facility" that is consistent with the definition of "Intermediate facility" in 40 CFR §260.10.

The commission proposes to amend §335.1 to add the definition of "Land-based unit" as §335.1(92) and to renumber subsequent definitions accordingly. Specifically, this amendment would conform to federal regulations promulgated in the January 13, 2015,

issue of the *Federal Register* (80 FR 1694) by adding the definition of "Land-based unit" when used to refer to reclamation of hazardous secondary materials that is consistent with the EPA definition of "Land-based unit" in 40 CFR §260.10. It is not the intent of the commission for this definition to include spills or releases from units that include, but are not limited to, tanks, containers, and miscellaneous units that result in corrective action.

The commission proposes to amend renumbered §335.1(101) to add electronic manifest to the definition of "Manifest." Specifically, this amendment would conform to federal regulations published in the February 7, 2014, issue of the *Federal Register* (79 FR 7518) by adding electronic manifest to be consistent with the definition of "Manifest" in 40 CFR §260.10. See the Section by Section Discussion of §335.10 for additional information.

The commission proposes to amend §335.1 to add the definition of "Remanufacturing" numbered as §335.1(134) and to renumber subsequent definitions accordingly. Specifically, this amendment would conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by adding the definition of "Remanufacturing" that is consistent with the definition of "Remanufacturing" in 40 CFR §260.10.

The commission proposes to amend renumbered §335.1(146) to revise the definition of "Solid waste" to be consistent with state and federal law. This change adds requirements and opportunities for certain hazardous waste recycling activities including creating a classification as hazardous secondary materials for certain hazardous waste that will be recycled and exclusions from the definition of "Solid waste" for certain of activities including the generator controlled exclusion, the verified recycler exclusion, and the remanufacturing exclusion. Specifically, this amendment would conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by changing the scope of the current definition of "Solid waste" to be consistent with the definition of "Solid waste" in 40 CFR §261.2.

The commission also proposes to further amend the definition of "Solid waste," by adding a new exclusion from regulation as a solid waste for certain recycled steel slag as proposed subparagraph (M). This change would exclude steel slag, when recycled in accordance with certain criteria from regulation as a solid waste. Specifically, this amendment would promulgate a new exclusion from regulation as a solid waste for recycled steel slag as codified in THSC, §361.040 (HB 2598).

The commission proposes to amend §335.1 to expand the scope of the definition of "Transfer facility," renumbered as §335.1(161), to include management of hazardous secondary material. Specifically, this amendment would conform to federal regulations

promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by revising the current definition of "Transfer facility" to be consistent with the definition of "Transfer facility" in 40 CFR §260.10.

The commission proposes to amend §335.1 to add the definition for "User of the electronic manifest system" numbered as §335.1(130) and renumber subsequent definitions accordingly. Specifically, this amendment would conform to federal regulations as promulgated in the February 7, 2014, issue of the *Federal Register* (79 FR 7518) by adding the definition of "User of the electronic manifest system" consistent with the definition of "User of the electronic manifest system" in 40 CFR §260.10. See the Section by Section Discussion of §335.10 for additional information.

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

In the February 7, 2014, issue of the *Federal Register* (79 FR 7518), the EPA established new requirements authorizing the use of electronic manifests (or e-Manifests) as a means to track offsite shipments of hazardous waste from a generator's site to the site of the receipt and disposition of the hazardous waste. The commission proposes these changes to conform its rules to the EPA's, thereby allowing persons the ability to participate in the EPA's e-Manifest system, including Class 1 waste.

The Hazardous Waste Electronic Manifest Establishment Act, Public Law 112-195 directed the EPA to implement a national electronic manifest system and to impose reasonable user service fees as a means to fund the development and operation of the e-Manifest system. The EPA announced explicitly that electronic manifest documents obtained from the Agency's national e-Manifest system and completed in accordance with applicable regulations are the legal equivalent of the paper manifest forms (EPA Forms 8700-22 and 8700-22A) currently authorized for use in tracking hazardous waste shipments. Upon completion of the e-Manifest system, the electronic manifest documents authorized by this final regulation will be available to manifest users as an alternative to the paper manifest forms to comply with federal and state requirements for the use of the hazardous waste manifest.

As of this rule proposal, the EPA has not implemented the electronic manifest system. The EPA has delayed the compliance date for its regulations until the e-Manifest system is ready for operation and after the announcement of the schedule of fees for manifest related services. The EPA will publish a further document subsequent to this rule's effective date to announce the user fee schedule for manifest related activities. This document will also announce the date that compliance with the federal e-Manifest regulation will be required and when the EPA will be ready to receive electronic manifests through the national e-Manifest system. Please see the EPA's website at

http://www3.epa.gov/epawaste/hazard/transportation/manifest/e-man.htm for further information regarding implementation of the electronic manifest system including equipment requirements, compliance dates, etc.

The EPA has authorized the use of its electronic manifest system to allow states to use the system for shipments of waste required to have a manifest under state law. The commission proposes giving persons the flexibility to use the EPA's electronic manifest system or paper manifests for shipments of Texas Class 1 waste.

The commission proposes to amend §335.10 to allow the use of either EPA ID numbers or Solid Waste Registration numbers when completing a manifest for Class 1 waste. The commission proposes to amend §335.10 by incorporating by reference the Electronic Manifest System published in the February 7, 2014, issue of the *Federal Register* (79 FR 7518). This change will add references to 40 CFR §§262.20, 262.24, and 262.25. Incorporation of these federal requirements would provide generators of hazardous and industrial waste the option of using the electronic manifest system or the paper manifest and establish that the electronic manifest is legally equivalent to the paper manifest. The commission proposes to remove §335.10(a)(3) and (4) because the EPA is implementing the e-Manifest system instead of TCEQ.

§335.11, Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste

The commission proposes to amend §335.11 to incorporate by reference the Electronic Manifest System as published in the February 7, 2014, issue of the *Federal Register* (79 FR 7518). This change will incorporate the requirements of 40 CFR §263.22 and §263.25.

§335.12, Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities

The commission proposes to amend §335.12 to incorporate by reference the Electronic Manifest System as published in the February 7, 2014, issue of the *Federal Register* (79 FR 7518). This change will incorporate federal requirements establishing that the electronic manifest is legally equivalent to the paper manifest.

§335.17, Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials

The commission proposes to amend §335.17 to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). Specifically, this amendment would add language clarifying the scope of the definition of when a material is reclaimed for the purposes of the generator controlled exclusion and the verified recycler exclusion regarding certain types of smelting, melting, and refining furnaces. In addition, the amendment establishes a requirement to label materials that will be recycled with the first date of accumulation for the purpose of demonstrating

compliance with the legitimate recycling criteria prohibiting speculative accumulation. The proposal will be consistent with the reclamation requirements and definition of when a material is accumulated speculatively under 40 CFR §261.1.

§335.18, Variances from Classification as a Solid Waste

The commission proposes to amend §335.18 to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). This amendment would add new opportunities for material that will be recycled to exit regulation as solid wastes if approved by the executive director on a case-by-case basis: variances from classification as solid waste for hazardous secondary materials that are reclaimed in a continuous process, variances from classification as solid waste for hazardous secondary materials that are managed in accordance with the new generator controlled exclusion and the new verified recycler exclusion, and a non-waste determination. Specifically, this amendment would add non-waste determinations to the title of the section and add language regarding the new requirements for non-waste determinations and variances from classification as a solid waste that is consistent with the non-waste determination and variance requirements of 40 CFR §260.30.

§335.19, Standards and Criteria for Variances from Classification as a Solid Waste

The commission proposes to amend §335.19 to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). This

amendment would add requirements for the new variance opportunities for hazardous secondary materials to the existing requirements for variances from classification as a solid waste. The amendment would add specified legitimacy criteria for determining whether resulting material from partial reclamation is commodity-like. Additionally, the amendment would add specified criteria for determining whether to issue a variance for hazardous secondary materials that will be transferred to a verified reclamation facility. These criteria include: demonstration of legitimate recycling; providing financial assurance; the facility not having been subject to formal enforcement action in the past three years and not having been classified as a significant non-complier under RCRA Subtitle C, with an opportunity to provide credible evidence to demonstrate that any such violations have and will be addressed; that the facility has adequate equipment and training, and personnel for proper management of the hazardous secondary material; compliance with emergency preparedness and response requirements; authorization or credible evidence that management of any residuals generated will be protective of human health and the environment; and the facility must address the potential risk to surrounding populations including cumulative risks from other sources. Specifically, this amendment would add non-waste determinations to the title of the section and add language regarding the requirements for variances and non-waste determinations that is consistent with the variances and non-waste determination requirements of 40 CFR §260.31.

§335.21, Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler

The commission proposes to amend §335.21 to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). This change would add requirements to the existing procedures for the executive director's case-by-case review of variances from classification as a solid waste, and applications to classify particular enclosed flame combustion devices as a boiler. The new procedures address the new criteria under §335.19, and require an owner or operator to notify the executive director when a change in circumstances affects how hazardous secondary material satisfy the relevant criteria upon which a variance or non-waste determination is based and require the executive director to determine whether the criteria are still met or if the owner or operator must reapply for the non-waste determination or variance. Additionally, the new procedures impose a fixed term of no more than ten years on a variance or non-waste determination, require an owner or operator to re-apply six months prior to expiration of the fixed term, and impose additional notification requirements for hazardous secondary material management activities under a variance or non-waste determination. The commission further proposes to amend §335.21 to clarify that the executive director's ability to hold a public hearing upon request or at his discretion under existing §335.21 means that the executive director may hold a TCEQ public meeting because TCEQ's public meeting process meets or exceeds the minimum requirements of a public hearing under 40 CFR §25.5 and §260.33. Specifically, this

amendment would add non-waste determinations to the title of the section and add language that is consistent with the federal variance and non-waste determination requirements of 40 CFR §260.33.

§335.26, Notification Requirements for Hazardous Secondary Materials

The commission proposes new §335.26 to conform to federal regulations published in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). Specifically, this new section would incorporate by reference the notification requirements of 40 CFR §260.42 for hazardous secondary materials that are reclaimed under the verified recycler exclusion and clarify that notification required by this section must be made to the TCEQ executive director instead of the EPA Regional Administrator.

§335.27, Legitimate Recycling of Hazardous Secondary Materials

The commission proposes new §335.27 to conform to federal regulations published in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). Specifically, this new section would incorporate by reference 40 CFR §260.43 requirements for legitimate recycling of hazardous secondary materials that are reclaimed and clarify that notification required under this section must be made to the TCEQ executive director instead of the EPA Regional Administrator.

§335.32, Standards and Criteria for Non-Waste Determinations

The commission proposes new §335.32 to conform to federal regulations published in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). Specifically, this new section would incorporate by reference the standards and criteria for non-waste determinations that is consistent with the requirements of 40 CFR §260.34.

§335.112, Standards

The commission proposes to amend §335.112(a)(4), Subpart E - Manifest System, Recordkeeping and Reporting, to conform to federal regulations published in the February 7, 2014, issue of the *Federal Register* (79 FR 7518). This amendment proposes to adopt by reference the electronic manifest system requirements for owners and operators of interim standard hazardous waste treatment, storage, or disposal facilities.

§335.152, Standards

The commission proposes to amend §335.152(a)(4), Subpart E - Manifest System, Recordkeeping and Reporting, to conform to federal regulations promulgated in the February 7, 2014, issue of the *Federal Register* (79 FR 7518). This amendment proposes to adopt by reference the electronic manifest system requirements for owners and operators of permitted hazardous waste treatment, storage, or disposal facilities.

§335.504, Hazardous Waste Determination

The commission proposes to amend §335.504 to conform to federal regulations

promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). This amendment would add requirements for the new variance opportunities for hazardous secondary materials to the existing requirements for variances from classification as a solid waste. See the Section by Section Discussion of §335.1 for additional information.

§335.602. Standards

The commission proposes to amend §335.602(c) to correct a reference to "Subchapter P of this chapter." The correct citation is "Chapter 37, Subchapter P of this title".

Subchapter V: Standards for Reclamation of Hazardous Secondary Materials

The commission proposes new Subchapter V to conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694). This subchapter is proposed to establish minimum standards and requirements for generators and owners and operators of recycling facilities seeking to conduct hazardous waste recycling activities under the exclusions from the definition of solid waste for hazardous secondary materials reclaimed under the generator controlled exclusion, the verified recycler exclusion and the remanufacturing exclusion under 40 CFR §261.4(a)(23), (24), and (27) (Exclusions). Specifically, this rulemaking proposes five new sections in Chapter 335, Subchapter V: §335.701 (Purpose and Applicability); §335.702 (Standards); §335.703 (Financial Assurance Requirements); §335.704; (Cost Estimate); §335.705 (Removal and Decontamination Plan for Release); and §335.706

(Release of the Owner or Operator from the Requirements of this Subchapter).

§335.701, Purpose and Applicability

The commission proposes new §335.701 to provide the purpose and applicability of new Subchapter V. This new section would establish that the purpose of the proposed new subchapter is to provide the minimum standards for management of hazardous secondary materials. The new subchapter would establish applicable standards for persons managing hazardous secondary materials under the new exclusions from the definition of solid waste for hazardous secondary materials. Specifically, this new section would conform to federal regulations promulgated in the January 13, 2015, issue of the *Federal Register* (80 FR 1694) by proposing management standards and applicability consistent with the requirements of 40 CFR §261.4(a)(23), (24), and (27).

§335.702, Standards

The commission proposes new §335.702 to set standards and criteria for management of hazardous secondary material. This new section would establish requirements for management of hazardous secondary materials under the exclusions from the definition of "Solid waste" for hazardous secondary materials including use and management of containers, tank systems, emergency preparedness and response, and air emissions standards for process vents, equipment leaks, and tanks and containers consistent with federal requirements. Specifically, this new section would conform to federal regulations

promulgated January 13, 2015, issue of the *Federal Register* (80 FR 1694) by incorporating by reference, with clarifications, 40 CFR Part 261, Subparts I, J, M, and AA - CC.

§335.703, Financial Assurance Requirements

The commission proposes new §335.703 to establish financial assurance requirements for owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 CFR §261.4(a)(24), and would exclude States and the Federal government from the financial assurance requirements. This new section would require owners and operators of reclamation facilities and intermediate facilities to establish and maintain financial assurance for removal and decontamination and corrective action, and liability coverage for sudden and nonsudden accidental occurrences. Specifically, this amendment would conform to federal regulations promulgated in the October 30, 2008, issue of the *Federal Register* (73 FR 64764) by adopting federal requirements by reference and by incorporating TCEQ financial assurance requirements and financial instruments under 30 TAC Chapter 37. The Chapter 37 requirements and financial instruments would be revised to be consistent with the financial assurance requirements of 40 CFR Part 261, Subpart H and §261.143.

§335.704, Cost Estimate

The commission proposes new §335.704 to establish financial assurance cost estimate

requirements for owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 CFR §261.4(a)(24). This new section would establish requirements for cost estimates. Specifically, this section would conform to federal regulations promulgated in the October 30, 2008, issue of the *Federal Register* (73 FR 64764) by proposing requirements for cost estimates by incorporating requirements of Chapter 37, with revisions to the Chapter 37 requirements, consistent with the financial assurance requirements of 40 CFR Part 261, Subpart H and §261.143.

§335.705, Removal and Decontamination Plan for Release

The commission proposes new §335.705 to establish requirements for owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 CFR §261.4(a)(24) who wish to discontinue hazardous secondary material activities and initiate the process of being released from financial assurance obligations. This new section would establish a process for submittal, review and approval, by the executive director, of a plan for removal of hazardous secondary material residues and decontamination in a manner that is protective of human health and the environment. This process would include public notice and opportunities for the public to request a public meeting and for an owner or operator and the public to file a motion to overturn the executive director's determination. Specifically, this new section conforms to federal regulations promulgated in the October 30, 2008, issue of the

Federal Register (73 FR 64764) by proposing requirements consistent with 40 CFR §261.143(h).

§335.706, Release of the Owner or Operator from the Requirements of this Subchapter

The commission proposes new §335.706 to establish requirements for owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 CFR §261.4(a)(24) to be released from financial assurance obligations. This new section would establish requirements for release from financial assurance obligations following fulfillment of the requirements of proposed new §335.705. Specifically, this section would conform to federal regulations promulgated in the October 30, 2008, issue of the *Federal Register* (73 FR 64764) by proposing requirements consistent with 40 CFR §261.143(i).

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state or local government. The proposed rules incorporate new federal regulations relating to the federal hazardous waste program (RCRA) and implements THSC, §361.040 added by HB 2598.

The proposed rules implement both mandatory and optional federal rule changes for the RCRA federal hazardous waste program. The adoption of mandatory federal rule changes is necessary in order for the state (TCEQ) to maintain RCRA authorization. The EPA recommends that optional federal regulatory changes be incorporated into the state rules as well. The anticipated result of the changes made by the EPA is to encourage the recycling of hazardous wastes while at the same time protecting human health and the environment. Establishing equivalency with federal regulations will enable Texas to operate all aspects of the federal hazardous waste program in lieu of the EPA. The proposed rules also implement HB 2598 which relates to the regulation of steel slag as solid waste.

The proposed rules would provide revisions to the definition of solid waste, implement HB 2598, add electronic manifests as a legal equivalent to paper manifests, and revise export requirements for CRTs.

Definition of Solid Waste Rule

The proposed rulemaking revises the current definition of "Solid waste." The proposed rule has three exclusions from the definition of "Solid waste." These exclusions are: the generator controlled exclusion, the verified recycler exclusion, and the remanufacturing exclusion. All of the exclusions apply to hazardous secondary materials (listed by-products, listed sludge, and spent materials) when the materials are recycled by being

reclaimed.

Generators, verified recyclers, and intermediate facilities who wish to take advantage of the proposed exclusions must satisfy specific criteria. The TCEQ currently has responsibility to administer the portion of the RCRA Program that deals with exclusions from the definition of a "Solid waste." The adoption of the proposed rules will result in an increase in the work load for the agency, but it is expected that available resources will be used to handle the increased work and that the increase will not be significant.

One of the proposed criteria for verified recyclers and intermediate facilities who wish to take advantage of the proposed exclusions is that they must obtain financial assurance. There will be additional costs for these facilities to obtain financial assurance. There will also be an increase in workload for the agency. Agency staff will need to track and maintain financial assurance for these facilities, but this additional workload is not expected to have significant fiscal implications.

No other unit of state or local government is charged with the responsibility of administering the portion of the RCRA Program that deals with exclusions from the definition of a "Solid waste." For this reason, it is not anticipated that there will be any fiscal implications for any other units of state or local government.

HB 2598

HB 2598 prevents the regulation of steel slag as a solid waste if: 1) the slag is an intended output or result of the use of an electric arc furnace to make steel; 2) introduced into the stream of commerce; and 3) managed as an item of commercial value, including through a controlled use in a manner constituting disposal but not discarded. Implementing the proposed rules is not expected to result in significant administrative or financial implications for the agency because steel slag is already commonly recycled as non-waste by virtue of existing solid waste exclusions and commission policy. No fiscal implications are anticipated for other units of state or local government.

e-Manifest Rule

This part of the proposed rulemaking would make state rules conform to new federal regulations by adding the requirement that electronic manifests be a legal equivalent to paper manifests. The goal of this change is to expedite the transition from paper manifests to electronic manifests. Current federal regulations and state rules require the use of manifests for disposal of both hazardous and Class 1 waste. The rule will adopt the federal electronic manifest system. The EPA will handle the administration and implementation of the system, including any fees involved. This amendment is required by the EPA in order for the state to maintain RCRA authorization. This rulemaking does not propose fees at the state level.

The TCEQ administers the portion of the RCRA Program that deals with manifesting hazardous waste. The proposed rules will not place any requirements on the agency to process or retain manifests of Class 1 and Hazardous waste. No fiscal implications are anticipated for the agency or for other units of state or local government.

CRT Rule

The proposed rulemaking amends the commission's rules relating to the export of CRTs to make them consistent with new federal regulations. The revisions will allow the EPA to better track exports of CRTs for reuse and recycling in order to ensure safe management of these materials. The proposed rulemaking affects only the export provisions of the CRT rule and does not affect any regulations applicable to the domestic management of used CRTs. The proposed rulemaking also does not affect unused CRTs. The proposed rulemaking would: 1) add a definition of "Cathode ray tube (CRT) exporter" to the regulations; 2) require annual reports from exporters of used CRTs exported for recycling; 3) revise the notification that must be submitted when used CRTs are exported for recycling; 4) revise the notification that must be submitted when used CRTs are exported for reuse; and 5) require that normal business records maintained by exporters of used CRTs for reuse be translated into English upon request.

These proposed rules are not expected to result in fiscal implications for the agency or other units of state or local government. The EPA has promulgated this rule for

management of CRTs in an effort to encourage reuse and recycling of these materials rather than landfilling or possible incineration of these wastes. Many used computers are resold or donated so that they can be used again, either as is or after minor repairs. Many markets for the reuse of computers are located abroad, particularly in countries where few may be able to purchase state-of-the-art new equipment.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules would be compliance with state law and federal regulations, the ability of the agency to maintain RCRA authorization, and the adoption of rules that are intended to encourage the recycling of hazardous wastes while at the same time protecting human health and the environment.

No significant fiscal implications are anticipated for businesses that generate or recycle hazardous waste. The EPA has estimated that cost savings may result for these businesses because many generators will be able to recycle their hazardous wastes on-site as opposed to having to send them off-site to be recycled. In addition, it is likely that generators will have an expanded number of off-site facilities to which they can send their hazardous waste for recycling. Depending upon the volume of material they are managing, there will be costs for verified recyclers and intermediate facilities that

generate hazardous secondary materials as they will be required to obtain financial assurance. The additional cost is expected to be offset by the savings from managing hazardous secondary materials instead of hazardous waste.

The proposed rules would provide revisions to the definition of "Solid waste," implement HB 2598, add electronic manifests as a legal equivalent to paper manifests, and provide certain export provisions for CRTs.

Definition of Solid Waste Rule

The proposed rulemaking revises the current definition of "Solid waste." The proposed rulemaking expands the scope of existing exemptions from the definition of a "Solid waste" to include by-products, sludge and spent materials that are listed hazardous wastes. At present, those types of hazardous waste can be recycled by being reclaimed but only at facilities that either have a RCRA Part B Permit or a solid waste variance.

Under the proposed rules, recycling those types of hazardous wastes will be required to have either a RCRA Part B Permit, a solid waste variance or what is called a non-waste determination. Under the proposed non-waste determination, recyclers will not be required to do anything more than what they are already required to do, except to provide financial assurance for disposal of hazardous secondary materials.

Generators, verified recyclers, and intermediate facilities who wish to take advantage of

the proposed exclusion must meet specific criteria. There may be some costs associated with meeting these proposed criteria. However, it is anticipated that those costs will be off-set by the savings of expanding the scope of hazardous waste that can be recycled. For example, under the proposed rules, many generators will be able to recycle their hazardous wastes on-site as opposed to having to send them off-site to be recycled. In addition, it is likely that generators will have an expanded number of off-site facilities to which they can send their hazardous waste for recycling.

The proposed rules are anticipated to have only minimal fiscal impact on businesses, and that impact is expected to be positive as the rules will expand the scope of hazardous wastes that can be recycled. Financial assurance will be required for those verified recycling facilities and intermediate facilities that manage or handle hazardous secondary materials. Cost for financial assurance is estimated to be approximately 5% of the estimated cost to close and remediate a site or facility. Any costs are estimated to be offset by the savings in managing hazardous secondary materials instead of hazardous waste.

HB 2598

This part of the proposed rulemaking is not expected to result in fiscal implications for businesses or individuals as steel slag is already commonly recycled as non-waste by virtue of existing policies and solid waste exclusions.

e-Manifest Rule

Under the proposed rules, hazardous and Class 1 industrial waste generators, waste transporters, and owners and operators of treatment, storage and disposal facilities will have the option to use electronic manifests. The proposed rules will affect approximately 8,100 registered generators, transporters, and disposal facilities according to the TCEQ Central Registry database. The proposed rules could also affect unregistered generators of Class 1 industrial or hazardous waste, but the quantity of waste generated by those generators varies widely at any particular point in time.

Businesses that deal with hazardous waste will need to comply with federal regulations regarding the use of paper and electronic manifests. Businesses dealing with Class 1 waste have the option of using either paper or electronic manifests. However, disposal facilities may decide to require that generators and transporters only use electronic manifests when disposing of hazardous or Class 1 waste at that disposal facility.

The EPA will handle the administration and implementation of the electronic manifest system, including any fees involved. The EPA will assess what measures might be effective to expedite the transition from paper manifests to electronic manifests, and may take input on fee incentives such as shifting a greater portion of the electronic system development and operating cost to paper manifests. At this time, the EPA has not estimated the costs involved in the administration of the system. Therefore, any costs or costs savings cannot be determined with any certainty at this point in time.

CRT Rule

Businesses that export CRTs to other countries must provide notification to the EPA of CRT export activities and submit an annual report of these activities to the EPA. No notifications or annual reports will be required to be submitted to TCEQ. Since regulation of CRTs is under the EPA's jurisdiction, the number of CRT exporters in Texas is not known. However, it is estimated that the number of CRT exporters in Texas is small (less than 20).

A cost will be incurred by exporters of CRTs to generate an annual report of CRT export activities to submit to the EPA. In addition, a cost may be incurred by exports of used CRTs to translate normal business records maintained by exporters of used CRTs into English upon request.

Small Business and Micro-business Assessment

No significant adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. Small businesses that generate wastes are typically conditionally exempt small quantity generators. The great majority of small businesses do not generate by-products or types of sludge.

A fairly large number of small businesses do generate spent materials. However, a large number of these spent materials are either already entitled to be exempt from being a solid waste under existing exclusions under Chapter 335 or are covered under the broad

conditional exclusion available to conditionally exempt small quantity generators.

Conditionally exempt small quantity generators are not required to follow the reporting requirements of the CRT export rule and they are exempt from the manifesting requirements. Steel slag generators and users are not typically small businesses. It is therefore anticipated that the proposed rules will not have a significant impact on small businesses.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect small or micro-businesses in a material way for the first five years that the proposed rules are in effect and because the proposed rules are required by state law and federal regulations.

Local Employment Impact Statement

The commission has reviewed the proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because the proposed rules do not meet the definition of a "Major environmental rule" as defined in the act and do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

"Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rules are not major environmental rules because they are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state since the proposed rules promulgate existing requirements that are already imposed under state statute and 42 United States Code (USC), §6926(g).

Further, even if the proposed rules met the definition of a major environmental rule, this rulemaking does not meet any of the four applicability requirements listed in Texas

Government Code, §2001.0225(a). Texas Government Code, §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 rulemaking does not exceed a standard set by federal law because the commission proposes this rulemaking to implement revisions to the federal hazardous waste program. The commission's rules must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program. Although this rulemaking proposes some requirements that are more stringent than existing state laws, federal law requires the commission to promulgate rules that are as stringent as federal law for the commission to maintain authorization of the state hazardous waste program. Additionally, to the extent that the rulemaking implements the state law requirements of HB 2598, it is not a requirement that is more stringent than existing state law. Moreover, the rulemaking does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government, where the delegation agreement or contract is to implement a state and federal program. On the contrary, the commission must undertake the rulemaking to maintain authorization of the state hazardous waste

program. Finally, the rulemaking does not seek to adopt a rule solely under the general powers of the agency instead of under specific state law. The commission proposes this rulemaking under the authority of the Texas Water Code, §5.103 and the THSC, §§361.017, 361.024, and 361.040.

The commission invites public comment of the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed analysis of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rules is to: 1) maintain consistency with the requirements of the federal solid and hazardous waste regulations and with the RCRA; and 2) implement state law, THSC, §361.040, added by HB 2598. The proposed rulemaking substantially advances these stated purposes by proposing rules that: 1) are equivalent to the federal regulations; 2) incorporate the federal regulations; and 3) implement the requirements of HB 2598.

The commission's analysis indicates that Texas Government Code, Chapter 2007 does

not apply to the portions of the proposed rulemaking that propose to adopt rules that meet the minimum standards of the federal hazardous waste program because Texas Government Code, §2007.003(b)(4) exempts an action reasonably taken, by a state agency, to fulfill an obligation mandated by federal law from the requirements of Texas Government Code, Chapter 2007. Under 42 USC, §6926(e), the state must adopt rules that meet the minimum standards of the federal hazardous waste program administered by the EPA in order to maintain authorization to administer the program. Therefore, the portions of the proposed rulemaking adopting rules that meet the minimum standards of the federal hazardous waste program are exempt from the requirements of Texas Government Code, Chapter 2007 because the rules are required by federal law.

Finally, to the extent that portions of the proposed rulemaking are not exempt under Texas Government Code, §2007.003(b)(4) or it implements state law, promulgation and enforcement of the proposed rules would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulations do not affect a landowner's rights in real property because the proposed rulemaking does not burden (constitutionally); nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. In other words, the proposed rules do not constitute a takings under the Texas Government Code, Chapter 2007 because they would either implement requirements already imposed on the regulated community under 42 USC, §6926(g) or

that are less stringent than existing rules.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq*., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to the rulemaking is 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 USC, §§6901 *et seq*. Promulgation and enforcement of these rules are consistent with the applicable CMP goals and policies because the rulemaking would update and enhance the commission's rules concerning hazardous waste facilities. In addition, the rules would not violate any applicable provisions of the CMP's stated goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on January 22, 2016, at 2:00 p.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Ms. Kris Hogan, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-021-335-WS. The comment period closes on January 29, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Cynthia Palomares, P.G., P.E., Industrial and Hazardous Waste Permits Section at (512) 239-6079.

SUBCHAPTER A: INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL
§§335.1, 335.4, 335.10 - 335.12, 335.17 - 335.19, 335.21, 335.26, 335.27, 335.32

Statutory Authority

These amendments and new sections are proposed under Texas Water Code (TWC), §5.103 (Rules) and §5.105 (General Policy), 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), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), §361.024 (Rules and Standards), and §361.036 (Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC; and THSC, §361.040 (Treatment of Steel Slag as Solid Waste), which provides an exclusion from regulation as a solid waste for certain steel slag.

The proposed amendments and new sections implement THSC, Chapter 361.

§335.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings.

(1) Aboveground tank--A device meeting the definition of "Tank" [tank] in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

(2) Act--Texas Health and Safety Code, Chapter 361.

(3) Active life--The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

(4) Active portion--That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. *(See* also "Closed [closed] portion" and "Inactive [inactive] portion.")

(5) Activities associated with the exploration, development, and production of oil or gas or geothermal resources--Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "Natural [natural] gas" and "Storage [storage] facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173 [§1.173];

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "Hydrocarbons [hydrocarbons]" and "Underground [underground] hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection

Agency in accordance with the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 *et seq.).*

(6) Administrator--The administrator of the United States Environmental Protection Agency or his designee.

(7) Ancillary equipment--Any device that is used to distribute, meter, or control the flow of solid waste or hazardous waste from its point of generation to a storage or processing tank(s), between solid waste or hazardous waste storage and processing tanks to a point of disposal on site, or to a point of shipment for disposal off site. Such devices include, but are not limited to, piping, fittings, flanges, valves, and pumps.

(8) Aquifer--A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

(9) Area of concern--Any area of a facility under the control or ownership of an owner or operator where a release to the environment of hazardous wastes or hazardous constituents has occurred, is suspected to have occurred, or may occur, regardless of the frequency or duration.

(10) Authorized representative--The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

(11) Battery--As defined in §335.261 of this title (relating to Universal Waste Rule).

(12) Boiler--An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery

section. The following units are not precluded from being boilers solely because they are not of integral design:

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

(ii) fluidized bed combustion units;

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance To Be Classified as a Boiler).

(13) Captive facility--A facility that accepts wastes from only related (within the same corporation) off-site generators.

(14) Captured facility--A manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

(15) Captured receiver--A receiver that is located within the property boundaries of the generators from which it receives waste.

(16) Carbon dioxide stream--Carbon dioxide that has been captured from an emission source (e.g., power plant), plus incidental associated substances derived from the source materials and the capture process, and any substances added to the stream to enable or improve the injection process.

(17) Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.

(18) Cathode ray tube (CRT) [or CRT]--A vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means its glass has been removed from its housing, or casing whose vacuum has been released.

(19) Cathode ray tube (CRT) collector--A person who receives used, intact CRTs for recycling, repair, resale, or donation.

(20) Cathode ray tube (CRT) exporter--Any person in the United States who initiates a transaction to send used CRTs outside the United States or its territories for recycling or reuse, or any intermediary in the United States arranging for such export.

(21) Cathode ray tube (CRT) glass manufacturer--An operation or part of an operation that uses a furnace to manufacture CRT glass.

(22) Cathode ray tube (CRT) processing--Conducting all of the following activities:

(A) receiving broken or intact CRTs;

(B) intentionally breaking intact CRTs or further breaking or separating broken CRTs; and

(C) sorting or otherwise managing glass removed from CRT monitors.

(23) [(19)] Certification--A statement of professional opinion based upon knowledge and belief.

(24) [(20)] Class 1 wastes--Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 of this title (relating to Class 1 Waste Determination).

(25) [(21)] Class 2 wastes--Any individual solid waste or combination of industrial solid waste which cannot be described as hazardous, Class 1, or Class 3 as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(26) [(22)] Class 3 wastes--Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 of this title (relating to Class 3 Waste Determination).

(27) [(23)] Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. *(See* also "Active [active] portion" and "Inactive [inactive] portion.")

(28) [(24)] Closure--The act of permanently taking a waste management unit or facility out of service.

(29) [(25)] Commercial hazardous waste management facility--Any hazardous waste management facility that accepts hazardous waste or polychlorinated biphenyl compounds for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person.

(30) [(26)] Component--Either the tank or ancillary equipment of a tank system.

(31) [(27)] Confined aquifer--An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

(32) [(28)] Consignee--The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

(33) Contained--Hazardous secondary materials held in a unit (including a "Land-based unit" as defined in this section) that meets the following criteria:

(A) the unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Unpermitted releases are releases that are not covered by a permit (such as a permit to discharge to water or air) and may include, but are not limited to, releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(B) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit;

(C) the unit holds hazardous secondary materials that are compatible with other hazardous secondary materials placed in the unit and is compatible with the materials used to construct the unit and addresses any potential risks of fires or explosions; and

(D) hazardous secondary materials in units that meet the requirements of 40 Code of Federal Regulations Parts 264 and 265 are presumptively contained.

(34) [(29)] Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

(35) [(30)] Containment building--A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.112(a)(21) or §335.152(a)(19) of this title (relating to Standards).

(36) [(31)] Contaminant--Includes, but is not limited to, "Solid [solid] waste," "Hazardous [hazardous] waste," and "Hazardous [hazardous] waste constituent" as defined in this section [subchapter]; "Pollutant [pollutant]" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC), §361.401; "Hazardous

[hazardous] substance" as defined in THSC, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.267.

(37) [(32)] Contaminated medium/media--A portion or portions of the physical environment to include soil, sediment, surface water, groundwater or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

(38) [(33)] Contingency plan--A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

(39) [(34)] Control--To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

(40) [(35)] Corrosion expert--A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

[(36) Cathode Ray Tube collector--A person who receives used, intact Cathode Ray Tubes for recycling, repair, resale, or donation.]

[(37) Cathode Ray Tube glass manufacturer--An operation or part of an operation that uses a furnace to manufacture Cathode Ray Tube glass.]

[(38) Cathode Ray Tube processing--Conducting all of the following activities:]

[(A) Receiving broken or intact cathode ray tubes (CRTs);]

[(B) Intentionally breaking intact CRTs or further breaking or separating broken CRTs; and]

[(C) Sorting or otherwise managing glass removed from CRT monitors.]

(41) [(39)] Decontaminate--To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

(42) [(40)] Designated facility--A hazardous waste treatment, storage, or disposal facility which: has received a permit (or interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 124 and 270 [270 and 124]; has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271; or is regulated under 40 CFR §261.6(c)(2) or 40 CFR Part 266, Subpart F and has been designated on the manifest by the generator pursuant to 40 CFR §262.20. For hazardous wastes, if a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. For Class 1 wastes, a designated facility is any treatment, storage, or disposal facility authorized to receive the Class 1 waste that has been designated on the manifest by the

generator. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

(43) [(41)] Destination facility--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(44) [(42)] Dike--An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

(45) [(43)] Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octa-chlorinated dibenzo dioxins and furans.

(46) [(44)] Discharge or hazardous waste discharge--The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

(47) [(45)] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous

waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(48) [(46)] Disposal facility--A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term "Disposal [disposal] facility" does not include a corrective action management unit into which remediation wastes are placed.

(49) [(47)] Drip pad--An engineered structure consisting of a curbed, free-draining base, constructed of non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

(50) Electronic manifest or e-Manifest--The electronic format of the hazardous waste manifest that is obtained from the United States Environmental Protection Agency's (EPA's) national e-Manifest system and transmitted electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

(51) Electronic manifest system or e-Manifest system--The United States Environmental Protection Agency's national information technology system through

which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(52) [(48)] Elementary neutralization unit--A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR) §261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of non-hazardous industrial solid waste; and

(B) meets the definition of "Tank," "Tank system," "Container," or "Transport vehicle," [tank, tank system, container, transport vehicle, or vessel] as defined in this section; or "Vessel" as defined in 40 CFR §260.10.

[(49) United States Environmental Protection Agency (EPA) acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.]

[(50) United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D and to each characteristic identified in 40 CFR Part 261, Subpart C.]

[(51) United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.]

(53) [(52)] Essentially insoluble--Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or United States Environmental Protection Agency limits for drinking water as published in the *Federal Register*.

(54) [(53)] Equivalent method--Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

(55) [(54)] Existing portion--That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

(56) [(55)] Existing tank system or existing component--A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or

(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

(57) [(56)] Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated

explosives or munitions, an improvised explosive device, 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.

(58) [(57)] 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.

(59) [(58)] 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, technical escort unit, 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.

(60) [(59)] 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.

(61) [(60)] 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, or for the management of hazardous secondary materials prior to reclamation. A facility may consist of several treatment, storage, 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) or §335.602(a)(5) of this title (relating to Standards), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste); [.]

(C) notwithstanding subparagraph (B) of this paragraph, a "Remediation waste management site," as defined in 40 Code of Federal Regulations §260.10, is not a facility that is subject to §335.167 of this title, but is subject to corrective action requirements if the site is located within such a facility.

(62) [(61)] 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 Treatment, Storage, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, 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).

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

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

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

(66) [(65)] Gasification--For the purpose of complying with 40 Code of Federal Regulations §261.4(a)(12)(i), gasification is a process, conducted in an enclosed

device or system, designed and operated to process petroleum feedstock, including oil-bearing hazardous secondary materials through a series of highly controlled steps utilizing thermal decomposition, limited oxidation, and gas cleaning to yield a synthesis gas composed primarily of hydrogen and carbon monoxide gas.

(67) [(66)] 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 3 wastes only shall not be considered a generator.

(68) [(67)] Groundwater--Water below the land surface in a zone of saturation.

(69) [(68)] 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 United States Environmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). 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.

(70) Hazardous secondary material--A secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as "Hazardous waste" as defined in this section.

(71) Hazardous secondary material generator--Any person whose act or process produces hazardous secondary materials at the generating facility. For purposes of this paragraph, "generating facility" means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator. For the purposes of 40 Code of Federal Regulations §261.4(a)(23), a facility that collects hazardous secondary materials from other persons is not the hazardous secondary material generator.

(72) [(69)] Hazardous substance--Any substance designated as a hazardous substance under 40 Code of Federal Regulations Part 302.

(73) [(70)] Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection

Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq*.

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

(75) [(72)] 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.

(76) [(73)] 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.

(77) [(74)] In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

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

(79) [(76)] 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 [infrared] incinerator" or "Plasma [plasma] arc incinerator."

(80) [(77)] 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.

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

(82) [(79)] 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 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 [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.

(83) [(80)] 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 [hazardous] waste" as defined in this section.

(84) [(81)] 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.

(85) [(82)] Inground tank--A device meeting the definition of "Tank" [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.

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

(87) [(84)] 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.

(88) [(85)] 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.

(89) Intermediate facility--Any facility that stores hazardous secondary materials for more than ten days, other than a hazardous secondary material generator or reclaimer of such material.

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

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

(92) Land-based unit--When used to describe recycling of hazardous secondary materials, an area where hazardous secondary materials are placed in or on the land before recycling. This definition does not include land-based production units.

(93) [(88)] Land treatment facility--A facility or part of a facility at which solid waste or 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.

(94) [(89)] Landfill--A disposal facility or part of a facility where solid waste or 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.

(95) [(90)] Landfill cell--A discrete volume of a solid waste or 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.

(96) [(91)] Leachate--Any liquid, including any suspended components in the liquid, that has percolated through or drained from solid waste or hazardous waste.

(97) [(92)] 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 solid waste or 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 solid waste or hazardous waste into the secondary containment structure.

(98) [(93)] Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(99) [(94)] 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 solid waste or hazardous waste, hazardous waste constituents, or leachate.

(100) [(95)] Management or hazardous waste management--The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of solid waste or hazardous waste.

(101) [(96)] Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed by the generator or offeror in accordance with the instructions in §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and the applicable requirements of 40 Code of Federal Regulations Parts 262 - 265.

(102) [(97)] Manifest tracking number--The alphanumeric identification number (i.e., a unique three-letter suffix preceded by nine numerical digits), which is pre-printed in Item 4 of the manifest by a registered source.

(103) [(98)] Military munitions--All ammunition products and components produced or used by or for the Department of Defense (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.

(104) [(99)] 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, staging pile, 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).

(105) [(100)] Movement--That solid waste or hazardous waste transported to a facility in an individual vehicle.

(106) [(101)] 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.

(107) [(102)] 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.

(108) [(103)] 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 (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §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 [existing] tank system.")

(109) [(104)] No free liquids--As used in 40 Code of Federal Regulations [(CFR)] §261.4(a)(26) and (b)(18), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference, and that there is no free liquid in the container holding the wipes.

(110) [(105)] Off-site--Property which cannot be characterized as on-site.

(111) [(106)] Onground tank--A device meeting the definition of "Tank" [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.

(112) [(107)] 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.

(113) [(108)] 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 "Incinerator" ["incineration"] and "Thermal processing." [thermal treatment."])

(114) [(109)] Operator--The person responsible for the overall operation of a facility.

(115) [(110)] Owner--The person who owns a facility or part of a facility.

(116) [(111)] 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 Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, 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.

(117) [(112)] PCBs or polychlorinated biphenyl compounds--Compounds subject to 40 Code of Federal Regulations Part 761.

(118) [(113)] 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 treatment, storage, or disposal facility in accordance with specified limitations.

(119) [(114)] Personnel or facility personnel--All persons who work at, or oversee the operations of, a solid waste or hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

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

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

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "Petroleum [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 (USC), §§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; and

(xii) used oils--See definition for "Used [used] oil" in this section.

(B) For the purposes of this chapter, a "Petroleum [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 USC, §§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.

(122) [(117)] Pile--Any noncontainerized accumulation of solid, nonflowing solid waste or hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

(123) [(118)] 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.

(124) [(119)] Post-closure order--An order issued by the commission for post-closure care of interim status units, a corrective action management unit unless authorized by permit, or alternative corrective action requirements for contamination commingled from Resource Conservation and Recovery Act and solid waste management units.

(125) [(120)] Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(126) [(121)] 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.

(127) [(122)] 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.

(128) [(123)] 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.

(129) [(124)] 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 solid waste or hazardous

waste, designed to change the physical, chemical, or biological character or composition of any solid waste or 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" [processing] does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

(130) [(125)] 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.

(131) [(126)] 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.

(132) [(127)] 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).

(133) [(128)] Regional administrator--The regional administrator for the United States Environmental Protection Agency region in which the facility is located, or his designee.

(134) Remanufacturing--Processing a higher-value hazardous secondary material in order to manufacture a product that serves a similar functional purpose as the original commercial-grade material. For the purpose of this definition, a hazardous secondary material is considered higher-value if it was generated from the use of a

commercial-grade material in a manufacturing process and can be remanufactured into a similar commercial-grade material.

(135) [(129)] Remediation--The act of eliminating or reducing the concentration of contaminants in contaminated media.

(136) [(130)] 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 Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). 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 §335.166(5) of this title (relating to Corrective Action Program) or §335.167(c) of this title.

(137) [(131)] 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 treatment, storage, or disposal.

(138) [(132)] 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 United States Environmental Protection Agency or state approved corrective action.

(139) [(133)] 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.

(140) [(134)] Run-off--Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

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

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

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

(144) [(138)] Sludge dryer--Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating valve of the sludge itself, of 2,500 British thermal units per pound of sludge treated on a wet-weight basis.

(145) [(139)] Small quantity generator--A generator who generates less than 1,000 kilograms of hazardous waste in a calendar month.

(146) [(140)] 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 in accordance with 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 of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from "Activities [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 in accordance with the Texas 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 (EPA) in accordance with the federal Solid Waste Disposal 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) - (24) [(22)], [and] (26), and (27), 261.39, and 261.40, as amended through January 13, 2015 (80 FR 1694) [July 31, 2013 (78 FR 46448)], subject to the changes in this clause, or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to

Standards and Criteria for Variances from Classification as a Solid Waste). For the purposes of the exclusions under 40 CFR §261.39 (as amended through June 26, 2014 (79 FR 36220)) and §261.40, 40 CFR §261.41 is adopted by reference as amended through July 28, 2006 (71 FR 42928). For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid waste' ['solid Waste'] in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of 'Solid waste' ['solid Waste'] in §335.1 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 subparagraph (A)(iv) under the definition of 'Solid waste' ['solid Waste'] in 30 TAC §335.1," 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 Treatment, Storage, or Disposal Facilities) or Chapter 335, Subchapter

F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities)";

(III) in 40 CFR §261.38(c)(3) - (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 Treatment, Storage, or Disposal Facilities) and Chapter 335, Subchapter F of this title (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, 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(146)(D)(iv) [§335.1(140)(D)(iv)"] of this title (relating to Definitions)"; and

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

(B) A discarded material is any material which is:

(i) abandoned, as explained in subparagraph (C) of this paragraph;

(ii) recycled, as explained in subparagraph (D) of this paragraph;

(iii) considered inherently waste-like, as explained in subparagraph (E) of this paragraph; or

(iv) a military munition identified as a solid waste in 40 CFR §266.202.

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

(i) disposed of;

(ii) burned or incinerated; [or]

(iii) accumulated, stored, or processed (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated; or [.]

(iv) sham recycling as explained in subparagraph (J) of this paragraph.

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 in Figure: 30 TAC §335.1(146)(D)(iv) 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" [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 in Figure: 30 TAC §335.1(146)(D)(iv) 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 in Figure: 30 TAC §335.1(146)(D)(iv) 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 will 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 (unless they meet the requirements of [except as provided under] 40 CFR §261.4(a)(17), (23), (24), or (27)). Materials without an asterisk in Column 3 of Table 1 in Figure: 30 TAC §335.1(146)(D)(iv) are not solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 in Figure: 30 TAC §335.1(146)(D)(iv) are solid wastes when accumulated speculatively.

Figure: 30 TAC §335.1(146)(D)(iv)

[Figure: 30 TAC §335.1(140)(D)(iv)]

TABLE 1				
	Use Constituting Disposal S.W. Def.	**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)**

	(D)(i)(1)			
Spent materials (listed hazardous and 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 that is not excluded under subparagraph (A) of	*	*	*	*

this paragraph [§335.1(140)(A)(iv) of this title] (hazardous)				
Scrap metal other than excluded scrap metal (see §335.17(a)(9) of this title (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).

[1] These materials are governed by the provisions of §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) only.
[2] Except as provided in 40 CFR §261.2(c)(3) and §261.4(a)(17) for mineral processing secondary materials or as provided in §§261.4(a)(23), (24), or (27) for hazardous secondary materials.

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 CFR §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:

(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products;

(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at 40 CFR §261.4(a)(17) apply rather than this provision; or

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

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

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

(III) the secondary materials are never accumulated in such tanks for over 12 months without being reclaimed; and

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

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

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

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

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the EPA, as described in 40 CFR §261.2(d)(1) and (2).

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

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

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

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

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

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

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

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

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

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

(-a-) is a Class 2 or Class 3 waste under Subchapter R of this chapter; and

(-b-) does not exceed a concentration limit under §312.43(b)(3), Table 3 of this title (relating to Metal Limits); and

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

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

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

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

(J) A hazardous secondary material found to be sham recycled is considered discarded and a solid waste. Sham recycling is recycling that is not legitimate recycling as defined in §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials).

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

(L) [(K)] Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §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 Facilities).

(M) Steel slag may not be considered as solid waste if the steel slag is an intended output or result of the use of an electric arc furnace to make steel, introduced into the stream of commerce, and managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

(147) [(141)] Solvent-contaminated wipe--A wipe that, after use or after cleaning up a spill, either:

(A) contains one or more of the F001 through F005 solvents listed in 40 Code of Federal Regulations (CFR) §261.31 or the corresponding P- or U-listed solvents found in 40 CFR §261.33;

(B) exhibits a hazardous characteristic found in 40 CFR Part 261, Subpart C, when that characteristic results from a solvent listed in 40 CFR Part 261; and/or

(C) exhibits only the hazardous waste characteristic of ignitability found in 40 CFR §261.21 due to the presence of one or more solvents that are not listed in 40 CFR Part 261. Solvent-contaminated wipes that contain listed hazardous waste other than solvents, or exhibit the characteristic of toxicity, corrosivity, or reactivity due to contaminants other than solvents, are not eligible for the exclusions at 40 CFR §261.4(a)(26) and (b)(18).

(148) [(142)] 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.

(149) [(143)] Spill--The accidental spilling, leaking, pumping, emitting, emptying, or dumping of solid waste or hazardous wastes or materials which, when spilled, become solid waste or hazardous wastes into or on any land or water.

(150) [(144)] Staging pile--An accumulation of solid, non-flowing "Remediation [remediation] waste," as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a

facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

(151) [(145)] Standard permit--A Resource Conservation and Recovery Act [(RCRA)] permit authorizing management of hazardous waste issued under Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units) and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit). The standard permit may have two parts, a uniform portion issued in all cases and a supplemental portion issued at the executive director's discretion.

(152) [(146)] 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.

(153) [(147)] Sump--Any pit or reservoir that meets the definition of "Tank" [tank] in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, 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.

(154) [(148)] 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.

(155) [(149)] 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.

(156) [(150)] Tank system--A solid waste or hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

(157) [(151)] TEQ--Toxicity equivalence, the international method of relating the toxicity of various dioxin/furan congeners to the toxicity of 2,3,7,8-tetrachlorodibenzo-p-dioxin.

(158) [(152)] Thermal processing--The processing of solid waste or 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 solid waste or hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. *(See* also "Incinerator" ["incinerator"] and "Open [open] burning.")

(159) [(153)] Thermostat--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

(160) [(154)] 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.

(161) [(155)] 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 or hazardous secondary materials are held during the normal course of transportation.

(162) [(156)] Transit country--Any foreign country, other than a receiving country, through which a hazardous waste is transported.

(163) [(157)] 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.

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

(165) [(159)] 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 Code of Federal Regulations §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.

(166) [(160)] 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.

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

(168) [(162)] 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 [injection] well.")

(169) [(163)] Underground tank--A device meeting the definition of "Tank" [tank] in this section whose entire surface area is totally below the surface of and covered by the ground.

(170) [(164)] 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 solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

(171) United States Environmental Protection Agency (EPA) acknowledgment of consent--The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to

accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

(172) United States Environmental Protection Agency (EPA) hazardous waste number--The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations (CFR) Part 261, Subpart D and to each characteristic identified in 40 CFR Part 261, Subpart C.

(173) United States Environmental Protection Agency (EPA) identification number--The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

(174) [(165)] Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(16)(F) [§335.261(b)(13)(F)] of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(175) [(166)] Universal waste handler--Has the definition adopted as "Large quantity handler of universal waste" and "Small quantity handler of universal waste" under §335.261 of this title (relating to Universal Waste Rule).

(176) [(167)] Universal waste transporter--Has the definition adopted under 40 Code of Federal Regulations §273.9 [§335.261 of this title (relating to Universal Waste Rule)].

(177) [(168)] Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

(178) [(169)] 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.

(179) [(170)] 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 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 Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

(180) User of the electronic manifest system--A hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that:

(A) is required to use a manifest to comply with:

(i) any federal or state requirement to track the shipment, transportation, and receipt of hazardous waste or other waste material that is shipped from the site of generation to an off-site designated facility for treatment, storage, recycling, or disposal; or

(ii) any federal or state requirement to track the shipment, transportation, and receipt of rejected wastes or regulated container residues that are shipped from a designated facility to an alternative facility, or returned to the generator; and

(B) elects to use the system to obtain, complete and transmit an electronic manifest format supplied by the United States Environmental Protection Agency electronic manifest system; or

(C) elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper

copy), in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(181) [(171)] 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" [tank or tank system] as defined in this section.

(182) [(172)] Water (bulk shipment)--The bulk transportation of municipal hazardous waste or Class 1 industrial solid waste which is loaded or carried on board a vessel without containers or labels.

(183) [(173)] 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.

(184) [(174)] Wipe--A woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

(185) [(175)] Zone of engineering control--An area under the control of the owner/operator that, upon detection of a solid waste or hazardous waste release, can be readily cleaned up prior to the release of solid waste or hazardous waste or hazardous constituents to groundwater or surface water.

§335.4. General Prohibitions.

In addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling,

storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission];

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the public health and welfare.

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

(a) Except as provided in paragraph (2) of this subsection, no person who generates, transports, processes, stores, or disposes of hazardous waste shall cause, suffer, allow, or permit the shipment of hazardous waste unless he complies with the requirements of paragraph (1) of this subsection, and the manifest requirements in 40 Code of Federal Regulations (CFR) §§262.20 - 262.25 [262.23], 262.27, 262.42, 262.54,

262.55, and 262.60 and the Appendix to 40 CFR Part 262, as these sections are amended through February 7, 2014 (79 FR 7518) [March 18, 2010 (75 FR 12989)].

(1) In addition, generators, owners or operators of treatment, storage, or disposal facilities, and primary exporters shall include a Texas waste code for each hazardous waste itemized on the manifest.

(2) No manifest is required for a hazardous waste generated by a generator that generates less than the quantity limits of hazardous waste specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title [(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)].

[(3) For the purposes of the federal hazardous waste manifest requirements incorporated by reference the term, "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B.]

[(4) For the purposes of the federal hazardous waste manifest requirements incorporated by reference, reference to the United States Environmental Protection Agency (EPA) is changed to the Texas Commission on Environmental Quality.]

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

(c) Except as provided in subsections (d) and (e) of this section, persons who generate, transport, process, store, or dispose of Class 1 waste shall not cause, suffer, allow, or permit the shipment of Class 1 waste unless the person complies with the manifest requirements listed in subsection (a) of this section except for 40 CFR §262.54 and §262.55 with the following changes:

(1) <u>when</u> [When] Class 1 waste is itemized on the manifest, use the Texas Commission on Environmental Quality solid waste registration (SWR) number <u>or</u> [in

place of] the United States Environmental Protection Agency (EPA) [EPA] identification number to identify the generator, transporter, and receiver; and use the Texas waste code in place of the EPA waste code; and

(2) when [When] both hazardous and Class 1 waste are itemized on the same manifest, use EPA identification numbers to identify the generator, transporter, and receiver; and use the Texas waste codes for each waste itemized on the manifest.

[(3) Use Texas waste codes for each waste itemized on the manifest;]

[(4) The term, "regional administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality or to the commission, consistent with the organization of the commission as set out in Texas Water Code, Chapter 5, Subchapter B; and]

[(5) Reference to the EPA is changed to the Texas Commission on Environmental Quality.]

(d) No manifest is required for the shipment of Class 1 waste where the generator is an industrial generator that generates less than the quantity limits of Class 1 waste

specified in §335.78 of this title or is a municipal generator that generates less than the quantity limit of Class 1 waste specified in §335.78 of this title.

(e) No manifest is required for the shipment of Class 1 waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered another source with respect to other plants or operations owned by the same person.

§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste.

(a) Except as provided by §335.10(a)(2), (d), and (e) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), persons who transport hazardous waste must comply with the manifest requirements in 40 Code of Federal Regulations (CFR) §§263.20 - 263.22, and §263.25 [§263.20, §263.21], and the

Appendix to 40 CFR Part 262, as these sections are amended through February 7, 2014 (79 FR 7518) [June 16, 2005 (70 FR 35034)] as well as the following:

(1) the person must comply with §335.10 of this title; and

(2) in the case of hazardous waste exports, the person must ensure that the shipment conforms to the requirements set forth in the regulations contained in 40 CFR §263.20.

(b) Except as provided by §335.10(d) and (e) of this title, a person who transports Class 1 waste must comply with the requirements of subsection (a) of this section, except those requirements in 40 CFR §263.20(a)(2).

§335.12. Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities.

(a) Except as provided by §335.10(a)(2) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), persons who generate, process, store, or dispose of hazardous waste must comply with 40 Code of Federal Regulations (CFR) §265.71 and §265.72, or 40 CFR §264.71 and §264.72, depending on the status of the

person, and with the Appendix to 40 CFR Part 262, as these sections are amended through February 7, 2014 (79 FR 7518) [March 18, 2010 (75 FR 12989)]. The references in §335.112(b)(1) and (10) and §335.152(c)(1) and (10) of this title (relating to Standards) do not apply to this provision.

(b) Except as provided by §335.10(d) and (e) of this title, persons who generate, transport, process, store, or dispose of Class 1 waste must comply with 40 CFR §§264.71, 264.72, and 264.76, and the Appendix to 40 CFR Part 262, as amended through February 7, 2014 (79 FR 7518) [March 18, 2010 (75 FR 12989)], and a manifest or copy of e-Manifest must accompany the shipment which designates that facility to receive the waste.

§335.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials.

(a) For the purposes of the definition of "Solid waste" [solid waste] in §335.1 of this title (relating to Definitions) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) a spent material is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.[;]

(2) sludge has the same meaning used in Texas Health and Safety Code, §361.003.[;]

(3) a by-product is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form in which it is produced by the process.[;]

(4) a material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents. For purposes of 40 Code of Federal Regulations (CFR) §261.4(a)(23) and (24), smelting, melting, and refining furnaces are considered to be solely engaged in metals reclamation if the metal recovery from the hazardous secondary materials meets the same requirements as those specified for metals recovery from hazardous waste found in §335.221(a)(1) of this title (relating to Applicability and

Standards), and if the residuals meet the requirements specified in §335.221(a)(23) of this title.

(5) a material is used or reused if it is either:

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(B) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).[;]

(6) scrap metal is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wires) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.[;]

(7) a material is recycled if it is used, reused, or reclaimed.[;]

(8) a material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40 CFR [Code of Federal Regulations] §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

(9) Excluded scrap metal is processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal.

(10) Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note: shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (40 CFR §261.4(a)(14)).

(11) Home scrap metal is scrap metal as generated by steel mills, foundries, and refineries such as turnings, cuttings, punchings, and borings.

(12) Prompt scrap metal is scrap metal as generated by the metal working/fabrication industries and includes such scrap metal as turnings, cuttings, punchings, and borings. Prompt scrap is also known as industrial or new scrap metal.

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title, under the definition of "Solid waste" [Solid Waste], §335.6 of this title (relating to Notification Requirements), §335.18 of this title (relating to Non-Waste Determinations and 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, and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities [Materials]).

§335.18. Non-Waste Determinations and Variances from Classification as a Solid Waste.

(a) In accordance with the standards and criteria in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations), and in accordance with the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations) the executive director may determine on a case-by-case basis that the following recyclable materials and nonhazardous recyclable materials are not solid wastes:

(1) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials));

(2) materials that are reclaimed and then reused within the original production process in which they were generated; [or]

(3) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered; [.]

(4) hazardous secondary materials that are reclaimed in a continuous industrial process;

(5) hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate; or

(6) hazardous secondary materials that are transferred for reclamation under 40 Code of Federal Regulations §261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Resource Conservation and Recovery Act Part B permit or interim status standards.

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste [Waste]," §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)], §335.19 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 Facilities [Materials]).

§335.19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following criteria:

(1) the manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) the reason that the applicant has accumulated the material for one or more years without recycling 75% of the weight or volume accumulated at the beginning of the year;

(3) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) the extent to which the material is handled to minimize loss; and

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation

operation is an essential part of the production process. This determination will be based on the following criteria:

(1) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) the extent to which the material is handled before reclamation to minimize loss;

(3) the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) the location of the reclamation operation in relation to the production process;

(5) whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) whether the person who generates the material also reclaims it; and

(7) other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial [, after initial] reclamation has produced a[, the resulting material is] commodity-like material [(even though it is not yet a commercial product, and has to be reclaimed further)]. A [This] determination that a partially-reclaimed material for which the variance is sought is commodity-like material will be based on whether the hazardous secondary material is legitimately recycled as specified in §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials) and on whether all of the following decision criteria are satisfied [factors]:

(1) whether the degree of partial reclamation the material has undergone is substantial as demonstrated by using a partial reclamation process other than the process that generated the hazardous waste;

(2) whether the partially reclaimed material has sufficient economic value that it will be purchased for further reclamation;

(3) whether the partially reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which is used in subsequent production steps;

(4) whether there is a market for the partially reclaimed material as demonstrated by known customer(s) who are further reclaiming the material (e.g., records of sales and/or contracts and evidence of subsequent use, such as bills of lading);

[(1) the degree of processing the material has undergone and the degree of further processing that is required;]

[(2) the value of the material after it has been reclaimed;]

[(3) the degree to which the reclaimed material is like an analogous raw material;]

[(4) the extent to which an end market for the reclaimed material is guaranteed;]

(5) whether the partially [the extent to which the] reclaimed material is handled to minimize loss; and

(6) other relevant factors.

(d) The executive director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that are transferred for reclamation in accordance with the requirements of 40 Code of Federal Regulations (CFR) §261.4(a)(24) and are managed at a verified reclamation facility or intermediate facility where the management of the hazardous secondary materials is not addressed under a Resource Conservation and Recovery Act (RCRA) Part B permit or interim status standards. The executive director's decision will be based on the following criteria:

(1) the reclamation facility or intermediate facility must demonstrate that the reclamation process for the hazardous secondary materials is legitimate pursuant to §335.27 of this title;

(2) the reclamation facility or intermediate facility must satisfy the financial assurance requirements of §335.703 of this title (relating to Financial Assurance Requirements);

(3) the reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a

significant non-complier under RCRA Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;

(4) the intermediate or reclamation facility must have the equipment and trained personnel needed to safely manage the hazardous secondary material and must meet emergency preparedness and response requirements under 40 CFR Part 261, Subpart M;

(5) if residuals are generated from the reclamation of the excluded hazardous secondary materials, the reclamation facility must have the permits required (if any) to manage the residuals, have a contract with an appropriately permitted facility to dispose of the residuals or present credible evidence that the residuals will be managed in a manner that is protective of human health and the environment; and

(6) the intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential

releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.

(e) [(d)] Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste [Waste]," §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 Non-Waste Determinations and 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 Facilities).

§335.21. Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations.

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste, [or] applications to classify particular

enclosed flame combustion devices as boilers, and applications for non-waste determinations:

(1) the owner or operator [The applicant] must apply to the executive director for the variance. The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) or §335.20 of this title (relating to Variance To Be Classified as a Boiler); [.]

(2) the [The] executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public meeting [hearing] upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the public meeting [hearing] (if any). Any person affected by a final decision of the executive director may file with the chief clerk a motion for reconsideration, in accordance with §50.39 [subject to §50.39(b)-(f)] of this title (relating to Motion for Reconsideration).

(3) in the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in §335.19 or §335.20 of this title or §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations), upon which a variance or non-waste determination has been based, the applicant must send a written description of the change in circumstances to the executive director. The executive director may issue a determination that the hazardous secondary material continues to meet the relevant criteria of the variance or non-waste determination or may require the facility to re-apply for the variance or non-waste determination;

(4) variances and non-waste determinations shall be effective for a fixed term not to exceed ten years. No later than six months prior to the end of this term, owners or operators of facilities must re-apply for a variance or non-waste determination. If an owner or operator of a facility re-applies for a variance or non-waste determination within six months, the owner or operator of the facility may continue to operate under an expired variance or non-waste determination until receiving a decision on their re-application from the executive director; and

(5) owners or operators of facilities receiving a variance or non-waste determination must provide notification as required by §335.26 of this title (relating to Notification Requirements for Hazardous Secondary Materials).

§335.26. Notification Requirement for Hazardous Secondary Materials.

Persons who generate, process, store or recycle hazardous secondary materials must comply with the requirements of 40 Code of Federal Regulations (CFR) §260.42 (Notification requirements for hazardous secondary materials) as adopted and amended through January 13, 2015 (80 FR 1694). For the purposes of this section and 40 CFR §260.42, the term "Regional Administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality.

§335.27. Legitimate Recycling of Hazardous Secondary Materials.

Persons who generate, process, store or recycle hazardous secondary materials must comply with the requirements of 40 Code of Federal Regulations (CFR) §260.43 (Legitimate recycling of hazardous secondary materials) as adopted and amended through January 13, 2015 (80 FR 1694). For the purposes of this section and 40 CFR §260.43, the term, "Regional Administrator" is changed to the "executive director" of the Texas Commission on Environmental Quality.

§335.32. Standards and Criteria for Non-Waste Determinations.

Persons who generate, process, store or recycle hazardous secondary materials must comply with the requirements of 40 Code of Federal Regulations §260.34 (Standards and criteria for non-waste determinations) as adopted and amended through

January 13, 2015 (80 FR 1694).

SUBCHAPTER E: INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES §335.112

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (Rules) and §5.105 (General Policy), 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), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), §361.024 (Rules and Standards), and §361.036 (Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§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 <u>in this section</u> [herein]) are adopted by reference as amended and adopted in the CFR through

June 1, 1990 (55 FR 22685) and as further amended as indicated in each paragraph of this subsection:

(1) Subpart B - General Facility Standards (as amended through January 8, 2010 (75 FR 1236));

(2) Subpart C - Preparedness and Prevention;

(3) Subpart D - Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §265.56(d);

(4) Subpart E - Manifest System, Recordkeeping and Reporting (as amended through February 7, 2014 (79 FR 7518) [March 18, 2010 (75 FR 12989)]), except 40 CFR §§265.71, 265.72, and 265.75 - 265.77 [, 265.76, and 265.77];

(5) Subpart F - Groundwater Monitoring (as amended through April 4, 2006 (71 FR 16862)), except 40 CFR §265.90 and §265.94;

(6) Subpart G - Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)); except 40 CFR §265.112(d)(3) and (4) and §265.118(e) and (f);

(7) Subpart H - Financial Requirements (as amended through September 16, 1992 (57 FR 42832)); except 40 CFR §§265.140, 265.141, 265.142(a)(2), (b) [265.142(b)] and (c), 265.143(a) - (g), 265.144(b) and (c), 265.145(a) - (g), 264.146, 265.147(a) - (d), and (f) - (k) [265.147(f) - (k)], and 265.148 - 265.150;

(8) Subpart I - Use and Management of Containers (as amended through July 14, 2006 (71 FR 40254));

(9) Subpart J - Tank Systems (as amended through July 14, 2006 (71 FR 40254));

(10) Subpart K - Surface Impoundments (as amended through July 14, 2006 (71 FR 40254));

(11) Subpart L - Waste Piles (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §265.253;

(12) Subpart M - Land Treatment (as amended through July 14, 2006 (71 FR 40254)) except, 40 CFR §§265.272, 265.279, and 265.280;

(13) Subpart N - Landfills (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §§265.301(f) - (i), 265.314, and 265.315;

(14) Subpart O - Incinerators (as amended through October 12, 2005 (70 FR 59402));

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

(16) Subpart Q - Chemical, Physical, and Biological Treatment (as amended through July 14, 2006 (71 FR 40254));

(17) Subpart R - Underground Injection;

(18) Subpart W - Drip Pads (as amended through July 14, 2006 (71 FR 40254));

(19) Subpart AA - Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254));

(20) Subpart BB - Air Emission Standards for Equipment Leaks (as amended through April 4, 2006 (71 FR 16862));

(21) Subpart CC - Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254));

(22) Subpart DD - Containment Buildings (as amended through July 14, 2006 (71 FR 40254));

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

(24) the following appendices contained in 40 CFR Part 265:

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

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

(C) Appendix IV - Tests for Significance;

(D) Appendix V - Examples of Potentially Incompatible Waste; and

(E) Appendix VI - Compounds With Henry's Law Constant Less Than 0.1 Y/X.

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

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

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

(3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) (Corrective Action Relating to Hazardous Waste).

(4) Reference to:

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

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

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

(D) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

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

(F) 40 CFR §265.90 is changed to §335.116 of this title (relating to Applicability of Groundwater Monitoring Requirements);

(G) 40 CFR §265.94 is changed to §335.117 of this title (relating to Recordkeeping and Reporting);

(H) 40 CFR §265.314 is changed to §335.125 of this title (relating to Special Requirements for Bulk and Containerized Waste);

(I) 40 CFR §270.1 is changed to §335.2 of this title (relating to Permit Required);

(J) 40 CFR §270.28 is changed to §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit and for a Post-Closure Order);

(K) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments);

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

(M) Qualified professional engineer is changed to Texas licensed professional engineer.

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 265, Subpart D (Contingency Plan and Emergency Procedures) is 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).

(7) Reference to 40 CFR §§265.71, 265.72, 265.76, and 265.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.115 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §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.

(9) Reference to 40 CFR Part 265, Subpart F is changed to include §335.116 and §335.117 of this title, in addition to the reference to 40 CFR Part 265, Subpart F, except §265.90 and §265.94.

(10) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

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

SUBCHAPTER F: PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES
§335.152

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (Rules), and §5.105 (General Policy), 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), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), §361.024 (Rules and Standards), and §361.036 (Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

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 CFR through June 1, 1990 (55 FR 22685) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) Subpart B--General Facility Standards (as amended through January 8, 2010 (75 FR 1236)); in addition, the facilities which are subject to 40 CFR Part 264, Subpart X, are subject to regulation under 40 CFR §264.15(b)(4) and §264.18(b)(1)(ii);

(2) Subpart C--Preparedness and Prevention;

(3) Subpart D--Contingency Plan and Emergency Procedures (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §264.56(d);

(4) Subpart E--Manifest System, Recordkeeping and Reporting (as amended through February 7, 2014 (79 FR 7518) [March 18, 2010 (75 FR 12989)]), except 40 CFR §§264.71, 264.72, 264.76, and 264.77; facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §264.73(b)(6);

(5) Subpart G--Closure and Post-Closure (as amended through July 14, 2006 (71 FR 40254)); facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR §§264.90(d), 264.111(c), 264.112(a)(2), 264.114, 264.117(a)(1)(i) and (ii), and 264.118(b)(1) and (2)(i) and (ii);

(6) Subpart H--Financial Requirements (as amended through April 4, 2006 (71 FR 16862)); except 40 CFR §§264.140, 264.141, 264.142(a)(2), (b) [264.142(b)] and (c), 264.143(a) - (h), 264.144(b) and (c), 264.145(a) - (h), 264.146, 264.147(a) - (d), and (f) - (k) [264.147(f) - (k)], and 264.148 - 264.151; and subject to the following limitations: facilities which are subject to 40 CFR Part 264, Subpart X, are subject to 40 CFR [§]§264.142(a)[,] and §264.144(a), and §37.6031(c) of this title (relating to Financial Assurance Requirements for Liability);

(7) Subpart I--Use and Management of Containers (as amended through July 14, 2006 (71 FR 40254));

(8) Subpart J--Tank Systems (as amended through July 14, 2006 (71 FR 40254));

(9) Subpart K--Surface Impoundments (as amended through July 14, 2006 (71 FR 40254)), except 40 CFR §264.221 and §264.228:

(A) reference to 40 CFR §264.221 is changed to §335.168 of this title (relating to Design and Operating Requirements (Surface Impoundments));

(B) reference to 40 CFR §264.228 is changed to §335.169 of this title (relating to Closure and Post-Closure Care (Surface Impoundments));

(10) Subpart L--Waste Piles (as amended [and adopted] through July 14, 2006 (71 FR 40254)), except 40 CFR §264.251;

(11) Subpart M--Land Treatment (as amended [and adopted] through July 14, 2006 (71 FR 40254)), except 40 CFR §264.273 and §264.280;

(12) Subpart N--Landfills (as amended through March 18, 2010 (75 FR 12989)), except 40 CFR §§264.301, 264.310, 264.314, and 264.315;

(13) Subpart O--Incinerators (as amended through April 8, 2008 (73 FR 18970));

(14) Subpart S--Special Provisions for Cleanup (as amended through March 18, 2010 (75 FR 12989));

(15) Subpart W--Drip Pads (as amended through July 14, 2006 (71 FR 40254));

(16) Subpart X--Miscellaneous Units (as amended through July 14, 2006 (71 FR 40254));

(17) Subpart AA--Air Emission Standards for Process Vents (as amended through July 14, 2006 (71 FR 40254));

(18) Subpart BB--Air Emission Standards for Equipment Leaks (as amended through July 14, 2006 (71 FR 40254));

(19) Subpart CC--Air Emission Standards for Tanks, Surface Impoundments, and Containers (as amended through July 14, 2006 (71 FR 40254));

(20) Subpart DD--Containment Buildings (as amended through July 14, 2006 (71 FR 40254));

(21) Subpart EE--Hazardous Waste Munitions and Explosives Storage (as amended through August 1, 2005 (70 FR 44150)); and

(22) the following appendices contained in 40 CFR Part 264:

(A) Appendix I--Recordkeeping Instructions (as amended through March 24, 1994 (59 FR 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 (62 FR 32451)).

(b) The provisions of 40 CFR §264.18(b) are applicable to owners and operators of hazardous waste management facilities, for which a permit is being sought, which are not subject to the requirements of §§335.201 - 335.206 of this title (relating to Purpose, Scope, and Applicability; Definitions; Site Selection to Protect Groundwater or Surface Water; Unsuitable Site Characteristics; Prohibition of Permit Issuance; and Petitions for Rulemaking). A copy of 40 CFR §264.18(b) is available for inspection at the library of the

Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

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

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

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

(3) Reference to Resource Conservation and Recovery Act, §3008(h) is changed to Texas Water Code, §7.031(c) - (e) ([relating to] Corrective Action Relating to Hazardous Waste).

(4) Reference to:

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

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

(C) 40 CFR §264.280 is changed to §335.172 of this title (relating to Closure and Post-Closure Care (Land Treatment Units));

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

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

(F) 40 CFR §264.310 is changed to §335.174 of this title (relating to Closure and Post-Closure Care (Landfills));

(G) 40 CFR §270.41 is changed to §305.62 of this title (relating to Amendments); and

(H) 40 CFR §270.42 is changed to §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(5) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste), as applicable.

(6) Reference to 40 CFR Part 264, Subpart D is 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).

(7) Reference to 40 CFR §§264.71, 264.72, 264.76, and 264.77 is changed to §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), §335.12(a) of this title, §335.15(3) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities), and §335.155 of this title (relating to Additional Reports), respectively.

(8) Reference to 40 CFR Part 264, Subpart F is changed to §335.156 of this title, §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.

(9) Reference to 40 CFR Part 265, Subpart F is 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.

(10) Reference to the EPA is changed to the Texas Commission on Environmental Quality.

(11) Reference to qualified professional engineer is changed to Texas licensed professional engineer.

(d) A copy of 40 CFR Part 264 is available for inspection at the library of the Texas Commission on Environmental Quality, located on the first floor of Building A at 12100 Park 35 Circle, Austin, Texas.

SUBCHAPTER R: WASTE CLASSIFICATION
§335.504

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (Rules), and §5.105 (General Policy), 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), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), §361.024 (Rules and Standards), and §361.036 (Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.504. Hazardous Waste Determination.

A person who generates a solid waste must determine if that waste is hazardous using the following method:

(1) Determine if the material is excluded or exempted from being a solid waste or hazardous waste per §335.1 of this title (relating to Definitions) or identified in 40 Code of Federal Regulations (CFR) Part 261, Subpart A, as amended through January 13, 2015 (80 FR 1694) [January 3, 2014 (79 FR 350)], or identified in 40 CFR Part 261, Subpart E, as amended through July 28, 2006 (71 FR 42928).

(2) If the material is a solid waste, determine if the waste is listed as, or mixed with, or derived from a listed hazardous waste identified in 40 CFR Part 261, Subpart D, as amended through April 13, 2012 (77 FR 22229) [March 18, 2010 (75 FR 12989)].

(3) If the material is a solid waste, determine whether the waste exhibits any characteristics of a hazardous waste as identified in 40 CFR Part 261, Subpart C, as amended through March 18, 2010 (75 FR 12989) [April 13, 2012 (77 FR 22229)].

SUBCHAPTER U: STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES OPERATING UNDER A STANDARD PERMIT §335.602

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.103 (Rules) and §5.105 (General Policy), 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), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), §361.024 (Rules and Standards), and §361.036 (Records and Manifests Required: Class I Industrial Solid Waste or Hazardous Waste), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed amendment implements THSC, Chapter 361.

§335.602. Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 267 (including all appendices to 40 CFR Part 267) are adopted by reference as amended and adopted in the CFR through September 8, 2005 (70 FR [Federal Register]

53420) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) 40 CFR Part 267, Subpart B--General Facility Standards;

(2) 40 CFR Part 267, Subpart C--Preparedness and Prevention:

(3) 40 CFR Part 267, Subpart D--Contingency Plan and Emergency Procedures;

(4) 40 CFR Part 267, Subpart E--Recordkeeping, Reporting, and Notifying;

(5) 40 CFR Part 267, Subpart F--Releases from Solid Waste Management Units;

(6) 40 CFR Part 267, Subpart G--Closure;

(7) 40 CFR Part 267, Subpart I--Use and Management of Containers;

(8) 40 CFR Part 267, Subpart J--Tank Systems;

(9) 40 CFR Part 267, Subpart DD--Containment buildings; and

(10) 40 CFR §267.142, concerning Cost estimate for closure.

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

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

(2) Reference to:

(A) 40 CFR Part 261 is changed to §335.504 of this title (relating to Hazardous Waste Determination);

(B) 40 CFR Part 262 is changed to Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste):

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

(D) Reference to 40 CFR Part 264, Subpart D is 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);

(E) 40 CFR Part 264, Subpart S is changed to §335.152(a)(14) of this title;

(F) 40 CFR Part 265 is changed to Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities);

(G) 40 CFR Part 268 is changed to Subchapter O of this chapter (relating to Land Disposal Restrictions);

(H) 40 CFR Part 270, Subpart J is changed to Chapter 305, Subchapter R of this title (relating to Resource Conservation and Recovery Act Standard Permits for Storage and Treatment Units);

(I) 40 CFR §262.34 is changed to §335.69 of this title (relating to Accumulation Time);

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

(K) Reference to "standardized permit" is changed to "standard permit".

(3) 40 CFR Parts 260 - 270 means the commission's rules including, but not limited to, Chapters 50, 305, and 335 of this title (relating to Action on Applications and Other Authorizations; Consolidated Permits; and Industrial Solid Waste and Municipal Hazardous Waste, respectively), as applicable.

(c) An owner or operator of a unit that treats, stores, or disposes of hazardous waste in tanks, containers, and containment buildings authorized by a standard permit as specified in this section shall establish and maintain financial assurance in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Non-Hazardous Industrial Solid Waste Facilities) [this chapter (relating to Warning Signs and Contaminated Areas)].

SUBCHAPTER V: STANDARDS FOR RECLAMATION OF HAZARDOUS SECONDARY MATERIALS
§§335.701 - 335.706

Statutory Authority

These new sections are proposed under Texas Water Code (TWC), §5.103 (Rules) and §5.105 (General Policy), 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), §361.017 (Commission's Jurisdiction: Industrial Solid Waste and Hazardous Municipal Waste), and §361.024 (Rules and Standards), which authorize the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with the general intent and purposes of the THSC.

The proposed sections implement THSC, Chapter 361.

§335.701. Purpose and Applicability.

(a) The purpose of this subchapter is to establish minimum standards for the management of hazardous secondary materials excluded under 40 Code of Federal Regulations (CFR) §261.4(a)(23), (24), and (27) (Exclusions).

(b) This subchapter applies to persons managing hazardous secondary materials excluded under 40 CFR §261.4(a)(23), (24), and (27).

§335.702. Standards

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 261 (including all appendices to 40 CFR Part 261) are adopted by reference as amended and adopted in the CFR through January 13, 2015 (80 FR 1694) and as further amended and adopted as indicated in each paragraph of this subsection:

(1) 40 CFR Part 261, Subpart I--Use and Management of Containers;

(2) 40 CFR Part 261, Subpart J--Tank Systems:

(3) 40 CFR Part 261, Subpart M--Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials;

(4) 40 CFR Part 261, Subpart AA--Air Emission Standards for Process Vents;

(5) 40 CFR Part 261, Subpart BB-- Air Emission Standards for Equipment Leaks; and

(6) 40 CFR Part 261, Subpart CC--Air Emission Standards for Tanks and Containers.

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

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

(2) 40 CFR §260.10 is changed to §335.1 of this chapter (relating to Definitions);

(3) The terms "EPA" and "Environmental Protection Agency" are changed to "Texas Commission on Environmental Quality."

§335.703. Financial Assurance Requirements.

(a) Applicability.

(1) The requirements of this section apply to owners or operators of reclamation facilities and intermediate facilities managing hazardous secondary materials excluded under 40 Code of Federal Regulations (CFR) §261.4(a)(24), except:

(2) States and the Federal government are exempt from the financial assurance requirements of this section.

(b) When used in this section, the following words and terms shall have the same meanings as the definitions in §37.11 and §335.1 of this title (relating to Definitions) except:

(1) Closure--Includes the activities under §335.8 of this title (relating to Closure and Remediation) and applicable closure requirements of 40 CFR Parts 264 and 265.

(2) Closure plan--Includes the removal and decontamination plan for release as set out in §335.705 of this title (relating to Removal and Decontamination Plan for Release).

(c) Owners and operators of a reclamation facility or an intermediate facility required by 40 CFR §261.4(a)(24) to provide financial assurance, shall establish and maintain financial assurance for removal and decontamination and corrective action as a condition of the exclusion under 40 CFR §261.4(a)(24) and comply with Chapter 37, Subchapters A and B of this title (relating to General Financial Assurance Requirements; and Financial Assurance Requirements for Closure, Post Closure, and Corrective Action) except:

(1) an owner or operator must submit an acceptable originally signed mechanism to the executive director prior to receiving a variance for the management of hazardous secondary materials under the exclusion in 40 CFR §261.4(a)(24);

(2) in addition to the reasons to draw specified in §37.101 of this title (relating to Drawing on the Financial Assurance Mechanisms), the executive director may draw on the financial assurance mechanism(s) following a determination by the executive director that the hazardous secondary materials do not meet the conditions of the exclusion under 40 CFR §261.4(a)(24).

(d) Owners or operators of a reclamation facility or intermediate facility required by 40 CFR §261.4(a)(24) to provide financial assurance must comply with Chapter 37,

Subchapter C of this title (relating to Financial Assurance Mechanisms for Closure, Post Closure, and Corrective Action), by establishing financial assurance for removal and decontamination and corrective action using any of the following mechanisms as specified in Chapter 37, Subchapter C of this title:

(1) Trust fund (fully funded), except reimbursements to the owner or operator as specified under §37.201(j) of this title (relating to Trust Fund) may only be made if the owner or operator begins final closure under the applicable requirements of 40 CFR Part 264 or 265;

(2) Surety bond guaranteeing payment, except:

(A) the bond must guarantee that the owner or operator will fund the standby trust fund in an amount equal to the penal sum of the bond before the loss of the exclusion under 40 CFR §261.4(a)(24) rather than the criteria set out in §37.211(d) of this title (relating to Surety Bond Guaranteeing Payment); and

(B) the alternate financial assurance to be provided by the Principal must meet the requirements specified in this section;

(3) Irrevocable standby letter of credit, except:

(A) the executive director may draw pursuant to subsection (c)(2) of this section in addition to §37.231 of this title (relating to Irrevocable Standby Letter of Credit); and

(B) alternate financial assurance must meet the requirements specified in this section;

(4) Financial test, except:

(A) the financial assurance amounts required by this section, for hazardous secondary materials must be included as an additional environmental obligation when determining eligibility for the financial test in accordance with §37.251 of this title (relating to Financial Test); and

(B) alternate financial assurance must meet the requirements of this section;

(5) Corporate guarantee except:

(A) the terms of the guarantee specified in §37.261(e)(1) of this title (relating to Corporate Guarantee), shall provide that following a determination by the executive director that the hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the requirements of the exclusion under 40 CFR §261.4(a)(24) the guarantor will dispose of any hazardous secondary material as hazardous waste and close the facility in accordance with the applicable closure requirements of 40 CFR Part 264 or 265, or establish a trust fund as specified in this section, in the name of the owner or operator in the amount of the current cost estimate; and

(B) the terms of the guarantee requiring alternate financial assurance in §37.261(e)(3) of this title must meet the requirements of this section.

(e) Owners or operators of a reclamation facility or intermediate facility required by 40 CFR §261.4(a)(24) to provide financial assurance for removal and decontamination and corrective action shall comply with the wording requirements of Chapter 37, Subchapter D of this title (relating to Wording of the Mechanisms for Closure, Post Closure and Corrective Action) for the mechanisms indicated in subsection (d) of this section except:

(1) the phrases in the Payment Bond under §37.311 of this title (relating to Payment Bond) shall be revised by:

(A) replacing the following language identified here by quotation marks "Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of, or corrective action at, each facility identified above, fund into the standby trust fund the amount(s) identified above for the facility," with the following language identified here by quotation marks "Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully, before the beginning of final closure of, or corrective action at, each facility identified above, fund into the standby trust fund the amount(s) identified above for the facility; or, if the Principal shall satisfy all the requirements for exclusion of hazardous secondary materials from classification as solid waste under 40 CFR §261.4(a)(24) and be released from the financial assurance requirements by the executive director"; and

(B) replacing the following language identified here by quotation marks "Or, if the Principal shall provide alternate financial assurance, as specified in 30 Texas Administrative Code, Chapter 37 (relating to Financial Assurance)" with the following language set off here by quotation marks "Or, if the Principal shall provide alternate financial assurance, as specified in 30 Texas Administrative Code, §335.703 (relating to Financial Assurance Requirements)"; and

(C) replacing the certification statement at the end of the Payment Bond with the following statement identified by quotation marks "The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in 30 Texas Administrative Code §37.311 (relating to Payment Bond), as modified by 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements), as such regulations were constituted on the date the bond was executed.";

(2) The Chief Financial Officer's letter associated with the financial test specified in §37.351 of this title (relating to Financial Test), shall include the environmental obligations associated with the exclusion in paragraph 5(f) of the Chief Financial Officer's Letter in Figure: 30 TAC §37.351;

(3) The wording of the Corporate Guarantee required by §37.361 of this title (relating to Corporate Guarantee) shall be revised by:

(A) replacing Recital number 4 with "For value received from (owner or operator) (describe consideration and dollar amount), guarantor guarantees to the TCEQ that in the event of a determination by the executive director that the

hazardous secondary materials at the owner or operator's facility covered by this guarantee do not meet the conditions of the exclusion under 40 CFR §261.4(a)(24), the guarantor will dispose of any hazardous secondary material as hazardous waste, and close the facility in accordance with the applicable closure requirements of 40 CFR Part 264 or 265, or establish a trust fund as specified in 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements) in the name of the (owner or operator) in the amount of the current cost estimate";

(B) replacing Recital number 5 with "Guarantor agrees that if, at the end of any fiscal year before termination of this guarantee, the guarantor fails to meet the financial test criteria, guarantor shall send within 90 days, by certified mail, notice to the TCEQ executive director and to (owner or operator) that the guarantor intends to provide alternate financial assurance as specified in 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements), as applicable, in the name of (owner or operator). Within 120 days after the end of such fiscal year, the guarantor shall establish such financial assurance unless (owner or operator) has done so";

(C) replacing Recital number 7 with "Guarantor agrees that within 30 days after being notified by the TCEQ executive director of a determination that guarantor no longer meets the financial test criteria or is disallowed from continuing as a guarantor of (closure, post closure, or corrective action), guarantor shall establish

alternate financial assurance as specified in 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements) in the name of (owner or operator) unless (owner or operator) has done so";

(D) replacing Recital number 11 with "Guarantor agrees that if (owner or operator) fails to provide alternate financial assurance as specified in 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements), and obtain written approval of alternate financial assurance from the TCEQ executive director within 90 days after a notice of termination by the guarantor is received by the TCEQ executive director from guarantor, guarantor shall provide such alternate financial assurance in the name of the (owner or operator)"; and

(E) The wording of the certification statement at the end of the Corporate Guarantee shall be replaced with the following language identified by quotation marks "I hereby certify that the wording of this guarantee is identical to the wording specified in 30 Texas Administrative Code §37.361 (relating to Corporate Guarantee) as modified by 30 Texas Administrative Code §335.703 (relating to Financial Assurance Requirements) as such regulations were constituted on the date first above written."

(f) An owner or operator of a reclamation or intermediate facility, or a group of

facilities, subject to financial assurance requirements under 40 CFR §261.4(a)(24) shall establish and maintain financial assurance for bodily injury and property damage to third parties caused by sudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for sudden accidental occurrences in the amount of at least $1 million per occurrence with an annual aggregate of at least $2 million, exclusive of legal defense costs.

(g) An owner or operator of a reclamation or intermediate facility, or group of facilities, with a land-based unit as defined in §335.1 of this title shall establish and maintain financial assurance for bodily injury and property damage to third parties caused by nonsudden accidental occurrences arising from operations of the facility or group of facilities. The owner or operator must have and maintain liability coverage for nonsudden accidental occurrences in the amount of at least $3 million per occurrence with an annual aggregate of at least $6 million, exclusive of legal defense costs.

(h) An owner or operator who must meet the requirements of subsections (f) and (g) of this section may combine the required per-occurrence coverage levels for sudden and non-sudden accidental occurrences into a single per-occurrence level, and combine the required annual aggregate level. Owners or operators who combine coverage levels

for sudden and non-sudden accidental occurrences must maintain liability coverage in the amount of $4 million per occurrence and $8 million annual aggregate.

(i) Owners or operators of a reclamation facility or intermediate facility, or a group of facilities, subject to financial assurance requirements under 40 CFR §261.4(a)(24) must also comply with Chapter 37, Subchapters A and E of this title (relating to General Financial Assurance Requirements; and Financial Assurance Requirements for Liability Coverage) and shall use any of the mechanisms specified in Chapter 37, Subchapter F of this title (relating to Financial Assurance Mechanisms for Liability) to meet the liability requirements of this section except:

(1) liability insurance may only be demonstrated by providing an Endorsement for Liability as specified in §37.641 of this title (relating to Endorsement for Liability); and

(2) when using the financial test in accordance with §37.541 of this title (relating to Financial Test for Liability) the financial assurance amounts required by of this section, for hazardous secondary materials excluded under 40 CFR §261.4(a)(24) must be included as an additional environmental obligation.

(j) An owner or operator of a reclamation facility, an intermediate facility, or a

group of facilities required by 40 CFR §261.4(a)(24) to provide financial assurance demonstrating liability coverage shall comply with the requirements of Chapter 37, Subchapter G of this title (relating to Wording of the Mechanisms for Liability) for the mechanisms required by subsection (i) of this section except The Chief Financial Officer's letter associated with the financial test for liability specified in §37.651 of this title (relating to Financial Test for Liability), must include the financial assurance amounts required by this section, for hazardous secondary materials excluded under 40 CFR §261.4(a)(24) as an additional environmental obligation in paragraph 5(f) of the Chief Financial Officer's Letter in Figure: 30 TAC §37.351.

(k) If the state of Texas either assumes legal responsibility for an owner's or operator's compliance with the closure, post closure, corrective action, or liability requirements of this chapter, or assures that funds will be available from state sources to cover those requirements, the owner or operator will be in compliance with the requirements of this chapter if the executive director determines that the state's assumption of responsibility is at least equivalent to the financial mechanisms specified in this chapter. The executive director will evaluate the equivalency of state guarantees principally in terms of certainty of the availability of funds for the required closure, post closure, or corrective action activities, or liability coverage; and the amount of funds that will be made available. The executive director may also consider other factors as the executive director deems appropriate. The owner or operator must submit to the

executive director a letter from the State of Texas describing the nature of the state's assumption of responsibility together with a letter from the owner or operator requesting that the state's assumption of responsibility be considered acceptable for meeting the requirements of this chapter. The letter from the state must include the following information: the facility's permit number and/or solid waste registration number, name, physical and mailing addresses, and the amount of funds for closure, post closure, or corrective action or liability coverage that are guaranteed by the state. The executive director will notify the owner or operator of the determination regarding the acceptability of the state's guarantee in lieu of financial mechanisms specified in this chapter. The executive director may require the owner or operator to submit additional information as is deemed necessary to make this determination. Upon approval by the executive director, the owner or operator will be deemed to be in compliance with the requirements of this chapter. If the State of Texas' assumption of responsibility is found acceptable as specified in this section except for the amount of funds available, the owner or operator may satisfy the requirements of this chapter by use of both the state's assurance and additional financial mechanisms as specified in this chapter. The amount of funds available through the state and the owner or operator's mechanisms shall equal at least the required amount.

§335.704. Cost Estimate.

(a) The requirements of this section apply to owners or operators of reclamation and intermediate facilities managing hazardous secondary materials excluded under 40 Code of Federal Regulations (CFR) §261.4(a)(24).

(b) The owner or operator must submit to the executive director a detailed written estimate, in current dollars, of the cost of disposing of any hazardous secondary material as listed or characteristic hazardous waste, and the potential cost of closing the facility as a treatment, storage, and disposal facility. The estimate must meet the following requirements:

(1) the estimate must equal the cost of conducting the activities described in this subsection at the point when the extent and manner of the facility's operation would make these activities the most expensive; and

(2) the cost estimate must be based on the costs to the owner or operator of hiring a third party to conduct these activities. A third party is a party who is neither a parent nor a subsidiary of the owner or operator (See definition of "Parent corporation" in 40 CFR §265.141(d)). The owner or operator may use costs for on-site disposal in accordance with applicable requirements if the owner or operator can demonstrate that on-site disposal capacity will exist at all times over the life of the facility.

(3) The cost estimate may not incorporate any salvage value that may be realized with the sale of hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 40 CFR §265.113(d), facility structures or equipment, land, or other assets associated with the facility.

(4) The owner or operator may not incorporate a zero cost for hazardous secondary materials, or hazardous or non-hazardous wastes if applicable under 40 CFR §265.113(d) that might have economic value.

(c) During the active life of the facility, the owner or operator must adjust the cost estimate for inflation in accordance with the requirements of §37.131 of this title (relating to Annual Inflation Adjustments to Closure Cost Estimates).

(d) During the active life of the facility, the owner or operator must submit to the executive director a revised cost estimate no later than 30 days after a change in a facility's operating plan or design that would increase the costs of conducting the activities described in subsection (b) of this section or no later than 60 days after an unexpected event which increases the cost of conducting the activities described in subsection (b) of this section. The revised cost estimate must be adjusted for inflation as specified in subsection (c) of this section.

(e) The owner or operator must keep the following at the facility during the operating life of the facility:

(1) the latest cost estimate prepared in accordance with subsections (b) and (d) of this section; and

(2) when this estimate has been adjusted in accordance with subsection (c) of this section, the latest adjusted cost estimate.

§335.705. Removal and Decontamination Plan for Release.

(a) An owner or operator of a reclamation facility or an intermediate facility who wishes to be released from his financial assurance obligations under 40 Code of Federal Regulations (CFR) §261.4(a)(24) shall submit a plan for removing all hazardous secondary material residues to the executive director at least 180 days prior to the date on which the owner or operator expects to cease to operate under the exclusion.

(b) The plan shall include, at a minimum:

(1) for each hazardous secondary materials storage unit subject to financial assurance requirements under 40 CFR §261.4(a)(24), a description of how all excluded

hazardous secondary materials will be recycled or sent for recycling, and how all residues, contaminated containment systems (liners, etc.), contaminated soils, subsoils, structures, and equipment will be removed or decontaminated as necessary to protect human health and the environment;

(2) a detailed description of the steps necessary to remove or decontaminate all hazardous secondary material residues and contaminated containment system components, equipment, structures, and soils including, but not limited to, procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination necessary to protect human health and the environment;

(3) a detailed description of any other activities necessary to protect human health and the environment during this timeframe, including, but not limited to, leachate collection, run-on and run-off control; and

(4) a schedule for conducting the activities described which, at a minimum, includes the total time required to remove all excluded hazardous secondary materials for recycling and decontaminate all units subject to financial assurance under 40 CFR §261.4(a)(24)(vi)(F), and the time required for intervening activities which will allow tracking of the progress of decontamination.

(c) The executive director will provide the owner or operator and the public, through a newspaper notice, the opportunity to submit comments on the plan and request modifications to the plan no later than 30 days from the date of the notice. The executive director in response to a request or at his discretion may hold a public meeting whenever such a public meeting might clarify one or more issues concerning the plan. The executive director will give public notice of the public meeting at least 30 days before it occurs. (Public notice of the public meeting may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.) The executive director will approve, modify, or disapprove the plan within 90 days of its receipt. If the executive director does not approve the plan, the executive director shall provide the owner or operator with a detailed written statement of reasons for the refusal and the owner or operator must modify the plan or submit a new plan for approval within 30 days after receiving such written statement. The executive director will approve or modify this plan in writing within 60 days. If the executive director modifies the plan, this modified plan becomes the approved plan. The executive director must assure that the approved plan is consistent with subsection (b) of this section. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

(d) Within 60 days of completion of the activities described in the plan for each hazardous secondary materials management unit, the owner or operator must submit to the executive director, by certified United States mail, a certification that all hazardous secondary materials have been removed from the unit and the unit has been decontaminated in accordance with the specifications in the approved plan. The certification must be signed by the owner or operator and signed and sealed by a Texas licensed professional engineer. Documentation supporting the professional engineer's certification must be furnished to the executive director, upon request, until the executive director releases the owner or operator from the financial assurance requirements for 40 CFR §261.4(a)(24).

§335.706. Release of the Owner or Operator from the Requirements of this Subchapter.

Within 60 days after receiving certifications from the owner or operator and a Texas licensed professional engineer that all hazardous secondary materials have been removed from the facility or a unit at the facility and that the facility or a unit has been decontaminated in accordance with the approved plan in accordance with §335.705 of this title (relating to Removal and Decontamination Plan for Release), the executive director will notify the owner or operator in writing that the owner or operator is no longer required to maintain financial assurance under 40 Code of Federal Regulations

§261.4(a)(24) for that facility or a unit at the facility, unless the executive director has reason to believe that all hazardous secondary materials have not been removed from the facility or unit at a facility or that the facility or unit has not been decontaminated in accordance with the approved plan. The executive director shall provide the owner or operator a detailed written statement of any such reason to believe that all hazardous secondary materials have not been removed from the facility or unit or that the facility or unit has not been decontaminated in accordance with the approved plan.