The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §§335.1, 335.2, 335.10 - 335.13, 335.24, 335.31, 335.43, 335.63, 335.69, 335.71, 335.76, 335.78, 335.91, 335.112, 335.152, 335.251, 335.261, 335.262, 335.331, 335.501, 335.504, 335.590, and 335.602; and new §335.281.

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 EPA delegates the primary responsibility of implementing the RCRA hazardous waste program to individual states in lieu of 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 EPA. Because the federal regulations undergo regular revision, the commission must adopt 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 of 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); November 3, 2014 (parts of Clusters XIX - XXI); and December 21, 2015 (parts of Clusters XX - XXIII).

The commission proposes in this rulemaking certain parts of RCRA Rule Clusters XXI, XXV, and XXVII that implement revisions to the federal hazardous waste program which were made by EPA between April 8, 2015 and November 30, 2018. Both mandatory and optional federal rule changes in these clusters are proposed to be adopted. Although not necessary to maintain authorization, EPA also recommends that the optional federal rule changes be incorporated into the state rules. Establishing equivalency with federal regulations will enable Texas to operate all delegated aspects of the federal hazardous waste program in lieu of the EPA.

*Vacatur of Comparable Fuels and Gasification Rule*

In the April 8, 2015, issue of the *Federal Register* (80 FR 18777), the EPA implemented vacaturs, ordered by the United States Court of Appeals for the District of Columbia Circuit on June 27, 2014, of regulations associated with the comparable fuels exclusion and the gasification exclusion. The vacatur eliminated the exclusions and reinstated the regulatory status in effect prior to their adoption with respect to the materials subject to this rule.
Coal Combustion Residual Co-Disposal Rule

In the April 17, 2015, issue of the Federal Register (80 FR 21302), the EPA codified a list of wastes generated primarily from processes that support the combustion of coal or other fossil fuels that are not subject to hazardous waste regulations when co-disposed with coal combustion residuals.

Imports and Exports of Hazardous Waste Rule

In the November 28, 2016, issue of the Federal Register (81 FR 85696), the EPA amended existing regulations regarding the export and import of hazardous wastes from and into the United States. EPA made these changes to provide greater protection to human health and the environment by: 1) making existing export and import related requirements more consistent with the current import-export requirements for shipments between members of the Organization for Economic Cooperation and Development; 2) enabling electronic submittal to EPA of all export and import-related documents (e.g., export notices, export annual reports); and 3) enabling electronic validation of consent in the Automated Export System for export shipments subject to RCRA export consent requirements prior to exit. The import and export regulations were promulgated under the Hazardous Waste and Solid Waste Amendments of 1984 which are administered by the EPA and are not delegable to states.

Waste), which contained 40 CFR §§262.50 – 262.58 and §262.60 (Applicability; Definitions; General requirements; Notification of intent to export; Special manifest requirements; Exception reports; Annual reports; Recordkeeping; International agreements; and Imports of hazardous waste). Further information on the removal of sections and integration of all import and export requirements into 40 CFR Part 262, Subpart H (Transboundary Movements of Hazardous Waste for Recovery or Disposal), can be found in the Section by Section Discussion of this preamble for individual sections impacted by these revisions.

Safe Management of Recalled Airbags Rule

In the November 30, 2018, issue of the Federal Register (83 FR 61552), the EPA conditionally exempted the collection of airbag waste from hazardous waste requirements. EPA concluded that the conditional exemption would facilitate dealerships, salvage yards, and others’ ability to conduct more expedited removal of defective and recalled airbag inflators and would facilitate safer and environmentally sound disposal. The conditions for exemption mirror the requirements for management of recalled airbags established by the United States Department of Transportation for the recalled airbags.

Promulgation of House Bill 1953

Additionally, the commission proposes this rulemaking to partially implement House Bill (HB) 1953, 86th Texas Legislature, 2019. HB 1953 amended Texas Health and Safety Code (THSC), §361.003 (Definitions) and §361.119 (Regulation of Certain Facilities as Solid Waste Facilities), and added THSC, §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste). These statutory enactments created a new conditional exclusion
from the definition of solid waste and from regulations for the management of municipal and industrial solid waste for owners and operators of facilities that convert plastics and certain other nonhazardous recyclable material through pyrolysis or gasification. The conditional exclusion is dependent upon two factors: 1) the facility owner or operator demonstrating that the primary function of the facility is to convert materials that have a resale value greater than the cost of converting the materials for beneficial use; and 2) that solid waste generated from converting the materials is disposed at an authorized solid waste management facility. The implementation of HB 1953 in Chapter 335 would only be applicable to material that would be classified as nonhazardous industrial solid waste if discarded because the commission intends to implement the exclusion enacted by HB 1953 applicable to municipal solid waste in a future rulemaking.

All proposed new rules and rule changes are discussed further in the Section by Section Discussion portion of this preamble.

As part of this rulemaking the commission is proposing revisions to 30 TAC Chapter 305, Consolidated Permits, concurrently in this issue of the Texas Register.

Section by Section Discussion

In addition to the proposed amendments associated with this rulemaking, various stylistic, non-substantive changes are being proposed to update rule language to current Texas Register style and format requirements. These changes are generally non-substantive and not specifically discussed in the Section by Section Discussion portion of this preamble.
§335.1, Definitions

The commission proposes §335.1(7) to add the definition of "AES filing compliance date" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would add the definition of "AES filing compliance date" that is consistent with the definition of "AES filing compliance date" in 40 CFR §260.10 (Definitions). EPA established December 31, 2017, as the AES filing compliance date in the August 29, 2017, issue of the Federal Register (82 FR 41015).

The commission proposes §335.1(8) to add the definition of "Airbag waste" to conform to the federal regulations promulgated in the November 30, 2018, issue of the Federal Register (83 FR 61552). Specifically, this amendment would add the definition of "Airbag waste" that is consistent with the definition of "Airbag waste" in 40 CFR §260.10.

The commission proposes §335.1(9) to add the definition of "Airbag waste collection facility" to conform to federal regulations promulgated in the November 30, 2018, issue of the Federal Register (83 FR 61552). Specifically, this amendment would add the definition of "Airbag waste collection facility" that is consistent with the definition of "Airbag waste collection facility" in 40 CFR §260.10.

The commission proposes §335.1(10) to add the definition of "Airbag waste handler" to conform to federal regulations promulgated in the November 30, 2018, issue of the Federal Register (83 FR 61552). Specifically, this amendment would add a definition of "Airbag waste
handler" that is consistent with the definition of "Airbag waste handler" in 40 CFR §260.10. The commission proposes to renumber the subsequent paragraphs accordingly to account for the additional definitions.

The commission proposes to delete existing §335.1(32) to remove the definition of "Consignee" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would remove the definition of "Consignee" consistent with the repeal of 40 CFR §262.51 and the definition of "Consignee."

The commission proposes §335.1(53) to add the definition of "Electronic import-export reporting compliance date" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would add the definition of "Electronic import-export reporting compliance date" that is consistent with the definition of "Electronic import-export reporting compliance date" in 40 CFR §260.10.

The commission proposes to delete existing §335.1(66) to remove the definition of "Gasification" to conform to federal regulations promulgated in the April 8, 2015, issue of the Federal Register (80 FR 18777). Specifically, this amendment would remove the definition of "Gasification" consistent with the removal of the definition from 40 CFR §260.10.
The commission proposes §335.1(70) to add the definition of "Gasification." This amendment would implement HB 1953 by adding the definition of "Gasification" consistent with the definition of "Gasification" under THSC, §361.003 (Definitions).

The commission proposes §335.1(71) to add the definition of "Gasification facility." This amendment would implement HB 1953 by adding a new definition of "Gasification facility" consistent with the definition of "Gasification facility" under THSC, §361.003.

The commission proposes to amend renumbered §335.1(84) to revise the definition of "Incinerator" to establish in proposed §335.1(84)(B) that incinerators are not a "Gasification facility" or "Pyrolysis facility" managing "Recoverable feedstock" consistent with the "Gasification facility" and "Pyrolysis facility" definitions enacted by HB 1953 under THSC, §361.003.

The commission proposes to amend renumbered §335.1(106) to revise the definition of "Manifest" to conform with the proposed title revision for §335.10.

The commission proposes §335.1(130) to add the definition of "Post-use polymers." This amendment implements HB 1953 for the purposes of material that would be classified as nonhazardous industrial solid waste if discarded. The commission would accomplish this by adding a definition of "Post-use polymers" consistent with the conditional exclusion under THSC, §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste), and the definition of "Post-use polymers" under THSC, §361.003.
The commission proposes to delete existing §335.1(128) to remove the definition of "Primary exporter" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment would remove the definition of "Primary exporter" consistent with the repeal of 40 CFR §262.51 and the definition of "Primary exporter."

The commission proposes §335.1(136) to add the definition of "Pyrolysis." This amendment would implement HB 1953 by adding a definition of "Pyrolysis" consistent with the definition of "Pyrolysis" under THSC, §361.003.

The commission proposes §335.1(137) to add the definition of "Pyrolysis facility." This amendment would implement HB 1953 by adding a new definition of "Pyrolysis facility" consistent with the definition of "Pyrolysis facility" under THSC, §361.003.

The commission proposes to delete existing §335.1(132) to remove the definition of "Receiving country" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696). Specifically, this amendment would remove the definition of "Receiving country" consistent with the repeal of 40 CFR §262.51 and the definition of "Receiving country."

The commission proposes §335.1(139) to add the definition of "Recognized trader" to conform to federal regulations promulgated in the November 28, 2016, issue of the *Federal
Register (81 FR 85696). Specifically, this amendment would add a definition of "Recognized trader" that is consistent with the definition of "Recognized trader" in 40 CFR §260.10.

The commission proposes §335.1(140) to add the definition of "Recoverable feedstock." This amendment would implement HB 1953 by adding a definition of "Recoverable feedstock" consistent with the definition of "Recoverable feedstock" under THSC, §361.003.

The commission proposes to amend renumbered §335.1(154)(A)(iv) of the definition of "Solid waste." This amendment proposes to adopt by reference revisions promulgated in the April 8, 2015, issue of the Federal Register (80 FR 18777) and November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Vacatur of the Comparable Fuels and Gasification Rule and Imports and Exports of Hazardous Waste Rule, respectively. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR §261.4(a) and §261.39 (Exclusions; and Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling). Additionally, the adoption by reference of §261.4(a)(16) and §261.38 were removed.

The commission proposes to further amend renumbered §335.1(154)(A)(iv) to adopt by reference revisions promulgated in the April 8, 2015, issue of the Federal Register (80 FR 18777) to incorporate changes associated with the Vacatur of the Comparable Fuels Rule and the Gasification Rule revisions. The commission proposes to accomplish the adoption of these revisions by removing the references for 40 CFR §261.4(a)(16) and §261.38, and
subclauses (I) - (VIII), consistent with the removal of these sections and language from federal regulations.

The commission proposes §335.1(154)(A)(v) to implement the new conditional exclusion from the definition of "Solid waste" enacted by HB 1953 under THSC, §§361.003, 361.041, and 361.119. The amendment would implement the statutory changes by creating a new exception from the definition of "Solid waste" for post-use polymers and recovered feedstocks processed through pyrolysis or gasification at a "Pyrolysis facility" or "Gasification facility," as those terms are defined in proposed §335.1, and are converted into materials that have a resale value greater than the cost of converting the materials for subsequent beneficial reuse and that the solid waste generated from converting the materials is disposed of in a solid waste management facility authorized under THSC, Chapter 361.

The commission proposes to amend renumbered §335.1(154)(D) to revise the citations for Table 1 to Figure: 30 TAC §335.1(154)(D)(iv) to be consistent with the renumbering of the paragraphs in §335.1. Furthermore, Table 1 is proposed to be revised to remove the inappropriate digit after the clause in the abbreviated citations within the column headings.

Additionally, the commission proposes to amend §335.1(154)(I) to implement the new conditional exclusion enacted by HB 1953 under THSC, §§361.003, 361.041, and 361.119. The amendment would implement the statutory changes by adding facility operators to the persons that are required by §335.1(154)(I) to provide appropriate documentation.
demonstrating that they meet the terms of an exclusion or exemption from the definition of "Solid waste" or from waste regulations. Specifically, this amendment would implement THSC, §361.119 which exempts facility owners and operators, that convert nonhazardous recyclable materials through "Pyrolysis" or "Gasification”, as those terms are defined in §335.1, from regulation under THSC, §361.119 upon demonstration that the primary function of the facility is to convert the materials into materials that have a resale value greater than the cost of converting the materials for subsequent beneficial reuse and that the solid waste generated from converting the materials is disposed of in a solid waste management facility authorized under THSC, Chapter 361.

The commission proposes to delete existing §335.1(162) to remove the definition of "Transit country" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would remove the definition of "Transit country" consistent with the repeal of 40 CFR §262.51 and the definition of "Transit country."

The commission proposes to delete existing §335.1(171) to remove the definition of "United States Environmental Protection Agency (EPA) acknowledgment of consent" to conform to federal regulations promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696). Specifically, this amendment would remove the definition of "United States Environmental Protection Agency (EPA) acknowledgment of consent” consistent with the repeal of 40 CFR §262.51. The definition of "EPA Acknowledgment of Consent (AOC)" in 40 CFR §262.81 (Definitions) is adopted by reference as published in the November 28, 2016,
issue of the *Federal Register* (81 FR 85696) in §335.76 (Additional Requirements Applicable to International Shipments).

The commission proposes to amend renumbered §335.1(186)(C) to revise the definition of "User of the electronic manifest system" to conform with the proposed title revision for §335.10.

§335.2, Permit Required

The commission proposes to amend §335.2(g) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citation for 40 CFR §261.4(e) and (f). Specifically, the EPA amended existing regulations to add 40 CFR §261.4(e)(4), which placed a mass limit of 25 kilograms (kg) on imported or exported treatability study samples for eligibility with exemptions from hazardous waste regulations.

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

The commission proposes to amend §335.10 to revise the section title by removing the words "and Primary Exporters of Hazardous Waste." The proposed title reflects the removal of the term "Primary Exporters" from 40 CFR Part 262 (Standards Applicable to Generators of Hazardous Waste).
The commission proposes to amend §335.10(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by removing the references to 40 CFR §§262.54, 262.55, and 262.60, which were repealed in this federal rulemaking; adding the reference for 40 CFR Part 262, Subpart H; and amending the *Federal Register* citation for the Appendix to 40 CFR Part 262. Additionally, the commission proposes to amend §335.10(a)(1) to remove the reference to "primary exporters."

The commission also proposes to amend §335.10(c) to remove the exceptions for 40 CFR §262.54 and §262.55, which is proposed to be removed from §335.10(a).

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

The commission proposes to amend §335.11(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the *Federal Register* (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the *Federal Register* citations for 40 CFR §263.20 (The manifest system), and the Appendix to 40 CFR Part 262.

The commission proposes to further amend §335.11(a) to remove the exceptions for §335.10(d) and (e), which apply solely to shipments of Class 1 waste, and to revise the citation for §335.10 to conform with the proposed title revision for §335.10.
§335.12, Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities

The commission proposes to amend §335.12(a) and (b) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR §264.71 (Use of manifest system); §265.71 (Use of manifest system); and the Appendix to 40 CFR Part 262.

The commission proposes to further amend §335.12(a) to revise the citation for §335.10 to conform with the proposed title revision for §335.10.

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

The commission proposes to amend §335.13 to revise the section title by removing "and Primary Exporters of Hazardous Waste." The proposed title reflects the removal of the term "Primary Exporters" from 40 CFR Part 262.

The commission proposes §335.13(a). Proposed §335.13(a) contains the language in existing §335.13(m), which is proposed for deletion. Proposed subsection (a) clarifies that generators that generate less than 100 kg of hazardous or Class 1 waste, or less than the quantities of acutely hazardous waste listed in §335.78 (Special Requirements for Hazardous Waste
Generated by Conditionally Exempt Small Quantity Generators) are not subject to the requirements of §335.13. The commission proposes to re-letter subsequent subsections accordingly.

The commission proposes to amend re-lettered §335.13(b) to remove the document identification "(S1)" for the Waste Shipment Summary, which no longer applies.

The commission proposes to delete existing §335.13(b), to remove the requirement for exporters of hazardous or Class 1 waste to complete a Waste Shipment Summary.

The commission proposes to delete existing §335.13(c). The Foreign Waste Shipment Summary requirement is no longer needed since the changes associated with the Imports and Exports of Hazardous Waste Rule allow for improved tracking of hazardous waste imports and exports.

The commission proposes to amend re-lettered §335.13(c) to remove the document identification "(S1)" for the Waste Shipment Summary, which no longer applies; the requirement for the Foreign Waste Shipment Summary, and the document identification "(F1);" the reference to "in-state/out-of-state primary exporter;" and the last sentence, "Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection."

The commission proposes to delete existing §335.13(e) to remove the graphic
representation illustrating generator, waste type, shipment type, and report method because it is no longer needed.

The commission proposes to delete existing §335.13(h) to remove the reference for "primary exporter/importer."

The commission proposes to amend re-lettered §335.13(f) to remove the references to "primary exporter," revise the citation for §335.10 to conform with the proposed title revision for §335.10, and to replace the phrase "a minimum of" with "at least."

The commission proposes to amend re-lettered §335.13(h) to remove the references to "primary exporter."

The commission proposes to delete existing §335.13(n) to remove the references to "primary exporters;" 40 CFR §262.51; 40 CFR §262.56; and the annual report requirement contained within 40 CFR §262.56.

The commission proposes to amend re-lettered §335.13(j) to remove the references to "primary exporters;" 40 CFR Part 262, Subpart A; 40 CFR §262.51; and 40 CFR §262.58(a)(1); and to clarify that any person who exports or imports hazardous waste is subject to requirements in 40 CFR §262.12 and 40 CFR Part 262, Subpart H, which are proposed to be adopted by reference in §335.76(a).
§335.24, Requirements for Recyclable Materials and Nonhazardous Recyclable Materials

The commission proposes to amend §335.24(c)(1) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by revising the language in §335.24(c)(1) to be consistent with the language in revised 40 CFR §261.6(a)(3)(i), which clarifies that exports and imports of recyclable industrial ethyl alcohol are subject to the requirements of revised 40 CFR Part 262, Subpart H; and to move the language in existing §335.24(c)(1)(B) to the of §335.24(c)(1). The commission further proposes to delete current §335.24(c)(1)(A), which contains references to 40 CFR §§262.53, 262.55, 262.56, and 262.57; and 40 CFR Part 262, Subpart E, which have been repealed and reserved in the federal revisions.

The commission proposes to amend §335.24(c)(3) to adopt by reference revisions promulgated in the April 8, 2015, issue of the Federal Register (80 FR 18777) to incorporate changes associated with the Vacatur of the Comparable Fuels Rule and the Gasification Rule. The commission proposes to accomplish the adoption of these revisions by adding a dated Federal Register citation for 40 CFR §261.4(a)(12). Specifically, 40 CFR §261.4(a)(12)(i) was revised.

The commission proposes to amend §335.24(g) to revise the citations for §335.10 and §335.13 to conform with the proposed title revisions for §335.10, and §335.13.
The commission proposes to amend §335.24(o) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by revising the language in §335.24(o) to be consistent with the language in revised 40 CFR §261.6(a)(5), which clarifies that hazardous waste that is exported or imported for recovery is subject to 40 CFR Part 262, Subpart H.

§335.31, Incorporation of References

The commission proposes to amend §335.31 to adopt by reference the revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Import and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by revising the Federal Register citation for 40 CFR §260.11 (Incorporation by reference). The change revised the list of guidance materials available for purchase from the Organization for Economic Co-operation and Development.

§335.43, Permit Required

The commission proposes to amend §335.43(a) and (b) to replace the reference to the predecessor agency, Texas Natural Resource Conservation Commission, with the current agency, Texas Commission on Environmental Quality.

§335.63, EPA Identification Numbers
The commission proposes §335.63(c) to incorporate the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. Proposed §335.63(c) would require all "Recognized traders" in Texas, as defined in proposed §335.1(139), to receive an EPA identification number prior to arranging for imports or exports of hazardous wastes. The proposed language is consistent with revised 40 CFR §262.12(d).

§335.69, Accumulation Time
The commission proposes to amend §335.69(m) to revise the citation for §335.10 to conform with the proposed title revision for §335.10.

§335.71, Biennial Reporting
The commission proposes to amend §335.71 to adopt by reference the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by adding the publication date to the Federal Register citation for 40 CFR §262.41.

§335.76, Additional Requirements Applicable to International Shipments
The commission proposes to amend §335.76(a) to adopt by reference the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by clarifying that all
transboundary movements of hazardous waste are subject to 40 CFR Part 262, Subpart H and §262.12 (EPA identification numbers).

The commission proposes to amend §335.76(b) to clarify that imports of industrial solid waste are subject to Chapter 335. The commission proposes to further amend §335.76(b) to delete §335.76(b)(1) - (5), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in proposed §335.76(a), and these paragraphs are no longer needed.

The commission proposes to amend §335.76(c) to adopt by reference the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by clarifying that hazardous waste exporters are subject to a separate annual report requirement contained in 40 CFR §262.83(g). The proposed language is consistent with revised 40 CFR §262.41(b). The commission proposes to further amend §335.76(c) to delete §335.76(c)(1) - (3), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in proposed §335.76(a), and these paragraphs are no longer needed.

The commission proposes to delete §335.76(d) - (h), as all transboundary movements of hazardous waste are made subject to the requirements of 40 CFR Part 262, Subpart H adopted by reference in proposed §335.76(a), and these subsections are no longer needed.
§335.78, Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

The commission proposes to amend §335.78(c)(1) to adopt by reference the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by adding a publication date to the Federal Register citation for 40 CFR §261.4(c) - (f). Specifically, 40 CFR §261.4(d) and (e) were revised.

The commission proposes §335.78(g)(3)(H). Proposed §335.78(g)(3)(H) adopts the language from 40 CFR §262.14(a)(5)(xi) (Conditions for exemption for a very small quantity generator), which as a condition for exemption requires that hazardous waste airbags generated by a conditionally exempt small quantity generator (less than 100 kg of hazardous wastes generated per calendar month) disposed of offsite, must be sent to an airbag waste collection facility or designated facility subject to the requirements of 40 CFR §261.4(j), which are contained within proposed new §335.281 (Airbag Waste).

§335.91, Scope

The commission proposes to amend §335.91(e) to adopt by reference the federal revisions published in the November 28, 2016, issue of the Federal Register (81 FR 85696) associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by revising the language in §335.91(e) to be
consistent with the language in revised 40 CFR §263.10(d) (Scope), which clarifies that transporters of hazardous waste for export or import are subject to 40 CFR Part 262, Subpart H.

§335.112, Standards
The commission proposes to amend §335.112(a)(1) and (4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR Part 265, Subparts B and E (General Facility Standards; and Manifest System, Recordkeeping and Reporting). Specifically, 40 CFR §265.12 (Required notices) and §265.71 were revised.

§335.152, Standards
The commission proposes to amend §335.152(a)(1) and (4) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR Part 264, Subparts B and E (General Facility Standards; and Manifest System, Recordkeeping and Reporting). Specifically, 40 CFR §264.12 and §264.71 were revised.

§335.251, Applicability and Requirements
The commission proposes to amend §335.251(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citation for 40 CFR Part 266, Subpart G (Spent Lead-Acid Batteries Being Reclaimed).

The commission proposes to delete existing §335.251(c) and proposes §335.251(c) – (g) to adopt revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule.

§335.261, Universal Waste Rule

The commission proposes to amend §335.261(a) to adopt by reference revisions promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citation for 40 CFR Part 273 (Standards for Universal Waste Management). Specifically, 40 CFR §§273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70 (Exports; Tracking universal waste shipments; Exports; Exports; Tracking universal waste shipments; and Imports) were revised.

The commission proposes to amend §335.261(b) to make conformational changes
associated with the adoption of revised 40 CFR Part 273. These include adding §§273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70 to the list of sections to which the changes within §335.261(b) do not apply. These sections are excluded from these changes because they are associated with the federal import and export of hazardous waste regulations. States are not allowed to replace federal or international references or terms with state references or terms. The commission further proposes to amend §335.261(b) to remove existing paragraphs (23), (24), (33), and (34), and renumber the remaining paragraphs, accordingly. These paragraphs contain references to 40 CFR §§262.53, 262.56, and 262.57, and 40 CFR Part 262, Subpart E, which were removed and reserved in the federal revisions; and replace federal citations for exports of hazardous waste with state citations, which is prohibited.

§335.262, Standards for Management of Paint and Paint-Related Wastes

The commission proposes to amend §335.262(b) to revise language to include non-pigmented paint wastes in universal waste regulations.

§335.281, Airbag Waste

The commission proposes new §335.281 to adopt the exemption promulgated in the November 30, 2018, issue of the Federal Register (83 FR 61552) associated with the Safe Management of Recalled Airbags rule. The commission proposes to accomplish the adoption of this rule by including the language of new 40 CFR §261.4(j) in proposed new §335.281.

§335.331, Failure to Make Payment or Report
The commission proposes to delete §335.331(c), which subjected operators to a daily civil penalty for submitting late reports, and re-letter the remaining subsection accordingly.

§335.501, Purpose, Scope, and Applicability

The commission proposes to amend §335.501 to correct a citation to 30 TAC §330.3 (Definitions).

§335.504, Hazardous Waste Determination

The commission proposes to amend §335.504(1) to incorporate changes associated with the Vacatur of Comparable Fuels and Gasification, Coal Combustion Residual Co-Disposal, and Imports and Exports of Hazardous Waste Rules. The commission proposes to accomplish the adoption of these revisions by amending the Federal Register citations for 40 CFR Part 261, Subparts A and E (General; and Exclusions/Exemptions). Specifically, 40 CFR §§261.4, 261.6 (Requirements for recyclable materials), and 261.39 were revised.

§335.590, Operational and Design Standards

The commission proposes to amend §335.590(24)(A)(ii) to clarify the components of a composite liner by replacing the reference to a flexible membrane component with a reference to a geomembrane layer component. This correction makes the language consistent with municipal solid waste standards in §330.331(e)(1) (Design Criteria).

§335.602, Standards

The commission proposes to amend §335.602(a)(4) to adopt by reference revisions
promulgated in the November 28, 2016, issue of the Federal Register (81 FR 85696) to incorporate changes associated with the Imports and Exports of Hazardous Waste Rule. The commission proposes to accomplish the adoption of these revisions by adding the Federal Register citation for 40 CFR Part 267, Subpart E (Recordkeeping, Reporting, and Notifying). Specifically, 40 CFR §267.71 (Use of the manifest system) was revised.

**Fiscal Note: Costs to State and Local Government**

Jené Bearse, Analyst in the Budget and Planning Division, determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

This rulemaking addresses necessary changes that are required to be consistent with solid and hazardous waste requirements within RCRA and recent changes to state law due to HB 1953.

**Public Benefits and Costs**

Ms. Bearse determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated will be compliance with state law, federal law, and regulations of the EPA.

**Local Employment Impact Statement**

The commission reviewed this proposed rulemaking and determined that a Local
Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

**Rural Community Impact Statement**

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments and new section would apply statewide and have the same effect in rural communities as in urban communities.

**Small Business and Micro-Business Assessment**

The agency is not aware of any adverse fiscal implications for small or micro-businesses due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect. Often small businesses are conditionally exempt from many of RCRA regulations because they are not known to generate significant volumes of hazardous waste.

**Small Business Regulatory Flexibility Analysis**

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rulemaking does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.
Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking does not create nor expand an existing regulation. However, the proposed rulemaking contains the proposed deletion of the existing requirements for affected materials to be managed as solid wastes and the solid waste regulation for pyrolysis and gasification activities, as well as the federal gasification and comparable fuels exclusions. This proposal may decrease the number of individuals subject to that provision’s applicability. During the first five years, the proposed rulemaking should not impact positively or negatively the state's economy.

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 action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "Major environmental rule" as defined in that statute. A "Major environmental rule" is 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 rulemaking is not a major environmental rule because it is 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 rulemaking implements requirements already imposed on the regulated community under 42 United States Code (USC), §6926(g). Likewise, there will be no adverse effect in a material way on 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 from those revisions outside 42 USC, §6926(g), because either the changes are not substantive, or the regulated community will benefit from the greater flexibility and reduced compliance burden.

Texas Government Code, §2001.0225, applies to a major environmental rule, the result of which is to: exceed a standard set by federal law, unless the rule is specifically required by state law; exceed an express requirement of state law, unless the rule is specifically required by federal law; 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 adopt a rule solely under the general authority of the commission. The proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225.

First, the rulemaking does not exceed a standard set by federal law because the commission is proposing this rulemaking to implement revisions to the federal hazardous waste
program. The commission must meet the minimum standards and mandatory requirements of the federal program to maintain authorization of the state hazardous waste program.

Second, although the 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.

Third, 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 is proposing rules that are required to maintain authorization of the state hazardous waste program.

And fourth, this rulemaking does not seek to adopt a rule solely under the general powers of the agency. Rather, this rulemaking is authorized by specific sections of the Texas Water Code and the Texas Health and Safety Code that are cited in the Statutory Authority section of this preamble.

Written comments on the Draft Regulatory Impact Analysis Determination may be submitted to the contact person 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 maintain state’s authorization to implement RCRA hazardous waste program by adopting state hazardous waste rules that are equivalent to the federal regulations and to implement the requirements of HB 1953. The proposed rulemaking substantially advances these stated purposes by proposing rules that: 1) are equivalent to the federal regulations, 2) incorporate the federal regulations, or 3) implement the requirements of HB 1953.

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(g), the state must adopt rules that meet the minimum standards of the federal hazardous waste program administered by 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 goals applicable to the proposed rules include protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; and to make agency and subdivision decision-making affecting
CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs. CMP policies applicable to the proposed rules include to 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 federal Solid Waste Disposal Act, 42 USC, §§6901 et seq. Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these proposed rules do not create or have a direct or significant adverse effect on any CNRAS, and because the proposed rules would update and enhance the commission's rules concerning hazardous waste facilities.

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.

**Effect on Sites Subject to the Federal Operating Permits Program**

The proposed amendments are not expected to have a significant impact on sites subject to the Federal Operating Permits Program under 30 TAC Chapter 122. Facilities which operate under a Federal Operating Permit (FOP) should evaluate the proposed changes to determine if an update to their FOP is necessary.
Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on February 6, 2020, at 10:00 a.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:

https://www6.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 2019-085-335-WS. The comment period closes on February 11, 2020. Copies of the proposed rulemaking can be obtained from the commission’s website at

https://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Jarita Sepulvado, Industrial and Hazardous Waste Permits Section, (512) 239-4413.
SUBCHAPTER A: INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

§§335.1, 335.2, 335.10, 335.13, 335.24, 335.31

Statutory Authority
The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; THSC, §361.041, which requires that the commission consider the treatment of post-use polymers and recoverable feedstocks; THSC, §361.078, which relates to the maintenance of state program authorization under federal law; and THSC, §361.119, which authorizes the commission to regulate industrial solid waste and hazardous waste and to adopt rules consistent with THSC, Chapter 361.

The proposed amendments 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" 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 portion" and "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 gas" and "Storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "Hydrocarbons" and "Underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.201; 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) AES filing compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the Federal Register, on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System platform.

(8) Airbag waste--Any hazardous waste airbag modules or hazardous waste airbag inflators.

(9) Airbag waste collection facility--Any facility that receives airbag waste from airbag handlers subject to regulation under §335.281 of this title (relating to Airbag Waste) and accumulates the waste for more than ten days.

(10) Airbag waste handler--Any person, by site, who generates airbag waste that is subject to regulation under this chapter.

(11) [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.
(12) [(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.

(13) [(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.

(14) [(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.

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

(16) [(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).

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

(18) [(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.

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

(20) [(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.

(21) [(17)] Carbon regeneration unit--Any enclosed thermal treatment device used to regenerate spent activated carbon.
(22) [(18)] Cathode ray tube (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.

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

(24) [(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.

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

(26) [(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.

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

(28) [(24)] 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).

(29) [(25)] 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).

(30) [(26)] 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).
(31) [(27)] Closed portion--That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "Active portion" and "Inactive portion.")

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

(33) [(29)] 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.

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

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

(36) [(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.

(37) [(34)] Container--Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.
(38) [(35)] 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).

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

(40) [(37)] 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.

(41) [(38)] 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.
(42) [(39)] 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.

(43) [(40)] 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.

(44) [(41)] 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.

(45) [(42)] 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; 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).

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

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

(48) [(45)] Dioxins and furans (D/F)--Tetra, penta, hexa, hepta, and octachlorinated dibenzo dioxins and furans.
(49) [(46)] 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.

(50) [(47)] 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.

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

(52) [(49)] 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.

(53) Electronic import-export reporting compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the Federal Register, on or after which exporters, importers, and receiving facilities are required to submit certain
export and import related documents to EPA using EPA's waste Import Export Tracking System, or its successor system.

(54) [(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).

(55) [(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.

(56) [(52)] 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 nonhazardous [non-hazardous] industrial solid waste; and

(B) meets the definition of "Tank," "Tank system," "Container," or "Transport vehicle," as defined in this section; or "Vessel" as defined in 40 CFR §260.10.
(57) [(53)] 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*.

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

(59) [(55)] 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.

(60) [(56)] 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.

(61) [(57)] 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.

(62) [(58)] 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.

(63) [(59)] 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.

(64) [(60)] 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.
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) regardless of 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.
(66) [(62)] 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).

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

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

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

(70) Gasification--A process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.
(71) **Gasification facility**—A facility that receives, separates, stores, and converts post-use polymers and recoverable feedstocks using gasification.

[(66) 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.]

(72) [(67)] **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.

(73) [(68)] **Groundwater**—Water below the land surface in a zone of saturation.

(74) [(69)] **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

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.

(75) [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.

(76) [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.


(78) [73] 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.

(79) [74)] 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.

(80) [75)] 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.

(81) [76)] 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.
In operation--Refers to a facility which is processing, storing, or disposing of solid waste or hazardous waste.

Inactive portion--That portion of a facility which is not operated after November 19, 1980. (See also "Active portion" and "Closed portion.")

Incinerator--

(A) Any enclosed device that:

(i) [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

(ii) [(B)] meets the definition of "Infrared incinerator" or "Plasma arc incinerator."

(B) Does not include a "Gasification facility" or "Pyrolysis facility," managing "Recoverable feedstock," as defined in this section.

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.

(86) [(81)] 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.

(87) [(82)] 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
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.

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

(89) [(84)] 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.

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

(91) [(86)] Injection well--A well into which fluids are injected. (See also "Underground injection.")
(92) [(87)] 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.

(93) [(88)] 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.

(94) [(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.

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

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

(97) [(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.
(98) [(93)] 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.

(99) [(94)] 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.

(100) [(95)] 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.

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

(102) [(97)] 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.

(103) [(98)] 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.

(104) [(99)] 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.

(105) [(100)] 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.

(106) [(101)] 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.
(107) [(102)] Manifest tracking number--The alphanumerical 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.

(108) [(103)] 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.

(109) [(104)] 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).

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

(111) [(106)] 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.

(112) [(107)] 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.
(113) [(108)] 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 tank system.")

(114) [(109)] No free liquids--As used in 40 Code of Federal Regulations §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.

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

(116) [(111)] Onground tank--A device meeting the definition of "Tank" in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.
(117) [(112)] 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.

(118) [(113)] 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" and "Thermal processing.")

(119) [(114)] Operator--The person responsible for the overall operation of a facility.
(120) [(115)] Owner--The person who owns a facility or part of a facility.

(121) [(116)] 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.

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

(123) [(118)] 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.

(124) [(119)] 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.
(125) [(120)] Pesticide--Has the definition adopted under §335.261 of this title (relating to Universal Waste Rule).

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

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "Petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (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;


(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 oil" in this section.

(B) For the purposes of this chapter, a "Petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 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.

(127) [(122)] 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.

(128) [(123)] 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.

(129) [(124)] 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.

(130) Post-use polymers--Plastic polymers that derive from industrial sources or activities that would be classified as a nonhazardous industrial solid waste if not converted into a valuable raw, intermediate, or final product. Post-use polymers include used polymers that contain incidental contaminants or impurities such as paper labels or metal rings but do not include used polymers mixed with solid waste, medical waste, hazardous waste, electronic waste, tires, or construction or demolition debris.
(131) [(125)] Poultry--Chickens or ducks being raised or kept on any premises in the state for profit.

(132) [(126)] 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.

(133) [(127)] 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) 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.]

(134) [(129)] 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" 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.

(135) [(130)] 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.

(136) Pyrolysis--A manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere until melted and thermally decomposed and then
cooled, condensed, and converted into a valuable raw, intermediate, or final product, including a plastic, monomer, chemical, wax, lubricant, or chemical feedstock or crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel.

(137) Pyrolysis facility--A manufacturing facility that receives, separates, stores, and converts post-use polymers using pyrolysis.

(138) [131] 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.

(139) Recognized trader--A person domiciled in the United States, by site of business, who acts to arrange and facilitate transboundary movements of wastes destined for recovery or disposal operations, either by purchasing from and subsequently selling to United States and foreign facilities, or by acting under arrangements with a United States waste facility to arrange for the export or import of the wastes.

(140) Recoverable feedstock--One or more of the following materials, derived from nonhazardous industrial solid waste, other than coal refuse, that has been processed
so that it may be used as feedstock in a "Gasification facility" or "Pyrolysis facility" as defined in this section:

(A) post-use polymers; and

(B) material, including municipal solid waste containing post-use polymers and other post-industrial waste containing post-use polymers, that has been processed into a fuel or feedstock for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 Code of Federal Regulations §241.3(c), as amended through February 8, 2016 (81 FR 6742).

[(132) 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).]

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

[(142) [(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.

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

(144) [[(136)]] 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.

(145) [[(137)]] 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.

(146) [[(138)]] 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.

(147) [(139)] 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.

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

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

(150) [(142)] Saturated zone or zone of saturation--That part of the earth's crust in which all voids are filled with water.
(151) [(143)] Shipment--Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

(152) [(144)] 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.

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

(154) [(146)] 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 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) §261.40 [§§261.4(a)(1) - (24), (26), and (27), 261.39, and 261.40], as amended through January 13, 2015 (80 FR 1694), §261.4(a)(1) - (15), (17) - (24), (26), and (27), as amended through April 8, 2015 (80 FR 18777), or §261.39, as amended through November 28, 2016 (81 FR 85696), subject to the changes in this clause, by variance, or by non-waste determination granted under §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), §335.21 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), and §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations). For the purposes of the exclusions under 40 CFR §261.39 [(as amended through June 26, 2014 (79 FR 36220))] and §261.40, §261.41 is adopted by reference as amended through July 28, 2006 (71 FR 42928); or [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' in 30 TAC §335.1" meaning "subparagraph (A)(iv) under the definition of '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' 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) 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."]

(v) recoverable feedstocks that are processed through pyrolysis or gasification at a pyrolysis facility or gasification facility, where the primary function of the facility is to convert recoverable feedstocks into materials that have a resale value greater than the cost of processing the recoverable feedstock for subsequent beneficial use and where solid waste generated from converting recoverable feedstock is disposed of at an authorized solid waste management facility.

(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;

(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(154)(D)(iv) [§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" 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(154)(D)(iv) [§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(154)(D)(iv) [§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 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(154)(D)(iv) [§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(154)(D)(iv) [§335.1(146)(D)(iv)] are solid wastes when accumulated speculatively.

Figure: 30 TAC §335.1(154)(D)(iv)
[Figure: 30 TAC §335.1(146)(D)(iv)]

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<thead>
<tr>
<th>TABLE 1</th>
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<th>Disposal S.W. Def. (D)(i)(1)</th>
<th>S.W. Def. (D)(ii)(2)</th>
<th>Def. (D)(iii)(3)¹</th>
<th>S.W. Def. (D)(iv)(4)</th>
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<tr>
<td>Spent materials (listed hazardous and not listed characteristically hazardous)</td>
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<td>Spent materials (nonhazardous)²</td>
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<td>Sludges (listed hazardous in 40 CFR §261.31 or §261.32)</td>
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<td>Sludges (not listed characteristically hazardous)</td>
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<td>Sludges (nonhazardous)²</td>
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<td>By-products (listed hazardous in 40 CFR §261.31 or §261.32)</td>
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<td>By-products (not listed characteristically hazardous)</td>
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<td>By-products (nonhazardous)²</td>
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<td>Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)</td>
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<tr>
<td>Scrap metal that is not excluded under subparagraph (A) of this paragraph (hazardous)</td>
<td>*</td>
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Scrap metal other than excluded scrap metal (see §335.17(a)(9) of this title) (nonhazardous)¹

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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 40 CFR §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 and facility operators 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) 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) 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.

(155) [(147)] 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).

(156) [(148)] 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.

(157) [(149)] 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.

(158) [(150)] Staging pile--An accumulation of solid, non-flowing "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).

(159) [(151)] Standard permit--A Resource Conservation and Recovery Act 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.

(160) [(152)] 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.

(161) [(153)] Sump--Any pit or reservoir that meets the definition of "Tank" in this section and those troughs/trenches connected to it that serve to collect 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.
(162) [(154)] 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.

(163) [(155)] 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.

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

(165) [(157)] 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.

(166) [(158)] 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" and "Open burning.")

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

(168) [(160)] 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.

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

(170) [(163)] 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.

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

(172) [(165)] 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.

(173) [(166)] 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.

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

(175) [(168)] Underground injection--The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "Injection well.")

(176) [(169)] Underground tank--A device meeting the definition of "Tank" in this section whose entire surface area is totally below the surface of and covered by the ground.
(177) [(170)] 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.]

(178) [(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.

(179) [(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.

(180) [(174)] Universal waste--Any of the hazardous wastes defined as universal
waste under §335.261(b)(16)(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).
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).

Universal waste transporter--Has the definition adopted under 40 Code of Federal Regulations §273.9.

Unsaturated zone or zone of aeration--The zone between the land surface and the water table.

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.

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).
(186) [(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.

(187) [181] Wastewater treatment unit--A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code, §§466 et seq., §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous or industrial solid waste, or generates and accumulates a wastewater treatment sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

(C) meets the definition of "Tank" or "Tank system" as defined in this section.

(188) [182] 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.
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.

Wipe--A woven or non-woven shop towel, rag, pad, or swab made of wood pulp, fabric, cotton, polyester blends, or other material.

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.

§335.2. Permit Required.

(a) Except with regard to storage, processing, or disposal to which subsections (c) - (h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Department of State
Health Services (DSHS), or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency (EPA) or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of
the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities that satisfied this requirement by filing an application on or before November 19, 1980, with the EPA are not required to submit a separate application with the DSHS. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Texas Solid Waste Disposal Act (Vernon’s Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §§6901 et seq., that render the facilities subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the EPA under RCRA, which first require them to comply with the standards in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not
apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; 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 an "other source" with respect to other plants and operations owned by the same person.);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, 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 an "other source" with respect to other plants and operations owned by the same person.);

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit;

(4) the collection, storage, or processing of nonhazardous industrial solid waste, if the waste is collected, stored, or processed as part of a treatability study;

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment;
(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the Clean Waste Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit;

(7) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater unit and is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26;

(8) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater treatment unit that discharges to a publicly owned treatment works and the units are located at a noncommercial solid waste management facility; or

(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities.
(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b) - (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 CFR §261.4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in 40 CFR §261.4(e) and (f), as amended [and adopted in the CFR through November 28, 2016 (81 FR 83696) [April 4, 2006, as published in the Federal Register (71 FR 16862)], which are adopted by reference.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill that has qualified for interim status in accordance with 40 CFR Part 270, Subpart G, and that has complied with the standards in Subchapter E of this chapter, by complying with the notification and information requirements in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or
grant the request for authorization subject to conditions, which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of 40 CFR §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days’ notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing permit or site development plan applicable to the facility or a portion of the facility;

(2) polychlorinated biphenyl compounds wastes subject to regulation by 40 CFR Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;
(5) infectious materials;

(6) liquid organic peroxides;

(7) radioactive or nuclear waste materials, receipt of which will require a license from the DSHS or the commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.171(c)(3)(B) - (E) of this title (relating to Disposal of Special Wastes). Authorizations obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit application, failure of the facility to operate the facility in compliance with the standards set forth in Subchapter E of this chapter, or as otherwise provided by law.

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under 40 CFR §270.1(c)(5) and (6), or obtain an
order in lieu of a post-closure permit, as provided in subsection (m) of this section. If a post-closure permit is required, the permit must address applicable provisions of 40 CFR Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) provisions concerning groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the commission’s Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the EPA imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title.

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the definitions and requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(m) At the discretion of the commission, an owner or operator may obtain a post-closure order in lieu of a post-closure permit for interim status units, a corrective action
management unit unless authorized by a permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units. The post-closure order must address the facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and groundwater monitoring requirements of §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response).

(n) Except as provided in subsection (d)(9) of this section, owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works are required to obtain a permit under this subchapter. By June 1, 2006, owners or operators of existing commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works must have a permit issued under this subchapter or obtain a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges) to continue operating. A general permit issued under Chapter 205 of this title will authorize operations until a final decision is made on the application for an individual permit or 15 months, whichever is earlier. The general permit shall authorize operations for a maximum period of 15 months except that authorization may be extended on an individual basis in one-year increments at the discretion of the executive director. Should an application for a general permit issued under Chapter 205 of this title be submitted, the applicant shall also submit to the commission, by June 1, 2006, the appropriate information to demonstrate compliance with financial assurance requirements for closure of industrial solid waste facilities in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for
Hazardous and Nonhazardous Industrial Solid Waste Facilities). Owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works operating under a general permit issued under Chapter 205 of this title shall submit an application for a permit issued under this subchapter prior to September 1, 2006.

(o) Treatment, storage, and disposal facilities that are otherwise subject to permitting under RCRA and that meet the criteria in paragraphs (1) or paragraph (2) of this subsection, may be eligible for a standard permit under Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit) if they satisfy one of the two following criteria:

(1) facility generates hazardous waste and then non-thermally treats and/or stores hazardous waste on-site; or

(2) facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility.

§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, 262.27, and 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), and 40 CFR Part 262, Subpart H, and the Appendix to 40 CFR Part 262, as amended through November 28, 2016 (81 FR 85696).

(1) In addition, generators and 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.

(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) when Class 1 waste is itemized on the manifest, use the Texas Commission on Environmental Quality solid waste registration (SWR) number or the United States Environmental Protection Agency (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 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.

(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) [§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) §§263.21, 263.22, and 263.25 [§§263.20 - 263.22, and §263.25, and the Appendix to 40 CFR Part 262], as these sections are amended through February 7, 2014 (79 FR 7518), and 40 CFR §263.20 and the Appendix to 40 CFR Part 262, as these are amended through November 28, 2016 (81 FR 85696), 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) §264.72 or §265.72, depending on the status of the person, as these sections are amended through February 7, 2014 (79 FR 7518); and 40 CFR §264.71 or §265.71, depending on the status of the person, as these sections are amended through November 28, 2016 (81 FR 85696) [§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 November 28, 2016 (81 FR 85696) [February 7, 2014 (79 FR 7518)]. 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 and §264.76, as amended through February 7, 2014 (79 FR 7518), and §264.71 and the Appendix to 40 CFR Part 262, as amended through November 28, 2016 (81 FR 85696), and a manifest or copy of e-Manifest must accompany the shipment which designates that facility to receive the waste.

§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste].

(a) The requirements of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(b) [a] Unregistered generators who ship hazardous waste or Class 1 waste shall prepare a complete and correct Waste Shipment Summary [(S1)] from the manifests.
(b) Unregistered generators or out-of-state primary exporters who export hazardous waste from or through Texas to a foreign country, shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

(c) Registered generators or out-of-state primary exporters who import hazardous or Class 1 waste from a foreign country through Texas to another state shall prepare a complete and correct Foreign Waste Shipment Summary (F1) from the manifests.

(c) The Waste Shipment Summary [(S1) and the Foreign Waste Shipment Summary (F1)], shall be prepared in a form provided or approved by the executive director and submitted to the executive director on or before the 25th of each month for shipments originating during the previous month. The unregistered generator [or in-state/out-of-state primary exporter] must keep a copy of each summary for a period of at least three years from the due date of the summary. These generators are required to prepare and submit a Waste Shipment Summary [(S1) and/or Foreign Waste Shipment Summary (F1)] only for those months in which shipments are actually made. [Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.]

(e) The following figure is a graphic representation illustrating generator, waste type, shipment type, and report method.

[Figure: 30 TAC §335.13(e)]
<table>
<thead>
<tr>
<th>Generator Type</th>
<th>Waste Type</th>
<th>Shipment Type</th>
<th>Report Method</th>
</tr>
</thead>
<tbody>
<tr>
<td>In-State Registered Generator</td>
<td>Texas Waste</td>
<td>Ship within Texas</td>
<td>Annual Waste Summary (G1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ship out of Texas</td>
<td>Annual Waste Summary (G1)</td>
</tr>
<tr>
<td>In-State Unregistered Generator</td>
<td>Texas Waste</td>
<td>Ship within Texas</td>
<td>Waste Shipment Summary (S1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ship out of Texas</td>
<td>Waste Shipment Summary (S1)</td>
</tr>
<tr>
<td>In-State Unregistered Primary Exporter/Importer (TX EPA#)</td>
<td>Foreign Waste (Import)</td>
<td>Ship through Texas</td>
<td>Foreign Waste Shipment Summary (F1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ship into Texas</td>
<td>No Report Required</td>
</tr>
<tr>
<td>Out-of-State Primary Exporter/Importer (Other State EPA #)</td>
<td>Foreign Waste (Import)</td>
<td>Ship through Texas</td>
<td>Foreign Waste Shipment Summary (F1)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Ship into Texas</td>
<td>No Report Required</td>
</tr>
<tr>
<td></td>
<td>Other State's Haz. Waste Exported to Foreign Country</td>
<td>Ship through Texas</td>
<td>Waste Shipment Summary (S1)</td>
</tr>
</tbody>
</table>

**(d) [(f)]** A registered generator is defined as an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements), and is assigned a solid waste registration number.
An unregistered generator is defined as an in-state generator who is not a conditionally exempt small quantity generator, as defined in §335.78 of this title [(relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)], that ships hazardous waste and/or Class 1 waste using a temporary solid waste registration number and a temporary Texas waste code number assigned by the executive director.

A primary exporter/importer is defined as:

(1) an in-state generator who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste to a foreign country; or

(2) an out-of-state generator/importer of record who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste through Texas to a foreign country.

The registered/unregistered generator [or primary exporter] shall retain a copy of each manifest required by §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]) for at least [a minimum of] three years from the date of shipment by the registered/unregistered generator [or primary exporter].
(g) [(j)] A registered/unregistered generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class 1 waste.

(h) [(k)] A registered/unregistered generator [or primary exporter of hazardous waste subject to §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments)] must submit an exception report to the executive director if he has not received a copy of the manifest with the handwritten signatures of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report must be retained by the registered/unregistered generator [or primary exporter] for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.
[i] [l] The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

[(m) The requirements of subsections (j) and (k) of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title.]

[(n) Primary exporters of hazardous waste as defined in 40 Code of Federal Regulations (CFR) §262.51 must submit an annual report in accordance with the requirements set out in the regulations contained in 40 Code of Federal Regulations (CFR) §262.56, as amended and adopted through March 18, 2010 (75 FR 12989).]

[(j) [o] Any person who exports or imports [Primary exporters of] hazardous waste [as defined in 40 CFR §262.51, or importers of hazardous waste, to or from countries listed in 40 CFR §262.58(a)(1) for recovery,] must comply with 40 CFR §262.12 and 40 CFR Part 262, Subpart H, as adopted by reference under §335.76(a) of this title (relating to Additional Requirements Applicable to International Shipments) [Subparts A and H].

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d) - (f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as recyclable materials. Nonhazardous industrial wastes that are recycled will be known as nonhazardous recyclable materials. Nonhazardous recyclable materials are subject to the requirements of subsections (h) - (l) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 17 of this title (relating to Tax Relief for Property Used for Environmental Protection); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); and Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings).
(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B - I or O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions); Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter
70 of this title; Chapter 80 of this title; Chapter 86 of this title; or Chapter 305 of this title, except as provided in subsections (g) and (h) of this section:

(1) Industrial ethyl alcohol that is reclaimed except that exports and imports of such recyclable materials must comply with the requirements of 40 Code of Federal Regulations (CFR) Part 262, Subpart H, as amended though November 28, 2016 (81 FR 85696). Transporters transporting a shipment for export may not accept a shipment if they know the shipment does not conform to the United States Environmental Protection Agency (EPA) acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment, and must ensure that it is delivered to the facility designated by the person initiating the shipment; [industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986:] 

[(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 CFR §§262.53, 262.55, 262.56(a)(1) - (4) and (6) and (b), and 262.57, as amended through January 8, 2010 (75 FR 1236), export such materials only upon such consent of the receiving country and in conformance with the United States Environmental Protection Agency (EPA) acknowledgment of consent as defined in the regulations contained in 40 CFR Part 262, Subpart E, as amended through January 8, 2010 (75 FR 1236), and provide a copy of the EPA]
acknowledgment of consent to the shipment to the transporter transporting the shipment for export;]

[(B) transporters transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment;]

(2) scrap metal that is not already excluded under 40 CFR §261.4(a)(13);

(3) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 CFR §261.4(a)(12), as amended through April 8, 2015 (80 FR 18777)); and

(4) the following hazardous waste fuels:

(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into
a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter and Subchapter D of this chapter, and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a) - (c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 17 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40
of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; and the notification requirements under §335.6 of this title, except as provided in subsections (a) - (c) of this section. The recycling process itself is exempt from regulation.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a) - (c) of this section:

(1) notification requirements under §335.6 of this title; and

(2) Section 335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities).

(g) Recyclable materials (excluding those listed in subsections (b)(4), and (c)(1) - (5) of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste]; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste [and Primary Exporters of Hazardous Waste];
Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities, respectively), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of §335.4 of this title. In addition, industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6 of this title. Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsections (b)(4) and (c)(2) of this section may also be subject to the requirements of §§335.10 - 335.15 of this title, as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste’s toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;
(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into nonharmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and

(9) other relevant factors.

(i) Except as provided in Texas Health and Safety Code, §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive
The director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) whether managing nonhazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;

(2) whether hazardous and nonhazardous wastes that are incompatible are stored and/or processed in the same or connected units;

(3) whether the management of recyclable materials and nonhazardous recyclable materials is segregated within the facility;

(4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;
(7) the potential for the objectionable constituent to degrade into harmful constituents;

(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment; and

(12) other relevant factors.

(j) Closure cost estimates.

(1) Except as otherwise approved by the executive director, an owner or operator of a recycling facility that stores combustible nonhazardous materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall provide a written cost estimate, in current dollars, showing the cost of hiring
a third party to close the facility by disposition of all processed and unprocessed materials in accordance with all applicable regulations. The closure cost estimate for financial assurance must be submitted with any new notification in accordance with §335.6 within 60 days of the effective date of this rule for existing facilities or as otherwise requested by the executive director.

(2) The estimate must:

(A) equal the costs of closure of the facility, including disposition of the maximum inventories of all processed and unprocessed combustible materials stored outdoors on site during the life of the facility, in accordance with all applicable regulations;

(B) be based on the costs of hiring a third party that is not affiliated (as defined in §328.2 of this title (relating to Definitions)) with the owner or operator; and

(C) be based on a per cubic yard and/or short ton measure for collection and disposition costs.

(k) Financial assurance. An owner or operator of a recycling facility that stores nonhazardous combustible recyclable materials outdoors, or that poses a significant risk to public health and safety as determined by the executive director, shall establish and maintain financial assurance for closure of the facility in accordance with Chapter 37, Subchapter J of this title (relating to Financial Assurance for Recycling Facilities).
(l) Closure requirements.

(1) Closure must include collecting processed and unprocessed materials, and transporting the materials to an authorized facility for disposition unless otherwise approved or directed in writing by the executive director.

(2) Closure of the facility must be completed within 180 days following the most recent acceptance of processed or unprocessed materials unless otherwise approved or directed in writing by the executive director.

(m) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A - I or O of this chapter, but is regulated under Chapter 324 of this title (relating to Used Oil Standards). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(n) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 CFR Part 264 or Part 265, Subparts AA and BB, as adopted
by reference under §335.152(a)(17) and (18) and §335.112(a)(19) and (20) of this title (relating to Standards).

(o) **Hazardous waste that is exported or imported for purpose of recovery is subject to the requirements of 40 CFR Part 262, Subpart H, as amended through November 28, 2016 (81 FR 85696).** [Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in 40 CFR §262.58(a)(1), for purpose of recovery, and any person who exports or imports such hazardous waste, is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996 at 61 FedReg 16290), if the hazardous waste is subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).]

(p) 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," §335.6 of this title, §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), and Subchapter H of this chapter.

§335.31. **Incorporation of References.**
When used in this chapter [Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)], the references contained in 40 Code of Federal Regulations [(CFR) §260.11 are incorporated by reference as amended through November 28, 2016 (81 FR 85696) [September 8, 2005 (70 FR 53420)].
SUBCHAPTER B: HAZARDOUS WASTE MANAGEMENT GENERAL PROVISIONS

§335.43

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendment implements THSC, Chapter 361.

§335.43. Permit Required.

(a) Except as provided in §335.2 of this title (relating to Permit Required), no person shall store, process, or dispose of hazardous waste without first having obtained a permit from the Texas Commission on Environmental Quality (commission) [Texas Natural Resource Conservation Commission].
(b) Upon receipt of federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's Hazardous Waste Program, the commission shall be authorized to enforce the HSWA provisions that the United States Environmental Protection Agency [EPA] imposed in hazardous waste permits that were issued before the HSWA authorization was granted.
SUBCHAPTER C: STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

§§335.63, 335.69, 335.71, 335.76, 335.78

Statutory Authority
The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), Chapter 361, §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendments implement THSC, Chapter 361.

§335.63. EPA Identification Numbers.
(a) A generator must not store, process, dispose of, transport, or offer for transportation, hazardous waste without having received an Environmental Protection Agency (EPA) identification number.

(b) A generator must not offer hazardous waste to transporters or to storage, processing or disposal facilities that have not received an EPA identification number.

(c) A recognized trader must not arrange for import or export of hazardous waste without having received an EPA identification number from the EPA Administrator.

§335.69. Accumulation Time.

(a) Generators that comply with the requirements of paragraph (1) of this subsection are exempt from all requirements adopted by reference in §335.112(a)(6) and (7) of this title (relating to Standards), except 40 Code of Federal Regulations (CFR) §265.111 and §265.114. Except as provided in subsections (f) - (h) and (n) of this section, a generator may accumulate hazardous waste on-site for 90 days without a permit or interim status provided that:

(1) the waste is placed:
(A) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, BB, and CC, as adopted by reference under §335.112(a) of this title; and/or

(B) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, and CC, except 40 CFR §265.197(c) and §265.200, as adopted by reference under §335.112(a) of this title; and/or

(C) on drip pads and the generator complies with §335.112(a)(18) of this title and maintains the following records at the facility: a description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(D) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility's operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(i) a written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste
generation and management practices for the facility showing that they are consistent with respecting the 90-day limit, and documentation that the procedures are complied with; or

(ii) documentation that the unit is emptied at least once every 90 days;

(2) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container; and

(3) while being accumulated on-site, each container and tank is labeled or marked clearly with the words, "Hazardous Waste"; and

(4) the generator complies with the following:

(A) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D and with 40 CFR §265.16, as adopted by reference in §335.112(a) of this title;

(B) all applicable requirements under 40 CFR Part 268, as adopted by reference under §335.431 of this title (relating to Purpose, Scope, and Applicability); and

(C) Section 335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator).
(b) A generator of 1,000 kilograms or greater of hazardous waste in a calendar month, or greater than 1 kilogram of acute hazardous waste listed in 40 CFR §261.31 or §261.33(e) in a calendar month, who accumulates hazardous waste or acute hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 40 CFR Parts 264, 265, and 267 and the permit requirements of 40 CFR Part 270 unless he has been granted an extension to the 90-day period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 90 days due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(c) Persons exempted under this provision, who generate hazardous waste, are still subject to the requirements in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General) applicable to generators of Class 1 waste.

(d) A generator, other than a conditionally exempt small quantity generator regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may accumulate as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste,
without a permit or interim status and without complying with subsection (a) or (f) of this section provided he:

(1) complies with 40 CFR §§265.171, 265.172, and 265.173(a), as adopted by reference under §335.112(a) of this title; and

(2) marks his containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

(e) A generator who accumulates either hazardous waste or acutely hazardous waste listed in 40 CFR §261.31 or §261.33(e) in excess of the amounts listed in subsection (d) of this section at or near any point of generation must, with respect to that amount of excess waste, comply within three days with subsection (a) of this section or other applicable provisions of this chapter. During the three-day period, the generator must continue to comply with subsection (d) of this section. The generator must mark the container holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

(f) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that:

(1) the quantity of waste accumulated on-site never exceeds 6,000 kilograms;
(2) the generator complies with the requirements of 40 CFR Part 265, Subpart I, as adopted by reference under §335.112(a) of this title, except 40 CFR §265.176 and §265.178;

(3) the generator complies with the requirements of 40 CFR §265.201, as adopted by reference under §335.112(a) of this title;

(4) the generator complies with the requirements of:

   (A) subsection (a)(2) and (3) of this section;

   (B) 40 CFR Part 265, Subpart C, as adopted by reference under §335.112(a) of this title;

   (C) all applicable requirements under 40 CFR Part 267, as adopted by reference under §335.601 and §335.602 of this title (relating to Purpose, Scope, and Applicability; and Standards); and

   (D) all applicable requirements under 40 CFR Part 268, as adopted by reference under §335.431 of this title; and

(5) the generator complies with the following requirements.
(A) At all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the facility within a short period of time) with the responsibility for coordinating all emergency response measures specified in subparagraph (D) of this paragraph. This employee is the emergency coordinator.

(B) The generator must post the following information next to telephones that may be used to summon emergency assistance:

(i) the name and telephone number of the emergency coordinator;

(ii) location of fire extinguishers and spill control material, and, if present, fire alarm; and

(iii) the telephone number of the fire department, unless the facility has a direct alarm.

(C) The generator must ensure that all employees are thoroughly familiar with proper waste handling and emergency procedures, relevant to their responsibilities during normal facility operations and emergencies;
(D) The emergency coordinator or his designee must respond to any emergencies that arise. The applicable responses are as follows.

(i) In the event of a fire, call the fire department or attempt to extinguish it using a fire extinguisher.

(ii) In the event of a spill, contain the flow of hazardous waste to the extent possible, and as soon as is practicable, clean up the hazardous waste and any contaminated materials or soil.

(iii) In the event of a fire, explosion, or other release which could threaten human health outside the facility or when the generator has knowledge that a spill has reached surface water, the generator must immediately notify the National Response Center (using its 24-hour toll free number (800) 424-8802) and the commission according to the procedures set out in the State of Texas oil and hazardous substances spill contingency plan. The reports must include the following information:

(I) the name, address, and United States Environmental Protection Agency (EPA) identification number of the generator;

(II) date, time, and type of incident (e.g., spill or fire);
(III) quantity and type of hazardous waste involved in the incident;

(IV) extent of injuries, if any; and

(V) estimated quantity and disposition of recovered materials, if any.

(g) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more for off-site processing, storage, or disposal may accumulate hazardous waste on-site for 270 days or less without a permit or without having interim status, provided that he complies with the requirements of subsection (f) of this section.

(h) A generator who generates greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste), and 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) and the permit requirements of Chapter 305 of this title (relating to Consolidated Permits), unless he has been granted an extension to the 180-day (or 270-day, if applicable) period. Such extension may be granted by the executive director if hazardous wastes must remain on-site for longer than 180 days (or 270 days, if applicable) due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days may be granted at the discretion of the executive director on a case-by-case basis.

(i) A generator who generates or collects hazardous waste for the purpose of treatability studies is not subject to this section.

(j) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, may accumulate F006 waste on-site for more than 90 days, but not more than 180 days without a permit or without having interim status provided that:

(1) the generator has implemented pollution prevention practices that reduce the amount of any hazardous substances, pollutants, or contaminants entering the F006 waste or otherwise released to the environment prior to its recycling;

(2) the F006 waste is legitimately recycled through metals recovery;
(3) no more than 20,000 kilograms of F006 waste is accumulated on-site at any one time; and

(4) the F006 waste is managed in accordance with the following:

(A) the F006 waste is placed:

(i) in containers and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts I, AA, and BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC; and/or

(ii) in tanks and the generator complies with the applicable requirements of 40 CFR Part 265, Subparts J, AA, BB, as adopted by reference under §335.112(a) of this title, and 40 CFR Part 265, Subpart CC, except 40 CFR §265.197(c) and §265.200; and/or

(iii) in containment buildings and the generator complies with 40 CFR Part 265, Subpart DD, as adopted by reference under §335.112(a) of this title, and has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR §265.1101 in the facility’s operating record prior to operation of the unit. The owner or operator shall maintain the following records at the facility:
(I) a written description of procedures to ensure that the F006 waste remains in the unit for no more than 180 days, a written description of the waste generation and management practices for the facility showing that they are consistent with the 180-day limit, and documentation that the generator is complying with the procedures; or

(II) documentation that the unit is emptied at least once every 180 days;

(B) the generator complies with 40 CFR §265.111 and §265.114, as adopted by reference under §335.112(a)(6) of this title;

(C) the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container;

(D) while being accumulated on-site, each container and tank is labeled or marked clearly with the words "Hazardous Waste"; and

(E) the generator complies with the following:
(i) the requirements for owners or operators in 40 CFR Part 265, Subparts C and D, and 40 CFR §265.16, as adopted by reference under §335.112(a) of this title;

(ii) 40 CFR §268.7(a)(5), as adopted by reference under §335.431(c) of this title; and

(iii) Section 335.113 of this title.

(k) A generator of 1,000 kilograms or greater of hazardous waste per calendar month who also generates wastewater treatment sludges from electroplating operations that meet the listing description for EPA hazardous waste number F006, and who must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more for off-site metals recovery, may accumulate F006 waste on-site for more than 90 days, but not more than 270 days without a permit or without having interim status if the generator complies with the requirements of subsection (j)(1) - (4) of this section.

(l) A generator accumulating F006 waste in accordance with subsection (j) or (k) of this section who accumulates F006 waste on-site for more than 180 days (or for more than 270 days if the generator must transport this waste, or offer this waste for transportation, over a distance of 200 miles or more), or who accumulates more than 20,000 kilograms of F006 waste on-site is an operator of a hazardous waste storage facility and is subject to the requirements of this chapter and Chapter 305 of this title applicable to such owners and
operators, unless the generator has been granted an extension to the 180-day (or 270-day if applicable) period or an exception to the 20,000 kilogram accumulation limit. Such extensions and exceptions may be granted by the executive director if F006 waste must remain on-site for longer than 180 days (or 270 days if applicable) or if more than 20,000 kilograms of F006 waste must remain on-site due to unforeseen, temporary, and uncontrollable circumstances. An extension of up to 30 days or an exception to the accumulation limit may be granted at the discretion of the executive director on a case-by-case basis.

(m) A generator who sends a shipment of hazardous waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §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]) may accumulate the returned waste on-site in accordance with subsections (a) and (b) of this section or subsections (f) - (h) of this section depending on the amount of hazardous waste on-site in that calendar month. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or
(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

(n) A generator who sends a shipment of Class 1 waste to a designated facility with the understanding that the designated facility can accept and manage the waste and later receives that shipment back as a rejected load or residue in accordance with the manifest discrepancy provisions of §335.10 of this title may accumulate the returned waste on-site. Upon receipt of the returned shipment, the generator must:

(1) Sign Item 18c of the manifest, if the transporter returned the shipment using the original manifest; or

(2) Sign Item 20 of the manifest, if the transporter returned the shipment using a new manifest.

§335.71. Biennial Reporting.

In addition to annual reporting which is required under §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), in every even-numbered year facilities subject to the United States Environmental Protection Agency biennial reporting requirements shall submit to the commission information as required by 40 Code of Federal Regulations §262.41, as amended through November 28, 2016 (81 FR 85696). Upon request, this supplemental information shall be prepared in a form provided
or approved by the executive director and submitted within the specified timeframe.

Activities covered in the report shall be for the previous odd-numbered report year.

Facilities subject to the United States Environmental Protection Agency biennial reporting requirements include all large quantity generators of hazardous waste for any month during the previous odd-numbered report year.

§335.76. Additional Requirements Applicable to International Shipments.


(b) Imports of industrial solid waste shall comply with all applicable requirements of this chapter.

(c) Reporting for exports of hazardous waste is not required on the Biennial Report form. A separate annual report requirement is set forth at 40 CFR §262.83(g), as amended through November 28, 2016 (81 FR 85696), for hazardous waste exporters.

(a) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of this title and with the special requirements of this section. Except to the extent the regulations contained in 40 Code of Federal Regulations (CFR) §262.58 as amended through
January 8, 2010 (75 FR 1236), a primary exporter of hazardous waste must comply with the special requirements of this section as they apply to primary exporters, and a transporter transporting hazardous waste for export must comply with applicable requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) and §335.14 of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste). 40 CFR §262.58 sets forth the requirements of international agreements between the United States and receiving countries which establish different notice, export, and enforcement procedures for the transportation, processing, storage, and disposal of hazardous waste for shipments between the United States and those countries.]

[b) Exports of hazardous waste are prohibited except in compliance with the applicable requirements of this subchapter, the special requirements of this section, and §335.11 of this title and §335.14 of this title and Subchapter D of this chapter. Exports of hazardous waste are prohibited unless:]

[(1) notification in accordance with the regulations contained in 40 CFR §262.53, as amended and adopted through April 12, 1996 (61 FR 16290) has been provided;]

[(2) the receiving country has consented to accept the hazardous waste;]
(3) a copy of the United States Environmental Protection Agency (EPA) acknowledgment of consent to the shipment accompanies the hazardous waste shipment and, unless exported by rail, is attached to the manifest (or shipping paper for exports by water (bulk shipment));

(4) the hazardous waste shipment conforms to the terms of the receiving country’s written consent as reflected in the EPA acknowledgment of consent; and

(5) the primary exporter complies with the manifest requirements of §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) except that:

(A) the primary exporter must attach a copy of the EPA acknowledgment of consent to the shipment to the manifest which must accompany the hazardous waste shipment. For exports by rail or water (bulk shipment), the primary exporter must provide the transporter with an EPA acknowledgment of consent which must accompany the hazardous waste but which need not be attached to the manifest except that for exports by water (bulk shipment) the primary exporter must attach the copy of the EPA acknowledgment of consent to the shipping paper; and

(B) the primary exporter may obtain the manifest from any source that is registered with the EPA as a supplier of manifests.
(c) A primary exporter must submit an exception report to the executive director if:

(1) he has not received a copy of the manifest signed by the transporter stating the date and place of departure from the United States within 45 days from the date it was accepted by the initial transporter;

(2) within 90 days from the date the waste was accepted by the initial transporter, the primary exporter has not received written confirmation from the foreign consignee that the hazardous waste was received; or

(3) the waste was returned to the United States.

(d) When importing hazardous waste into the state from a foreign country, a person must prepare a manifest in accordance with the requirements of §335.10 of this title and 40 CFR §262.60.

(e) Any person exporting hazardous waste shall file an annual report with the executive director as required in §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators) summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.
(f) Any person who exports hazardous waste to a foreign country or imports hazardous waste from a foreign country into the state must comply with the requirements of the regulations contained in 40 CFR §262.58 (International Agreements), as amended and adopted through January 8, 2010 (75 FR 1236).

(g) Except to the extent that they are clearly inconsistent with Texas Health and Safety Code, Chapter 361, or the rules of the commission, primary exporters must comply with the regulations contained in 40 CFR §262.57, which are in effect as of November 8, 1986.

(h) Transfrontier shipments of hazardous waste for recovery within countries belonging to the Organization for Economic Cooperation and Development are subject to 40 CFR Part 262, Subpart H, which is adopted by reference as amended and adopted in the CFR through January 8, 2010 (75 FR 1236).

§335.78. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

(a) A generator is a conditionally exempt small quantity generator in a calendar month if he generates no more than 100 kilograms of hazardous waste in that month.

(b) Except for those wastes identified in subsections (e) - (g) and (j) of this section, a conditionally exempt small quantity generator’s hazardous wastes are not subject to
regulation under Subchapters C - H and O of this chapter (relating to Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings; Chapter 305 of this title (relating to Consolidated Permits); or the notification requirements of the Resource Conservation and Recovery Act, §3010, provided the generator complies with the requirements of subsections (f), (g), and (j) of this section.

(c) When making the quantity determinations of Subchapters A - C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of
Hazardous Waste), the generator must include all hazardous waste it generates, except hazardous waste that:

(1) is exempt from regulation under 40 Code of Federal Regulations (CFR) §261.4(c) - (f), as amended through November 28, 2016 (81 FR 85696), §335.24(c) of this title (relating to Requirements For Recyclable Materials and Nonhazardous Recyclable Materials), §335.41(f)(1) of this title (relating to Purpose, Scope and Applicability), or 40 CFR §261.8;

(2) is managed immediately upon generation only in on-site elementary neutralization units, wastewater treatment units, or totally enclosed treatment facilities as defined in §335.1 of this title (relating to Definitions);

(3) is recycled, without prior storage or accumulation, only in an on-site process subject to regulation under §335.24(f) of this title;

(4) is used oil managed under the requirements of §335.24(j) of this title and Chapter 324 of this title (relating to Used Oil);

(5) are spent lead-acid batteries managed under the requirements of §335.251 of this title (relating to Applicability and Requirements);

(6) is universal waste managed under §335.41(j) of this title and Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule); or
(7) is an unused commercial chemical product (listed in 40 CFR Part 261, Subpart D or exhibiting one or more characteristics in 40 CFR Part 261, Subpart C) that is generated solely as a result of a laboratory clean-out conducted at an eligible academic entity consistent with 40 CFR §262.213. For purposes of this provision, the phrase "eligible academic entity" shall have the meaning as defined in 40 CFR §262.200.

(d) In determining the quantity of hazardous waste generated, a generator need not include:

(1) hazardous waste when it is removed from on-site storage provided that the waste was counted at the time it was generated;

(2) hazardous waste which is generated or collected for the purpose of treatability studies;

(3) hazardous waste produced by on-site processing (including reclamation) of his hazardous waste, so long as the hazardous waste that is processed was counted once; or

(4) spent materials that are generated, reclaimed, and subsequently reused on-site, so long as such spent materials have been counted once.
(e) If a generator generates acute hazardous waste in a calendar month in quantities greater than set forth in paragraphs (1) or (2) of this subsection, all quantities of that acute hazardous waste are subject to full regulation under Subchapters C - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010:

(1) a total of one kilogram of acute hazardous waste listed in 40 CFR §§261.31, 261.32, or 261.33(e); or

(2) a total of 100 kilograms of any residue or contaminated soil, waste, or other debris resulting from the clean-up of a spill, into or on any land or water, of any acute hazardous wastes listed in 40 CFR §§261.31, 261.32, or 261.33(e).

(f) In order for acute hazardous wastes generated by a generator of acute hazardous wastes in quantities equal to or less than those set forth in subsection (e)(1) or (2) of this section to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The generator must comply with the requirements in §335.62 of this title (relating to Hazardous Waste Determination and Waste Classification).
(2) The generator may accumulate acute hazardous waste on-site. If the generator accumulates at any time acute hazardous wastes in quantities greater than those set forth in subsection (e)(1) or (2) of this section, all of those accumulated wastes are subject to regulation under Subchapters C - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title (relating to Accumulation Time) for accumulation of wastes on-site begins when the accumulated wastes exceed the applicable exclusion limit.

(3) A conditionally exempt small quantity generator may either process or dispose of its acute hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the United States Environmental Protection Agency (EPA) under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;
(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258;

(E) permitted, licensed, or registered by a state to manage non-municipal nonhazardous waste and, if managed in a non-municipal nonhazardous waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30;

(F) a facility which:

   (i) beneficially uses or reuses, or legitimately recycles or reclaim its waste; or

   (ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; or

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter.
(g) In order for hazardous waste generated by a conditionally exempt small quantity generator in quantities of less than 100 kilograms of hazardous waste during a calendar month to be excluded from full regulation under this section, the generator must comply with the following requirements:

(1) The conditionally exempt small quantity generator must comply with §335.62 of this title.

(2) The conditionally exempt small quantity generator may accumulate hazardous waste on-site. If such generator accumulates at any time more than a total of 1000 kilograms of its hazardous wastes, all of those accumulated wastes are subject to regulation under the special provisions of this subchapter applicable to generators of between 100 kilograms and 1000 kilograms of hazardous waste in a calendar month as well as the requirements of Subchapters D - H and O of this chapter; Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; Chapter 305 of this title; and the notification requirements of the Resource Conservation and Recovery Act, §3010. The time period of §335.69(f) of this title for accumulation of wastes on-site begins for a conditionally exempt small quantity generator when the accumulated wastes exceed 1,000 kilograms;
(3) A conditionally exempt small quantity generator may either process or dispose of its hazardous waste in an on-site facility, or ensure delivery to an off-site storage, processing or disposal facility, either of which, if located in the United States, is:

(A) permitted by the EPA under 40 CFR Part 270;

(B) in interim status under 40 CFR Parts 270 and 265;

(C) authorized to manage hazardous waste by a state with a hazardous waste management program approved under 40 CFR Part 271;

(D) permitted, licensed, or registered by a state to manage municipal solid waste and, if managed in a municipal solid waste landfill, is subject to 40 CFR Part 258 or equivalent or more stringent rules under Chapter 330 of this title (relating to Municipal Solid Waste);

(E) permitted, licensed, or registered by a state to manage non-municipal or industrial nonhazardous [non-hazardous] waste and, if managed in a non-municipal or industrial nonhazardous [non-hazardous] waste disposal unit after January 1, 1998, is subject to the requirements in 40 CFR §§257.5 - 257.30 or equivalent or more stringent counterpart rules that may be adopted by the commission relating to additional requirements for industrial nonhazardous [non-hazardous] waste disposal units that may receive hazardous waste from conditionally exempt small quantity generators;
(F) a facility which:

(i) beneficially uses or reuses, or legitimately recycles or reclaims its waste;

(ii) processes its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; [or]

(G) for universal waste managed under Subchapter H, Division 5 of this chapter, a universal waste handler or destination facility subject to the requirements of Subchapter H, Division 5 of this chapter; or[

(H) for airbag waste, an airbag waste collection facility or a designated facility subject to the requirements of 40 CFR §261.4(i).

(h) Hazardous waste subject to the reduced requirements of this section may be mixed with nonhazardous [non-hazardous] waste and remain subject to these reduced requirements even though the resultant mixture exceeds the quantity limitations identified in this section, unless the mixture meets any of the characteristics of hazardous waste identified in 40 CFR Part 261, Subpart C.
(i) If any person mixes a solid waste with a hazardous waste that exceeds a quantity exclusion level of this section, the mixture is subject to full regulation under this chapter.

(j) If a conditionally exempt small quantity generator's wastes are mixed with used oil, the mixture is subject to Chapter 324 of this title (relating to Used Oil Standards) and 40 CFR Part 279. Any material produced from such a mixture by processing, blending, or other treatment is also so regulated.
§335.91. Scope.

(a) This subchapter establishes standards for transporters transporting hazardous waste to off-site storage, processing, or disposal facilities. These standards are in addition...
to any applicable provisions contained in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General).

(b) This subchapter does not apply to on-site transportation of hazardous waste by generators or by owners or operators of storage, processing or disposal facilities.

(c) A transporter of hazardous waste must also comply with any standards applicable to generators of hazardous waste if he:

(1) transports hazardous waste into the state from a foreign country; or

(2) mixes hazardous waste of different Department of Transportation shipping descriptions by placing them into a single container.

(d) Transporters who store hazardous waste are owners or operators of storage facilities and, as such, are also subject to the permit requirements and storage standards contained in this chapter.

(e) A transporter of hazardous waste that is being imported from or exported to any other country for purposes of recovery or disposal is subject to all relevant requirements of 40 Code of Federal Regulations (CFR), Part 262, Subpart H, including, but not limited to, 40 CFR §262.83(d) and §262.84(d) for movement documents, as amended through November 28, 2016 (81 FR 85696).
[e] A transporter of hazardous waste subject to the federal manifesting requirements of 40 Code of Federal Regulations (CFR) Part 262, or subject to state hazardous waste manifesting requirements of §335.11 of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste), or subject to the universal waste management standards of 40 CFR Part 273, or subject to Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule), that is being imported from or exported to any of the countries listed in 40 CFR §262.58(a)(1) for purposes of recovery is subject to this subchapter and to all other relevant requirements of 40 CFR Part 262, Subpart H, including, but not limited to, 40 CFR §262.84 for tracking documents].

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

(g) 40 CFR §266.203, as adopted by reference under Subchapter H, Division 6 of this chapter (relating to Military Munitions), identifies how the requirements of this subchapter apply to military munitions classified as solid waste under 40 CFR §266.202.
SUBCHAPTER E: INTERIM STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

§335.112

Statutory Authority
The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

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 in this section) 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 November 28, 2016 (81 FR 85696)) [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 November 28, 2016 (81 FR 85696)) [February 7, 2014 (79 FR 7518)], except 40 CFR §§265.71, 265.72, and 265.75 - 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) and (c), 265.143(a) - (g), 265.144(b) and (c), 265.145(a) - (g), 264.146, 265.147(a) - (d), and (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), §5.013, which establishes the
general jurisdiction of the commission; TWC, §5.102, which provides the commission with the
authority to carry out its duties and general powers under its jurisdictional authority as
provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule
necessary to carry out its powers and duties under the TWC and other laws of the state. The
amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which
provides the commission's authority to manage industrial solid waste and hazardous
municipal waste; THSC, §361.024, which authorizes the commission to adopt rules
regarding the management and control of solid waste; THSC, §361.036, which provides the
commission authority to adopt rules regarding records and manifests for Class I industrial
solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of
state program authorization under federal law.

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 November 28, 2016 (81 FR 85696)) [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 November 28, 2016 (81 FR 85696)) [February 7, 2014 (79 FR 7518)], 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) and (c), 264.143(a) - (h), 264.144(b) and (c), 264.145(a) - (h), 264.146, 264.147(a) - (d), and (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 through July 14, 2006 (71 FR 40254)), except 40 CFR §264.251;

(11) Subpart M--Land Treatment (as amended 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) (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 H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND
SPECIFIC TYPES OF FACILITIES

DIVISION 4: SPENT LEAD-ACID BATTERIES BEING RECLAIMED

§335.251

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendment implements THSC, Chapter 361.

§335.251. Applicability and Requirements.
(a) The regulations of this section adopt by reference 40 Code of Federal Regulations (CFR) Part 266, Subpart G as amended through November 28, 2016 (81 FR 85696) [January 8, 2010 (75 FR 1236)]. This section applies to persons who reclaim (including regeneration) spent lead-acid batteries that are recyclable materials (spent batteries). Persons who generate, transport, or collect spent batteries, who regenerate spent batteries, who store spent batteries that are to be regenerated, or who store spent batteries but do not reclaim them (other than spent batteries that are to be regenerated), [who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country] are not subject to regulation under this chapter, except that §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) applies; and are not subject to regulation under Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); or Chapter 305 of this title (relating to Consolidated Permits). Such persons, however, remain subject to the requirements of the Texas Water Code, Chapter 26.
(b) Owners or operators of facilities that store spent lead-acid batteries before reclaiming them (other than spent batteries that are to be regenerated) are subject to the following requirements:

(1) all applicable provisions in Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter B of this chapter (relating to Hazardous Waste Management General [Management-General] Provisions), Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), and Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit), except for the requirements in §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities) and 40 CFR §265.13; and

(2) all applicable provisions in Chapters 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, and 305 of this title [Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; and Chapter 305 of this title].
(c) Persons who export spent batteries for reclamation in a foreign country where they will be reclaimed through regeneration or any other means are not subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste), except for §335.63 of this title (relating to EPA Identification Numbers); Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), except for §335.91(e) of this title (relating to Scope); Subchapter E of this chapter (relating to Interim Standards of Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities); Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities); or Subchapter O of this chapter (relating to Land Disposal Restrictions), or Chapter 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title (relating to Hazardous Waste Determination).

(d) Persons who transport spent batteries in the United States to export them for reclamation in a foreign country where they will be reclaimed through regeneration or any other means are not subject to the requirements of Subchapter C of this chapter; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter; or Subchapter O of this chapter, or Chapter 1, 3, 10, 20, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §335.91(e) of this title.
(e) Persons who import spent batteries from a foreign country and store these spent batteries, but are not the reclaimer, and where the spent battery will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.63 of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 55, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title, and applicable provisions of Subchapter O of this chapter.

(f) Persons who import spent batteries from a foreign country and store these spent batteries before reclaiming them, and where the spent battery will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.63 of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40, 50, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title, and applicable provisions of Subchapter O of this chapter.

(g) Persons who import spent batteries from a foreign country and do not store these spent before reclaiming them, and where they will be reclaimed other than through regeneration, are not subject to the requirements of Subchapter C of this chapter, except for §335.63 of this title; Subchapter D of this chapter, except for §335.91(e) of this title; Subchapter E of this chapter; Subchapter F of this chapter, or Chapter 1, 3, 10, 37, 39, 40,
50, 70, 80, 86, or 305 of this title. Such persons, however, remain subject to the requirements of §§335.63, 335.91(e), and 335.504 of this title, and applicable provisions of Subchapter O of this chapter.

[(c) In addition to the regulations in this section, persons who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country are subject to the requirements of §335.13 and §335.76(h) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; and Additional Requirements Applicable to International Shipments, respectively).]
SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

DIVISION 5: UNIVERSAL WASTE RULE

§335.261, §335.262

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendments implement THSC, Chapter 361.


(a) This section establishes requirements for managing universal wastes as defined in this section, and provides an alternative set of management standards in lieu of regulation, except as provided in this section, under all otherwise applicable chapters under 30 Texas
Administrative Code. Except as provided in subsection (b) of this section, 40 Code of Federal Regulations (CFR) Part 273 is adopted by reference as amended [and adopted in the Federal Register] through November 28, 2016 (81 FR 85696) [July 14, 2006 (71 FR 40254)].

(b) 40 CFR Part 273, except 40 CFR §§273.1, 273.20, 273.39(a) and (b), 273.40, 273.56, 273.62(a), and 273.70, [§273.1] is adopted subject to the following changes:

1. The term "regional administrator" is changed to "executive director" or "commission" consistent with the organization of the commission as set out in the Texas Water Code, Chapter 5.

2. The terms "U.S. Environmental Protection Agency" and "EPA" are changed to "the Texas Commission on Environmental Quality," "the agency," or "the commission" consistent with the organization of the commission as set out in Texas Water Code, Chapter 5. This paragraph does not apply to 40 CFR §273.32(a)(3) or §273.52 or to references to the following: "EPA Acknowledgment of Consent" or "EPA Identification Number."

3. The term "treatment" is changed to "processing."

4. The term "universal waste" is changed to "universal waste as defined under §335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."
(5) The term "this part" is changed to "Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule)."

(6) In 40 CFR §273.2(a) and (b), references to "40 CFR Part 266, Subpart G," are changed to "§335.251 of this title (relating to Applicability and Requirements)."

(7) In 40 CFR §273.2(b)(2), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(8) In 40 CFR §273.3(b)(1), the reference to "40 CFR §262.70" is changed to "§335.77 of this title (relating to Farmers)." Also, the phrase "(40 CFR §262.70 addresses pesticides disposed of on the farmer’s own farm in a manner consistent with the disposal instructions on the pesticide label, providing the container is triple rinsed in accordance with 40 CFR §261.7(b)(3))" is deleted.

(9) In 40 CFR §273.3(b)(2), the reference to "40 CFR parts 260 through 272" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(10) In 40 CFR §273.3(b)(3), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."
(11) In 40 CFR §273.3(d)(1)(i) and (ii), references to "40 CFR §261.2" are changed to "§335.1 of this title (relating to Definitions)."

(12) In 40 CFR §273.4(a), the reference to "§273.9" as it relates to the definition of "mercury-containing equipment" is amended to include the commission definition of "thermostats" as contained in §335.261(b)(16)(E) of this title (relating to Universal Waste Rule) and in 40 CFR §273.4(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(13) In 40 CFR §273.5(b)(1), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(14) In 40 CFR §273.8(a)(1), the reference to "40 CFR §261.4(b)(1)" is changed to "§335.1 of this title (relating to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(15) In 40 CFR §273.8(a)(2), the reference to "40 CFR §261.5" is changed to "§335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)" and to "§335.402(5) of this title (relating
to Definitions)" and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(16) In 40 CFR §273.9, the following definitions are changed to the meanings described in this paragraph.

(A) Destination facility--A facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.

(B) Generator--Any person, by site, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261 or whose act first causes a hazardous waste to become subject to regulation.

(C) Large quantity handler of universal waste--A universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total universal waste is accumulated.
(D) Small quantity handler of universal waste--A universal waste handler (as defined in this section) who does not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively.

(E) Thermostat--A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR §273.13(c)(2) or §273.33(c)(2) as adopted by reference in this section.

(F) Universal waste--Any of the following hazardous wastes that are subject to the universal waste requirements of this section:

    (i) batteries, as described in 40 CFR §273.2;

    (ii) pesticides, as described in 40 CFR §273.3;

    (iii) mercury-containing equipment, including thermostats, as described in 40 CFR §273.4;

    (iv) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and
(v) lamps, as described in 40 CFR §273.5.

(17) In 40 CFR §273.10, the reference to "40 CFR §273.9" is changed to "§335.261(b)(16)(D) of this title (relating to Universal Waste Rule)."

(18) 40 CFR §273.11(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.17; managing specific wastes as provided in 40 CFR §273.13; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(19) In 40 CFR §273.13(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(20) In 40 CFR §273.13(c)(2)(iii) and (iv), references to "40 CFR §262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(21) In 40 CFR §273.13(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."
(22) In 40 CFR §273.17(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

[(23) In 40 CFR §273.20(a), the reference to "§§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."]

[(24) In 40 CFR §273.20(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."]

(23) [(25)] In 40 CFR §273.30, the reference to "§273.9" is changed to §335.261(b)(16)(C) of this title (relating to Universal Waste Rule)."

(24) [(26)] 40 CFR §273.31(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.37; managing specific wastes as provided in 40 CFR §273.33; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."
(25) [(27)] In 40 CFR §273.33(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(26) [(28)] In 40 CFR §273.33(c)(2)(iii) and (iv), the references to "40 CFR §262.34" are changed to "§335.69 of this title (relating to Accumulation Time)."

(27) [(29)] In 40 CFR §273.33(c)(4)(i), the reference, "40 CFR part 261, subpart C," is changed to "Chapter 335, Subchapter R of this title (relating to Waste Classification)."

(28) [(30)] In 40 CFR §273.33(c)(3)(ii), the reference, "40 CFR parts 260 through 272," is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(29) [(31)] In 40 CFR §273.33(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(30) [(32)] In 40 CFR §273.37(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."
[33] In 40 CFR §273.40(a), the reference to "40 CFR Part 262, Subpart H §§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

[34] In 40 CFR §273.40(b), the reference to "subpart E of part 262 of this chapter" is changed to "§335.13 of this title and §335.76 of this title."

(31) [(35)] In 40 CFR §273.52(a), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(32) [(36)] In 40 CFR §273.52(b), the reference to "40 CFR part 262" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(33) [(37)] In 40 CFR §273.54(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(34) [(38)] In 40 CFR §273.60(a), the reference to "§273.9" is changed to "§335.261(b)(16)(A) of this title (relating to Universal Waste Rule)" and the reference to
"parts 264, 265, 266, 268, 270, and 124 of this chapter" is changed to "30 Texas Administrative Code (relating to Environmental Quality)."

(35) [(39)] In 40 CFR §273.60(b), the reference to "40 CFR §261.6(c)(2)" is changed to "§335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials)."

(36) [(40)] In 40 CFR §273.80(a), the reference to "40 CFR §260.20 and §260.23" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules) and §335.261(c) of this title (relating to Universal Waste Rule)."

(37) [(41)] In 40 CFR §273.80(b), the reference to "40 CFR §260.20(b)" is changed to "§20.15 of this title (relating to Petition for Adoption of Rules)."

(38) [(42)] In 40 CFR §273.81(a), the reference to "40 CFR §260.10" is changed to "§335.1 of this title (relating to Definitions) and the reference to "§273.9" is changed to "§335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(c) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste rule may file a petition for rulemaking under this section, §20.15 of this title, and 40 CFR Part 273, Subpart G as adopted by reference in this section.
(1) To be successful, the petitioner must demonstrate to the satisfaction of the commission that regulation under the universal waste rule: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by §20.15 of this title. The petition should also address as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

(2) The commission will grant or deny a petition using the factors listed in 40 CFR §273.81. The decision will be based on the commission's determinations that regulation under the universal waste rule is appropriate for the waste or category of waste, will improve management practices for the waste or category of waste, and will improve implementation of the hazardous waste program.

(3) The commission may request additional information needed to evaluate the merits of the petition.

(d) Any waste not qualifying for management under this section must be managed in accordance with applicable state regulations.

(e) Crushing lamps is permissible only in a crushing system for which the following control conditions are met:
(1) an exposure limit of no more than 0.05 milligrams of mercury per cubic meter is demonstrated through sampling and analysis using Occupational Safety and Health Administration (OSHA) Method ID-140 or National Institute for Occupational Safety and Health Method Number 6009, based on an eight-hour time-weighted average of samples taken at the breathing zone height near the crushing system operating at the maximum expected level of activity;

(2) compliance with the notification requirements of §106.262 of this title (relating to Facilities (Emission and Distance Limitations) (Previously SE 118)) is demonstrated;

(3) documentation of the demonstrations under paragraphs (1) and (2) of this subsection is provided in a written report to the executive director; and

(4) the executive director approves the crushing system in writing.


(a) This section establishes requirements for managing paint and paint-related waste as described in subsection (b) of this section, and provides an alternative set of management standards in lieu of regulation under other portions of this chapter not otherwise referenced under this section.
(b) Paint and paint-related waste is used or unused paint or [and] paint-related material which is "hazardous waste" as defined under §335.1 of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination). Paint is a pigmented or unpigmented mixture of binder and [and] suitable liquid which forms a closely adherent coating when spread on a surface [or any material which results from painting activities].

(c) Except as otherwise provided in this section, the following definitions and requirements apply to persons managing paint and paint-related wastes:


(2) In addition to the requirements referenced under paragraph (1) of this subsection, small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4 of this title (relating to General Prohibitions). The paint and paint-related waste must be contained in one or more of the following:
(A) a container that remains closed, except when necessary to add or remove waste;

(B) a container that is structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; or

(C) a container that does not meet the requirements of subparagraphs (A) and (B) of this paragraph, provided that the unacceptable container is overpacked in a container that does meet the requirements of subparagraphs (A) and (B) of this paragraph; or

(D) a tank that meets the requirements of 40 CFR Part 265, Subpart J, except for 40 CFR §§265.197(c), 265.200, and 265.201; or

(E) a transport vehicle or vessel that is closed, structurally sound, compatible with the waste, and that lacks evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions; and

(F) a container, multiple container package unit, tank, transport vehicle or vessel that is labeled or marked clearly with the words "Universal Waste - Paint and Paint-Related Wastes;" and
(3) For paint and paint-related waste that is ignitable, reactive, or incompatible waste, the applicable requirements under 40 CFR §§265.17, 265.176, and 265.177.

(d) Hazardous waste determinations under subsection (b) of this section shall be documented at the time of the determination and maintained for at least three years.
SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES

DIVISION 7: AIRBAG WASTE RULE

§335.281

Statutory Authority

The new section is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The new section is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission's authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed new section implements THSC, Chapter 361.


(a) Airbag waste at the airbag waste handler site or during transport to an airbag
waste collection facility or a designated facility is not subject to regulation under §335.2 of this title (relating to Permit Required), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste), Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter O of this chapter (relating to Land Disposal Restrictions); or Chapter 37 of this title (relating to Financial Assurance), Chapter 39 of this title (relating to Public Notice), Chapter 281 of this title (relating to Applications Processing), or Chapter 305 of this title (relating to Consolidated Permits), provided that:

(1) the airbag waste is accumulated in a quantity of no more than 250 airbag modules or airbag inflators for no longer than 180 days;

(2) the airbag waste is packaged in a container designed to address the risk posed by the airbag waste and labeled "Airbag Waste-Do Not Reuse";

(3) the airbag waste is sent directly to either:

(A) an airbag waste collection facility in the United States under the control of a vehicle manufacturer or their authorized representative, or under the control of
an authorized party administering a remedy program in response to a recall under the
National Highway Traffic Safety Administration; or

(B) a "Designated facility", as defined in §335.1 of this title (relating to Definitions), that is authorized to accept airbag waste;

(4) the transport of the airbag waste complies with all applicable United States Department of Transportation regulations in 49 Code of Federal Regulations Parts 171 - 180 during transit;

(5) the airbag waste handler maintains at the handler facility, for no less than three years, records of all off-site shipments of airbag waste and all confirmations of receipt from the receiving facility. For each shipment, these records must, at a minimum, contain the name of the transporter and date of the shipment; name and address of receiving facility; and the type and quantity of airbag waste (i.e., airbag modules or airbag inflators) in the shipment. Confirmations of receipt must include the name and address of the receiving facility; the type and quantity of the airbag waste (i.e., airbag modules or airbag inflators) received; and the date which it was received. Shipping records and confirmations of receipt must be made available for inspection and may be satisfied by routine business records (e.g., electronic or paper financial records, bills of lading, copies of United States Department of Transportation shipping papers, or electronic confirmations of receipt).

(b) Airbag waste received at an airbag waste collection facility or a designated facility
is subject to all hazardous waste regulations, and the operator of the receiving facility is the generator of the airbag waste that must comply with the generator requirements of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), and Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(c) Reuse of defective airbag modules or defective airbag inflators subject to a recall under the National Highway Traffic Safety Administration in vehicles is prohibited and is considered sham recycling as defined under §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials).
SUBCHAPTER J: HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

§335.331

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC §361.136, which provides that the commission establish fee rates for the management of industrial solid waste and hazardous municipal waste; and THSC §361.137, which provides the commission the authority to establish fees for an industrial solid waste or hazardous municipal waste permit application.

The proposed amendment implements THSC, Chapter 361.

§335.331. Failure to [To] Make Payment or Report.
(a) Failure to make payment in accordance with this subchapter constitutes a violation subject to enforcement pursuant to the Health and Safety Code, §361.137 and §361.252.

(b) Generators and owners or operators of a facility failing to make payment of fees imposed under the Health and Safety Code, Chapter 361, when due, shall be assessed late payment penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

[c] Operators of waste management facilities submitting late reports concerning the management of waste under the Health and Safety Code, §361.136, are subject to a civil penalty of $100 for each day the violation continues.

(c) [(d)] Any interest or penalties collected by the commission shall be deposited in the appropriate fund.
SUBCHAPTER R: WASTE CLASSIFICATION

§335.501, §335.504

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendments are also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

The proposed amendments implement THSC, Chapter 361.

§335.501. Purpose, Scope, and Applicability.

Persons who generate industrial solid waste or municipal hazardous waste shall comply with the provisions of this subchapter. Wastes that are regulated under Chapter 334, Subchapter K[,] of this title (relating to Storage, Treatment, and Reuse Procedures for
Petroleum-Substance Contaminated Soil) are not subject to the provisions of this subchapter. Persons who generate wastes in Texas shall classify their own waste according to the standards set forth in this subchapter and may do so without any prior approval or communication with the agency other than notification of waste generation activities pursuant to §335.6 of this title (relating to Notification Requirements) and submittal of required documentation pursuant to §335.513 of this title (relating to Documentation Required). A generator of industrial solid waste or special waste as defined by §330.3 [§330.2] of this title (relating to Definitions) shall refer to Chapter 330 of this title (relating to Municipal Solid Waste) for regulations regarding the disposal of such waste prior to shipment to a municipal landfill. Used oil, as defined and regulated under Chapter 324 of this title (relating to Used Oil), is not subject to the provisions of this subchapter. This subchapter:

(1) provides a procedure for implementation of Texas waste notification system; and

(2) establishes standards for classification of industrial solid waste and municipal hazardous waste managed in Texas.

§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 or E, as amended through November 28, 2016 (81 FR 85696) [January 13, 2015 (80 FR 1694), 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).

(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).
SUBCHAPTER T: PERMITTING STANDARDS FOR OWNERS AND OPERATORS OF COMMERCIAL INDUSTRIAL NONHAZARDOUS WASTE LANDFILL FACILITIES

§335.590

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; and THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste.

The proposed amendment implements THSC, Chapter 361.

§335.590. Operational and Design Standards.

The following requirements, including those applicable to municipal solid waste facilities, apply to owners and operators of facilities subject to this subchapter:

(1) §330.121 of this title (relating to General);
(2) §330.123 of this title (relating to Pre-operation Notice);

(3) §330.125 of this title (relating to Recordkeeping Requirements), except that the requirements under §330.125(b)(3) of this title concerning recordkeeping for gas monitoring and remediation plans relating to explosive and other gases do not apply, except as determined necessary by the executive director;

(4) §330.127 of this title (relating to Site Operating Plan);

(5) §330.129 of this title (relating to Fire Protection);

(6) §330.131 of this title (relating to Access Control);

(7) §330.133(a) - (c) of this title (relating to Unloading of Waste);

(8) §330.137 of this title (relating to Site Sign);

(9) §330.139 of this title (relating to Control of Windblown Waste and Litter);

(10) §330.141 of this title (relating to Easements and Buffer Zones);

(11) §330.143(a) of this title (relating to Landfill Markers and Benchmark);
(12) §330.149 of this title (relating to Odor Management Plan);

(13) §330.153 of this title (relating to Site Access Roads);

(14) §330.155 of this title (relating to Salvaging and Scavenging);

(15) §330.157 of this title (relating to Endangered Species Protection);

(16) §330.159 of this title (relating to Landfill Gas Control) as determined necessary by the executive director;

(17) §330.161 of this title (relating to Oil, Gas, and Water Wells);

(18) §330.163 of this title (relating to Compaction);

(19) §330.165 of this title (relating to Landfill Cover);

(20) §330.167 of this title (relating to Ponded Water);

(21) §330.175 of this title (relating to Visual Screening of Deposited Waste);

(22) §330.207 of this title (relating to Contaminated Water Management);
(23) the owner or operator shall have and follow procedures for the suppression and control of dust; and

(24) the owner or operator shall ensure that each commercial industrial nonhazardous waste landfill unit meets the requirements of subparagraphs (A) - (F) of this paragraph.

(A) Design criteria.

(i) Landfill cells shall be designed and constructed in accordance with subclause (I) or (II) of this clause, and shall also be constructed in accordance with subclause (III) of this clause.

(I) a design that ensures that the concentration values for constituents listed in §330.419(a) of this title (relating to Constituents for Detection Monitoring) will not be exceeded in the uppermost aquifer at the point of compliance, as specified by the executive director under clause (iv) of this subparagraph; or

(II) a composite liner, as defined in clause (ii) of this subparagraph, and a leachate collection system that is designed and constructed in accordance with subparagraph (B) of this paragraph; and
(III) unless the executive director approves an engineered design that the applicant has demonstrated will provide equal or greater protection to human health and the environment, a landfill cell must be constructed where the base of the containment structure, which includes the sides and bottom of the containment structure, is at least five feet above the uppermost saturated soil unit having a Unified Soil Classification of GW (well-graded gravel), GP (poorly-graded gravel), GM (silty gravel), GC (clayey gravel), SW (well-graded sand), SP (poorly-graded sand), or SM (silty sand), or a hydraulic conductivity greater than $1 \times 10^{-5}$ cm/sec, unless such saturated soil unit is not sufficiently thick and laterally continuous to provide a significant pathway for waste migration.

(ii) For purposes of this section, "composite liner" means a system consisting of two components. The upper component shall consist of a minimum 30-mil (0.75 mm) geomembrane [flexible membrane] liner and the lower component shall consist of at least a three-foot layer of compacted soil with a hydraulic conductivity of no more than $1 \times 10^{-7}$ cm/sec. Geomembrane [flexible membrane] liner components consisting of high density polyethylene shall be at least 60-mil thick. The geomembrane [flexible membrane] liner component must be installed in direct and uniform contact with the compacted soil component.

(iii) When approving a design that complies with clause (i)(l) of this subparagraph, the executive director may consider at least the following factors:
(I) the hydrogeologic characteristics of the facility and surrounding land;

(II) the climatic factors of the area; and

(III) the volume and physical and chemical characteristics of the leachate.

(iv) For purposes of this paragraph, the point of compliance is defined in §330.3 of this title (relating to Definitions). In determining the point of compliance, the executive director may consider at least the following factors:

(I) the hydrogeologic characteristics of the facility and surrounding land;

(II) the volume and physical and chemical characteristics of the leachate;

(III) the quantity, quality, and direction of flow of groundwater;

(IV) the proximity and withdrawal rate of the groundwater users;
(V) the availability of alternative drinking water supplies;

(VI) the existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater and whether groundwater is currently used or reasonably expected to be used for drinking water;

(VII) public health, safety, and welfare effects; and

(VIII) practicable capability of the owner or operator.

(B) Landfill cells shall have a leachate-collection system designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The leachate-collection and leachate-removal system shall be:

(i) constructed of materials that are chemically resistant to the leachate expected to be generated;

(ii) of sufficient strength and thickness to prevent collapse under the pressures exerted by overlying wastes, waste cover materials, and by any equipment used at the landfill; and
(iii) designed and operated to function through the scheduled closure and post-closure period of the landfill.

(C) Storm water run-on/run-off facilities such as berms and ditches shall be provided in accordance with §330.63 of this title (relating to Contents of Part III of the Application).

(D) The site shall have a groundwater monitoring system installed that is capable of detecting the migration of pollutants from the landfill and is sampled semiannually for the parameters specified in Chapter 330, Subchapter J of this title (relating to Groundwater Monitoring and Corrective Action).

(E) The final cover placed over the commercial industrial nonhazardous waste landfill unit shall consist of a minimum of 18 inches of uncontaminated topsoil overlying four feet of compacted clay-rich soil material meeting the requirements of §330.457 of this title (relating to Closure Requirements for Municipal Solid Waste Landfill Units That Receive Waste on or after October 9, 1993). The final cover over the aerial fill shall meet the requirements of §330.457 of this title and shall include a flexible membrane component.

(F) Nonhazardous waste may be placed above natural grade in commercial industrial nonhazardous waste landfill units provided the conditions in clauses (i) - (vi) of this subparagraph are met, except as provided in clause (vii) of this subparagraph:
(i) waste placed above grade shall be laterally contained by dikes that are constructed to:

(I) prevent washout, release, or exposure of waste;

(II) be physically stable against slope failure, with a minimum safety factor of 1.5;

(III) prevent washout from hydrostatic and hydrodynamic forces from storms and floods;

(IV) prevent storm water from reaching the waste;

(V) minimize release of leachate; and

(VI) minimize long-term maintenance;

(ii) the liner required in paragraph (22) of this section shall extend to the crest of the dike;

(iii) waste placed against the dike is placed no higher than three feet below the crest of the dike;
(iv) the slope of the wastes placed in the commercial industrial nonhazardous waste landfill units does not exceed 3% to the center of the unit;

(v) no waste is placed higher than the lowest elevation of the dike crest; and

(vi) a dike certification report is submitted with Attachment 10 of Part III of the permit application. The certification shall be in the following form:

Figure: 30 TAC §335.590(24)(F)(vi) (No change to the figure as it currently exist in TAC)

"I [(Texas Licensed Professional Engineer) __], Texas P.E. Registration Number __, certify under penalty of law that I have personally examined and am familiar with the design and construction of the dikes that are a portion of (unit name) __.

I further certify that I have evaluated the dike design and materials of construction using accepted engineering procedures, and have determined that the dike has structural integrity, and:

(I) Will withstand the stress of the pressure exerted by the types and amounts of wastes to be placed in the unit; and
(II) Will not fail due to scouring or piping, without dependence on any liner system included in the unit construction.

_____ (Signature) _____ Date: ________________

(SEAL)"

(vii) a commercial industrial nonhazardous waste landfill is not subject to the requirements of clauses (ii) - (v) of this subparagraph provided that the owner or operator submits a demonstration that the standards of clause (i) of this subparagraph can be met without meeting the requirements of clauses (ii) - (v) of this subparagraph, the demonstration is approved in writing by the executive director, and the owner or operator enters the approval into the facility operating record.

(25) Hazardous waste from a conditionally exempt small quantity generator as defined in §335.78(a) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), may be accepted for disposal in any commercial industrial nonhazardous waste landfill facility provided the amount of hazardous waste accepted from each conditionally exempt small quantity generator does not exceed 220 pounds (100 kilograms) a calendar month, and provided the landfill owner or operator is willing to accept the hazardous waste.
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), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by the TWC; and TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. The amendment is also proposed under Texas Health and Safety Code (THSC), §361.017, which provides the commission’s authority to manage industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.036, which provides the commission authority to adopt rules regarding records and manifests for Class I industrial solid waste or hazardous waste; and THSC, §361.078, which relates to the maintenance of state program authorization under federal law.

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 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 (as amended through November 28, 2016 (81 FR 85696);

(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 Nonhazardous [Non-Hazardous] Industrial Solid Waste Facilities).