

**SUBCHAPTER A: INDUSTRIAL SOLID WASTE AND
MUNICIPAL HAZARDOUS WASTE IN GENERAL
§§335.1 - 335.15, 335.17 - 335.32
Effective June 16, 2016**

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

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

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

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

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

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

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

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

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

(ii) fluidized bed combustion units;

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

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall

be given for recovered heat used internally in the same unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

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

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

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

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

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

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

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

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

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

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

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

(A) receiving broken or intact CRTs;

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

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

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

(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).

(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).

(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).

(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.")

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

(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.

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

(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.

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

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

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

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

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

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

(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).

(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.

(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.

(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.

(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.

(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.

(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.

(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).

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

(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.

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

(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.

(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.

(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.

(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.

(50) Electronic manifest or e-Manifest--The electronic format of the hazardous waste manifest that is obtained from the United States Environmental Protection Agency's (EPA's) national e-Manifest system and transmitted

electronically to the system, and that is the legal equivalent of EPA Forms 8700-22 (Manifest) and 8700-22A (Continuation Sheet).

(51) Electronic manifest system or e-Manifest system--The United States Environmental Protection Agency's national information technology system through which the electronic manifest may be obtained, completed, transmitted, and distributed to users of the electronic manifest and to regulatory agencies.

(52) Elementary neutralization unit--A device which:

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

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

(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*.

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

(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.

(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.

(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.

(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.

(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.

(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.

(61) 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.

(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).

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

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

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

(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.

(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.

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

(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 Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

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

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

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

(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.*

(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.

(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.

(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.

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

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

(79) Incinerator--Any enclosed device that:

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

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

(80) Incompatible waste--A hazardous waste which is unsuitable for:

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

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

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

(82) 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.

(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.

(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.

(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.

(86) Injection well--A well into which fluids are injected. (See also "Underground injection.")

(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.

(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.

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

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

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

(92) Land-based unit--When used to describe recycling of hazardous secondary materials, an area where hazardous secondary materials are placed in or

on the land before recycling. This definition does not include land-based production units.

(93) Land treatment facility--A facility or part of a facility at which solid waste or hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

(94) Landfill--A disposal facility or part of a facility where solid waste or hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

(95) Landfill cell--A discrete volume of a solid waste or hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

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

(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.

(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.

(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.

(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.

(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.

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

(103) Military munitions--All ammunition products and components produced or used by or for the Department of Defense (DOD) or the United States Armed Services for national defense and security, including military munitions under the control of the DOD, the United States Coast Guard, the United States Department of Energy (DOE), and National Guard personnel. The term "military munitions":

(A) includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof; and

(B) includes non-nuclear components of nuclear devices, managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, have been completed; but

(C) does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components thereof.

(104) Miscellaneous unit--A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, staging pile, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research, Development, and Demonstration Permits).

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

(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.

(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.

(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.")

(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.

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

(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.

(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.

(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.")

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

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

(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.

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

(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.

(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.

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

(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;

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

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

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

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

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

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

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

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

(xii) used oils--See definition for "Used 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.

(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.

(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.

(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.

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

(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.

(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.

(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.

(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.

(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.

(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).

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

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

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

(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.

(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.

(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.

(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.

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

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

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

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

(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.

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

(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) §§261.4(a)(1) - (24), (26), and (27), 261.39, and 261.40, as amended through January 13, 2015 (80 FR 1694), 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, 40 CFR §261.41 is adopted by reference as amended through July 28, 2006 (71 FR 42928). For the purposes of the exclusion under 40 CFR §261.4(a)(16), 40 CFR §261.38 is adopted by reference as amended through July 10, 2000 (65 FR 42292), and is revised as follows, with "subparagraph (A)(iv) under the definition of 'Solid waste' 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."

(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(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(146)(D)(iv) are solid wastes when they are:

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

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

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 in Figure: 30 TAC §335.1(146)(D)(iv) are solid wastes when they are:

(I) burned to recover energy; or

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

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (unless they meet the requirements of 40 CFR §261.4(a)(17), (23), (24), or (27)). Materials without an asterisk in Column 3 of Table 1 in Figure: 30 TAC §335.1(146)(D)(iv) are not solid wastes when reclaimed.

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

Figure: 30 TAC §335.1(146)(D)(iv)

TABLE 1				
	Use Constituting Disposal S.W. Def. (D)(i)(1)	Energy Recovery/Fuel S.W. Def. (D)(ii)(2)	Reclamation S.W. Def. (D)(iii)(3)²	Speculative Accumulation S.W. Def. (D)(iv)(4)

Spent materials (listed hazardous and not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous) ¹	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous) ¹	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous) ¹	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal that is not excluded under subparagraph (A) of this paragraph (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see	*	*	*	*

§335.17(a)(9) of this title) (nonhazardous) ¹				
----------------------------------------------------------	--	--	--	--

NOTE: The terms "spent materials," "sludges," "by-products," "scrap metal," and "excluded scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

¹ These materials are governed by the provisions of §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) only.

² Except as provided in 40 CFR §261.2(c)(3) and §261.4(a)(17) for mineral processing secondary materials or as provided in 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 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.

(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).

(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.

(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.

(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).

(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.

(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.

(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.

(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.

(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.

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

(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.

(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.")

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

(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.

(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.

(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.

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

(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.

(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.

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

(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.")

(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.

(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.

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

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

(174) 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).

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

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

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

(178) Uppermost aquifer--The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

(179) Used oil--Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, conditionally exempt small quantity generator hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil Standards) and 40 Code of Federal Regulations Part 279 (Standards for Management of Used Oil).

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

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

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

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

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

(C) elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(181) 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.

(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.

(183) Well--Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

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

(185) 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.

Adopted May 25, 2016

Effective June 16, 2016

§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 Water 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 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.

§335.3. Technical Guidelines.

In order to promote the proper collection, handling, storage, processing, and disposal of industrial solid waste or municipal hazardous waste in a manner consistent with the purposes of Texas Health and Safety Code, Chapter 361, the executive director will make available on request, copies of technical guidelines outlining methods designed to aid in the prevention of the conditions prohibited in this chapter. Guidelines should be considered as suggestions only.

Adopted October 24, 2001

Effective November 15, 2001

§335.4. General Prohibitions.

In addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause:

- (1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Commission on Environmental Quality;
- (2) the creation and maintenance of a nuisance; or
- (3) the endangerment of the public health and welfare.

Adopted May 25, 2016

Effective June 16, 2016

§335.5. Deed Recordation of Waste Disposal.

(a) Deed recordation of disposal of industrial solid waste or municipal hazardous waste. No person may cause, suffer, allow, or permit the disposal of industrial solid waste or municipal hazardous waste in a landfill prior to recording in the county deed records of the county or counties in which the disposal takes place the following information:

- (1) a metes and bounds description of the portion or portions of the tract of land on which disposal of industrial solid waste or municipal hazardous waste will take place;
- (2) the class or classes of industrial solid wastes or municipal hazardous wastes to be disposed of and waste description; and

(3) the name or permanent address of the person or persons operating the facility where more specific information on the disposal activity can be obtained.

(b) Proof of recordation. Proof of recordation shall be provided to the executive director in writing prior to instituting disposal operations.

(c) Additional requirements. Owners of property on which facilities for disposal of hazardous waste are located are subject to further requirements adopted by reference in §335.112(a)(6) of this title (relating to Standards).

(d) Exemption. A landowner who, at the time of disposal of animal carcasses on-site, complies with a certified water quality management plan developed for that site under Texas Agriculture Code, §201.026(f) (relating to Nonpoint Source Pollution) is exempt from the deed recordation requirements of this section.

Adopted April 10, 2002

Effective May 2, 2002

§335.6. Notification Requirements.

(a) Any person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (e), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director in writing or using electronic notification software provided by the executive director, that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. The executive director may require submission of information necessary to determine whether storage, processing, or disposal is compliant with the terms of this chapter. Required information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.

(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any changes or additional

information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements.

(c) Any person who generates hazardous waste in a quantity greater than the limits specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in any calendar month or greater than 100 kilograms in any calendar month of industrial Class 1 waste shall notify the executive director of such activity using electronic notification software or paper forms provided by the executive director. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. The executive director may require submission of information necessary to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title, or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §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 §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide notice to the executive director in writing or using electronic notification software provided by the executive director, of any such changes or additional information to that reported previously. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must meet the requirements of this subsection by electronic notification using software provided by the executive director unless the executive director has granted a written request to use paper forms or an alternative notification method or the software does not have features capable of meeting the requirements. If waste is recycled on-site or managed pursuant to §335.2(d) of this

title, the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

- (1) a description of the waste;
- (2) a description of the process generating the waste;
- (3) the composition of the waste;

(4) a proper hazardous waste determination which includes the appropriate EPA hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261. Generators must determine whether such waste is hazardous as defined in 40 CFR Part 261 and submit the results of that hazardous waste determination to the executive director;

(5) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including the following information:

- (A) whether the waste is managed on-site and/or off-site;
- (B) a description of the type and use of each on-site waste management facility unit;
- (C) a listing of the wastes managed in each unit; or
- (D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title.

(d) Any person who transports hazardous or Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director, except:

(1) industrial generators who generate less than 100 kilograms of Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste; and

(2) municipal generators who generate less than the quantity limits of hazardous waste specified in §335.78 of this title and who only transport their own waste.

(e) Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.

(f) Upon written request of the executive director, any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste and provide results of the analysis to the executive director.

(g) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter.

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or Subchapter H of this chapter must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Recycling operations may commence 90 days after the initial notification of the intent to recycle, or upon receipt of confirmation that the executive director has reviewed the information found in this section. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(i) The owner or operator of a facility qualifying for the small quantity burner exemption under 40 CFR §266.108 must provide a one-time signed, written notification to the EPA and to the executive director indicating the following:

(1) The combustion unit is operating as a small quantity burner of hazardous waste;

(2) The owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection of this section; and

(3) The maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

(j) Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), CESQG hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 of this title (relating to Used Oil).

(k) 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," §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.24 of this title, and Subchapter H of this chapter.

(l) A landowner who disposes of domestic or exotic animal carcasses and who complies with a certified water quality management plan developed for their site under Texas Agriculture Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) is exempt from the notification requirements of subsections (a) and (b) of this section.

Adopted July 9, 2008

Effective July 31, 2008

§335.7. Financial Assurance Required.

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

accidental occurrences resulting from the operations of a solid waste storage, processing, or disposal facility, the owner or operator may be required to provide coverage for sudden and/or nonsudden accidental occurrences in accordance with Chapter 37, Subchapter P of this title.

Adopted January 8, 2003

Effective January 30, 2003

§335.8. Closure and Remediation.

(a) Applicability. The regulations of this section, in addition to other applicable rules, permits, or orders, establish the obligation for persons to perform closures or remediations for facilities or areas containing industrial solid waste or municipal hazardous waste. The person can fulfill this obligation by meeting the risk reduction standards of this section or the remedy standards of Chapter 350 of this title (relating to Texas Risk Reduction Program), depending on the time of initial notification to the executive director of intent to conduct closure or remediation. The regulations of this section will remain in effect for persons who notify the executive director before May 1, 2000, of a closure or remediation in accordance with this section, unless the person elects to comply fully with Chapter 350 of this title prior to that date. Persons who notify of a closure or remediation in response to this section have up to five years from May 1, 2000, within which to submit for executive director review and approval according to this section a final report which demonstrates attainment of risk reduction standards 1 or 2. Persons will automatically qualify for this grandfathering provision if they have received a letter from the agency acknowledging receipt of the initial notification, or submit other forms of documentation by May 1, 2001, that proper and timely notification had been made. The person who has submitted a final remedial investigation report that fully complies with §335.553(b)(1) of this title (relating to Risk Reduction Standard Number 3), prior to May 1, 2001, may elect to either continue under these rules or to proceed under Chapter 350 of this title. Any person who qualifies for this grandfathering provision and elects to continue using the provisions of this section may not use any of the provisions of Chapter 350 of this title. If the executive director denies approval of the final remedial investigation report under this section for reasons of technical inadequacy, the executive director may require the person to comply with the requirements of Chapter 350 of this title. For closures and remediations initially reported to the executive director on or after May 1, 2000, the person shall use the procedures of Chapter 350 of this title. The regulations in this section supplement but do not replace any requirements for closure or remediation specified in the regulations for the programs subject to these rules and shall continue to apply as specified in paragraphs (1) - (4) of this subsection to persons who qualify for this grandfathering provision.

(1) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste at a facility permitted under §335.2(a) of this

title (relating to Permit Required), shall, unless specifically modified by other order of the commission, close the facility in accordance with the closing provisions of the permit.

(2) Any person who stores, processes, or disposes of hazardous waste is also subject to the applicable provisions relating to closure and post-closure in Subchapters E and F of this chapter (relating to Interim Standards for Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, respectively).

(3) Persons who have received approval of closure or remediation plans by the executive director and have either completed or not completed the action prior to June 28, 1993, may either maintain or complete the action, as applicable, according to the approved plan and are not subject to the requirements of this section unless a substantial change in circumstances develops at the facility or area which results in an unacceptable threat to human health or the environment as described in §350.35 of this title (relating to Substantial Change in Circumstances). Plans or reports submitted but not approved prior to June 28, 1993, will be reviewed according to the regulations in effect at the time of document submittal. If the executive director denies approval of the plan or report under those regulations for reasons of technical inadequacy, the person must then comply with the requirements of Chapter 350 of this title upon receipt of written notice from the executive director that the plan or report is not approved. Closure plans approved as part of an industrial solid or municipal hazardous waste permit which was issued prior to June 28, 1993, but not implemented at the time of permit renewal are subject to review for compliance with Chapter 350 of this title as part of the permit renewal process. Persons may resubmit such plans or reports that they have revised voluntarily to conform with the requirements of Chapter 350 of this title, unless such resubmittal would result in noncompliance with a previously approved or imposed schedule of compliance.

(4) The requirements of this section do not apply to substances discharged or spilled from storage tanks regulated by Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(b) Closure and Remediation Obligations. Persons identified in subsection (a) of this section have the obligation to conduct the activities described in paragraphs (1) - (4) of this subsection when performing a closure or remediation. Upon receipt of approval by the executive director of reports demonstrating compliance with all applicable requirements, the person has completed these obligations unless a substantial change in circumstances results in an unacceptable risk to human health or the environment as described in paragraph (5) of this subsection.

(1) Notify the executive director in writing of any closure or remediation activities as is further specified in subsection (c) of this section.

(2) Perform closure or remediation activities at the facility or area of unauthorized discharge which meet one or more of the risk reduction standards specified in subparagraphs (A) - (C) of this paragraph. Unless the requirement to close a waste management facility component is specified by other rule, permit, or order, the person will determine the time for initiation of closure. The timely remediation of unauthorized discharges resulting from continuing operation of a waste management facility component does not compel the closure of the component unless closure is a necessary part of the remedy to achieve protection of human health and the environment.

(A) Risk Reduction Standard Number 1. Closure/remediation to background-to remove and/or decontaminate all waste, waste residues, leachate, and contaminated media to background levels unaffected by waste management or industrial activities as further specified in §335.554 of this title (relating to Attainment of Risk Reduction Standard Number 1); or

(B) Risk Reduction Standard Number 2. Closure/remediation to health-based standards and criteria-to remove and/or decontaminate all waste, waste residues, leachate, and contaminated media to standards and criteria such that any substantial present or future threat to human health or the environment is eliminated as further specified in §335.555 of this title (relating to Attainment of Risk Reduction Standard Number 2); or

(C) Risk Reduction Standard Number 3. Closure/remediation with controls-to remove, decontaminate, and/or control all waste, waste residues, leachate, and contaminated media to levels and in a manner such that any substantial present or future threat to human health or the environment is eliminated or reduced to the maximum extent practicable, as further specified in §335.561 of this title (relating to Attainment of Risk Reduction Standard Number 3).

(3) Demonstrate in writing to the executive director that closure or remediation has been completed as is further specified in subsection (d) of this section.

(4) Perform any necessary post-closure care and deed certification or recordation activities as required by Subchapter S of this chapter (relating to Risk Reduction Standards).

(5) Respond on a continuing basis pursuant to paragraphs (1) - (4) of this subsection in the event that a substantial change in circumstances at the

facility or area results in an unacceptable threat to human health or the environment. In response to these substantial changes in circumstances, the person shall comply with this subsection utilizing the then-prevailing criteria and perform such actions as necessary to provide protection of human health and the environment. A substantial change in circumstance can include, but is not limited to, the situations described in subparagraphs (A) - (D) of this paragraph.

(A) a failure of institutional or engineering controls to prevent or mitigate exposure at the approved performance level;

(B) a change in land use from nonresidential to residential; or

(C) an actual exposure condition is determined to be occurring at levels not protective of human health or the environment. For purposes of this subparagraph, changes made to Subchapter S of this chapter (relating to Risk Reduction Standards) in response to periodic reviews of the general procedures specified to generate numeric cleanup levels, or in response to annual revisions of Appendix II of Subchapter S to reflect new toxicity data, do not constitute a substantial change in circumstances, unless these changes are of such magnitude to present an unacceptable threat to human health or the environment when evaluated for future exposure conditions based on site-specific considerations; or

(D) new information indicates that the contamination at the facility or area was not sufficiently characterized such that an unacceptable threat to human health or the environment continues to exist.

(c) Notification and Initiation Requirements. Persons who qualify according to subsection (a) of this section for an extended period of time for submittal of a final report to be reviewed according to this section must also respond, as appropriate, to the requirements of paragraphs (1) - (5) of this subsection.

(1) A person who intends to continue any activity of closure or remediation in accordance with subsection (b) of this section shall determine the risk reduction standard(s) to be attained. If required by subsection (a) of this section to resubmit this notification, the person shall notify the executive director and the commission's office in the district where the facility or area is located in writing of the following information by May 1, 2001:

(A) the facility or area to be subject to closure or remediation activities;

(B) the risk reduction standard(s) to be attained; and

(C) the estimated time necessary to complete the activity.

(2) After performing notification in accordance with paragraph (1) of this subsection, the person may initiate the actions necessary to attain risk reduction standard numbers 1 or 2 without prior approval by the executive director, unless such approval is required by other regulation, order, or permit of the commission. Any plan submitted for prior approval by the executive director shall contain the information specified in §335.553(a) of this title (relating to Required Information).

(3) If the person intends to attain Risk Reduction Standard Number 3, the person shall submit to the executive director the information specified in §335.553(b) of this title for approval prior to beginning or continuing, as applicable, the closure or remediation activities.

(4) The person may include one or more waste management units or areas in a submittal for the purpose of responding to this subsection and subsection (d) of this section.

(5) Notwithstanding any other requirement, the person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the closure or remediation is compliant with this section.

(d) Demonstration of conformance with risk reduction standards. Upon completion of a closure or remediation, the person shall demonstrate in a form acceptable to the executive director that the activity meets the intended risk reduction standards and any applicable closure criteria listed or referenced in this chapter. Any submittal to the executive director in response to this subsection shall be in the form of a plan or report that contains the information specified in §335.553 of this title.

Adopted September 2, 1999

Effective September 23, 1999

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

(a) Except with regard to nonhazardous recyclable materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous or industrial solid waste shall comply with the following.

(1) The generator shall keep records of all hazardous and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal and

which, at a minimum, includes the information described in subparagraphs (A) - (G) of this paragraph. These records may be maintained in any format, provided they are retrievable and easy to copy. The required records must be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to:

(A) the description, character, and classification of each waste, and any changes and additional information required under §335.6(c) and (d) of this title (relating to Notification Requirements);

(B) the quantity generated;

(C) except for conditionally exempt small quantity generators regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators), the quantity held in on-site storage as of December 31 of each calendar year;

(D) the quantity processed or disposed of at each on-site facility unit during the calendar year;

(E) the method of storage, processing, or disposal as described by codes listed on the form or instructions;

(F) the quantity shipped off-site for storage, processing, or disposal each calendar year, including the name, address, and location of each off-site facility and transporter receiving shipments;

(G) the location of all hazardous waste accumulation areas, situated at or near any point of generation, where hazardous wastes under the control of the operator of the process generating the wastes are placed in containers and initially accumulated without a permit or interim status in accordance with §335.69(d) of this title (relating to Accumulation Time).

(2) The generator shall submit to the executive director a complete and correct Annual Waste Summary detailing the management of each hazardous and Class 1 waste generated on-site during the reporting calendar year. The Annual Waste Summary shall also include the management of any hazardous or Class 1 waste generated in a year previous to the reporting year, but managed in the reporting calendar year. The Annual Waste Summary shall be submitted using electronic software or paper forms provided or approved by the executive director. Upon written request by the generator, the executive director may authorize an extension to the report due date. Any registered generator who generates 1,000 kilograms or more of hazardous waste in any calendar month, must submit the Annual Waste Summary using software provided by the executive director unless

the executive director has granted a written request to use paper forms or an alternative reporting method. Generators shall report as follows.

(A) Generators submitting their Annual Waste Summary on paper forms must do so on or before January 25 of the year following the reporting calendar year.

(B) Generators submitting their Annual Waste Summary electronically must do so on or before March 1 of the year following the reporting calendar year.

(3) Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:

(A) during the year, total on-site accumulation of hazardous waste did not equal or exceed 1,000 kilograms;

(B) no acute hazardous waste was generated or accumulated during the year exceeding the limits specified in §335.78(e)(1) and (2) of this title;

(C) a total of less than 1,200 kilograms of hazardous waste, and a total of less than 1,200 kilograms of Class 1 waste (2,400 kilograms or less of hazardous waste plus Class 1 waste combined) was generated during the year.

(4) Generators who are regulated under §335.78 of this title and also meet the requirements of paragraph (3) of this subsection are not required to submit an annual summary.

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

Adopted October 24, 2001

Effective November 15, 2001

§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, 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).

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

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

(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.

Adopted May 25, 2016

Effective June 16, 2016

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

(a) Except as provided by §335.10(a)(2), (d), and (e) of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), persons who transport hazardous waste must comply with the manifest requirements in 40 Code of Federal Regulations (CFR) §§263.20 - 263.22, and §263.25, and the Appendix to 40 CFR Part 262, as these sections are amended through February 7, 2014 (79 FR 7518) 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).

Adopted May 25, 2016

Effective June 16, 2016

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

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

Regulations (CFR) §265.71 and §265.72, or 40 CFR §264.71 and §264.72, depending on the status of the person, and with the Appendix to 40 CFR Part 262, as these sections are amended through February 7, 2014 (79 FR 7518). The references in §335.112(b)(1) and (10) and §335.152(c)(1) and (10) of this title (relating to Standards) do not apply to this provision.

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

Adopted May 25, 2016

Effective June 16, 2016

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

(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.

(d) 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)

Generator Type	Waste Type	Shipment Type	Report Method
In-State Registered Generator	Texas Waste	Ship within Texas	Annual Waste Summary (G1)
		Ship out of Texas	Annual Waste Summary (G1)
In-State Unregistered Generator	Texas Waste	Ship within Texas	Waste Shipment Summary (S1)
		Ship out of Texas	Waste Shipment Summary (S1)
In-State Unregistered Primary Exporter/Importer (TX EPA#)	Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	No Report Required
Out-of-State Primary Exporter/Importer (Other State EPA #)	Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	No Report Required
	Other State's Haz. Waste Exported to Foreign Country	Ship through Texas	Waste Shipment Summary (S1)

(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.

(g) 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.

(h) 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.

(i) 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 a minimum of three years from the date of shipment by the registered/unregistered generator or primary exporter.

(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.

(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.

(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 CFR §262.56, as amended and adopted through March 18, 2010 (75 FR 12989).

(o) 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 Part 262, Subparts A and H.

Adopted January 30, 2013

Effective February 21, 2013

§335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste.

(a) A transporter of hazardous waste or Class 1 waste shall retain a copy of each manifest signed by the generator or, in the case of exports of hazardous waste, the primary exporter; the transporter; and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of hazardous waste or Class 1 waste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title for a period of three years from the date the hazardous waste or Class 1 waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste or Class 1 waste was accepted by the initial transporter.

(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the hazardous waste or waste left the United States for a minimum of three years from the date of initial shipment.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

Adopted October 24, 2001

Effective November 15, 2001

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

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

(1) The owner or operator of the treatment, storage, or disposal facility designated on the manifest shall retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator or primary exporter where appropriate.

(2) Except as provided in paragraph (6) of this section or as provided in §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), the owner or operator shall prepare a complete and correct Monthly Waste Receipt Summary for all manifested and unmanifested hazardous or Class 1 waste shipments received. The Monthly Waste Receipt Summary shall be submitted electronically, using software provided by the executive director. Upon written request by the receiver, authorization may be given by the executive director to use paper forms or an alternative reporting method. The Monthly Waste Receipt Summary shall be submitted to the executive director on or before the 25th of each month for wastes or manifests received during the previous month. (The appropriate abbreviations for method of treatment, storage, and disposal of waste and for units of measure may be found on the form or accompanying instructions.) Any owner or operator of a treatment, storage, or disposal facility required to comply with this paragraph shall prepare and submit a Monthly Waste Receipt Summary each month even if no waste was received.

(3) If a facility accepts for treatment, storage, or disposal any hazardous waste or Class 1 waste from an off-site source without an accompanying manifest, or without an accompanying shipping paper as described 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 if the waste is not excluded from the manifest requirement of this chapter, then the owner or operator must prepare and submit a letter to the executive director within 15 days after receiving the waste. The unmanifested waste report must contain the following information:

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

(B) the date the facility received the waste;

(C) the EPA identification number, name, and address of the generator and the transporter, if available;

(D) a description and the quantity of each unmanifested hazardous waste the facility received which was not accompanied by a manifest;

(E) the method of treatment, storage, or disposal for each hazardous waste;

(F) the certification signed by the owner or operator of the facility or his authorized representative; and

(G) a brief explanation of why the waste was unmanifested, if known.

(4) The owner or operator shall retain a copy of each summary required by paragraphs (2) and (3) of this section for a minimum of three years from the date of each summary.

(5) The period of record retention required by this section is automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(6) An owner or operator reclaiming hazardous wastes received from conditionally exempt small quantity generators is subject to the requirements of this section requiring completion of a Monthly Waste Receipt Summary, from his copy of all manifests received during the month, unless he has requested in writing a modification in the reporting requirements. A modification relieving the owner or operator of having to report each manifested shipment on the Monthly Waste Receipt Summary may be granted at the discretion of the executive director on a case-by-case basis.

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

Adopted August 9, 2006

Effective August 31, 2006

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

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

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

(2) Sludge has the same meaning used in Texas Health and Safety Code, §361.003.

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

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

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

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a

material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

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

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

(7) A material is recycled if it is used, reused, or reclaimed.

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

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

(10) Processed scrap metal is scrap metal which has been manually or physically altered to either separate it into distinct materials to enhance economic value or to improve the handling of materials. Processed scrap metal includes, but is not limited to, scrap metal which has been baled, shredded, sheared, chopped, crushed, flattened, cut, melted, or separated by metal type (i.e., sorted), and, fines, drosses and related materials which have been agglomerated. (Note:

shredded circuit boards being sent for recycling are not considered processed scrap metal. They are covered under the exclusion from the definition of solid waste for shredded circuit boards being recycled (40 CFR §261.4(a)(14)).

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

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

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title, under the definition of "Solid waste", §335.6 of this title (relating to Notification Requirements), §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.20 of this title (relating to Variance To Be Classified as a Boiler), §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), §335.22 of this title (relating to Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis), §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities), §335.24 of this title, Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and Subchapter V of this chapter (relating to Standards for Reclamation of Hazardous Secondary Materials).

Adopted May 25, 2016

Effective June 16, 2016

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

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

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

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

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

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

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

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

(b) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title, §335.19 of this title, §335.20 of this title (relating to Variance To Be Classified as a Boiler), §335.21 of this title, §335.22 of this title (relating to Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis), §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and Subchapter V of this title (relating to Standards for Reclamation of Hazardous Secondary Materials).

Adopted May 25, 2016

Effective June 16, 2016

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

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following

year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The executive director's decision will be based on the following criteria:

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

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

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

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

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

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

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

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

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

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

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

(7) other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those hazardous secondary materials that have been partially reclaimed, but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially-reclaimed material for which the variance is sought is commodity-like material will be based on whether the hazardous secondary material is legitimately recycled as specified in §335.27 of this title (relating to Legitimate Recycling of Hazardous Secondary Materials) and on whether all of the following decision criteria are satisfied:

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

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

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

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

(5) whether the partially reclaimed material is handled to minimize loss; and

(6) other relevant factors.

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

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

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

(3) the reclamation facility or intermediate facility must not be subject to a formal enforcement action in the previous three years and not be classified as a significant non-complier under RCRA, Subtitle C, or must provide credible evidence that the facility will manage the hazardous secondary materials properly. Credible evidence may include a demonstration that the facility has taken remedial steps to address the violations and prevent future violations, or that the violations are not relevant to the proper management of the hazardous secondary materials;

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

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

(6) the intermediate or reclamation facility must address the potential for risk to proximate populations from unpermitted releases of the hazardous secondary material to the environment (i.e., releases that are not covered by a permit, such as a permit to discharge to water or air), which may include, but are not limited to, potential releases through surface transport by precipitation runoff, releases to soil and groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures), and must include consideration of potential cumulative risks from other nearby potential stressors.

(e) 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 (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.20 of this title (relating to

Variance To Be Classified as a Boiler), §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), §335.22 of this title (relating to Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis), §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities), §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities), and Subchapter V of this chapter (relating to Standards for Reclamation of Hazardous Secondary Materials).

Adopted May 25, 2016

Effective June 16, 2016

§335.20. Variance to be Classified as a Boiler.

In accordance with the standards and criteria in §335.1 of this title (relating to Definitions) (definition of boiler), and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler), the executive director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in §335.1 of this title (relating to Definitions), after considering the following criteria:

(1) the extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(2) the extent to which the combustion chamber and energy recovery equipment are of integral design;

(3) the efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;

(4) the extent to which exported energy is utilized;

(5) the extent to which the device is in common and customary use as a boiler functioning primarily to produce steam, heated fluids, or heated gases; and

(6) other factors, as appropriate.

Adopted September 4, 1998

Effective October 19, 1998

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

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed flame combustion devices as boilers, and applications for non-waste determinations:

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

(2) the owner or operator must apply to the executive director for the non-waste determination. The application must address the relevant criteria referenced in §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations);

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

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

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

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

Adopted May 25, 2016

Effective June 16, 2016

§335.22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-By-Case Basis.

The commission may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §335.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) should be regulated under §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. The procedures for this decision are set forth in §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities). In making this decision, the commission will consider the following factors:

- (1) the types of materials accumulated or stored and the amounts accumulated or stored;
- (2) the method of accumulation or storage;
- (3) the length of time the materials have been accumulated or stored before being reclaimed;
- (4) whether any contaminants are being released into the environment, or are likely to be so released; and
- (5) other relevant factors.

Adopted October 23, 1996

Effective November 20, 1996

§335.23. Procedures for Case-By-Case Regulation of Hazardous Waste Recycling Activities.

The commission will use the following procedures when determining whether to regulate hazardous waste recycling activities described in §335.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous

Recyclable Materials) under the provisions of §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), rather than under the provisions governing Recyclable Materials Utilized for Precious Metal Recovery under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) If a generator is accumulating the waste, the commission will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste). The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the commission will hold a public hearing. The commission will provide notice of the hearing to the public and allow public participation at the hearing. The commission will issue a final order after the hearing stating whether or not compliance with Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste) is required. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 80 of this title (relating to Contested Case Hearings) and the Texas Administrative Procedure Act, Texas Government Code Chapter 2001.

(2) if the person is accumulating the recyclable material at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of 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 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 Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); 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 261 of this title (relating to Introductory Provisions); and Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property). The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the commission's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the

notice of intent to deny the permit. The proposal for decision accompanying the permit will include the reasons for the commission's determination. The question of whether the commission's decision was proper will remain open for consideration during the public comment period and in any subsequent hearing.

Adopted September 4, 1998

Effective October 19, 1998

§335.24. Requirements for Recyclable Materials and Nonhazardous Recyclable Materials.

(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, 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)); 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; 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 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 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.

Adopted January 30, 2013

Effective February 21, 2013

§335.25. Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses.

(a) Acceptable methods for disposal of poultry carcasses include the following storage, processing, and disposal methods:

- (1) placement in a landfill permitted by the commission to receive municipal or industrial solid waste;
- (2) composting, as defined in §332.2 of this title (relating to Definitions), and as further described in §332.23 of this title (relating to Operational Requirements);
- (3) cremation or incineration;
- (4) extrusion;
- (5) rendering; and
- (6) any other method the commission determines to be appropriate.

(b) Prior to disposition by any method listed in subsection (a) of this section, poultry facilities may:

- (1) store poultry carcasses on site for no more than 72 hours provided that storage is in a varmint-proof receptacle to prevent odor, leakage, or spillage, but
- (2) shall freeze, or refrigerate at a temperature of 40 degrees Fahrenheit or less, any poultry carcasses which require on-site storage for more than 72 hours.

(c) Poultry carcasses may not be disposed of by burial on-site except in the event of a major die-off that exceeds the capacity of a poultry facility to store and process poultry carcasses by the normal means used by the facility. A mortality rate of 0.3% or more per day of the facility's total poultry inventory shall be deemed a major die-off for the purposes of this section. This subsection supersedes any provisions of a permit or other authorization issued by the commission or its predecessor agencies which may have authorized on-site burial of poultry carcasses. This section does not authorize violation of any applicable regulations or laws.

(d) Transportation of poultry carcasses to an off-site location for final disposition shall be in accordance with applicable local, state or federal regulations or laws.

Adopted July 9, 2008

Effective July 31, 2008

§335.26. Notification Requirement for Hazardous Secondary Materials.

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

Adopted May 25, 2016

Effective June 16, 2016

§335.27. Legitimate Recycling of Hazardous Secondary Materials.

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

Adopted May 25, 2016

Effective June 16, 2016

§335.28. Adoption of Memoranda of Understanding by Reference.

(a) The memorandum of understanding (effective July 14, 1987) between the attorney general of Texas and the Texas Water Commission, which concerns public participation in the state hazardous waste enforcement process, is adopted by reference.

(b) The memorandum of understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission, which concerns radiation control functions and mutual cooperation, is adopted by reference under §7.118 of this title (relating to Memorandum of Understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission Regarding Radiation Control Functions).

(c) Copies of these documents are available upon request from the Texas Natural Resource Conservation Commission, Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

Adopted October 24, 2001

Effective November 15, 2001

§335.29. Adoption of Appendices by Reference.

The following appendices contained in 40 Code of Federal Regulations Part 261 are adopted by reference as amended and adopted through April 1, 1987, and as further amended as indicated in each paragraph:

(1) Appendix I--Representative Sampling Methods (as amended through August 1, 2005 (70 Federal Register (FR) 44150));

(2) Appendix VII--Basis for Listing Hazardous Waste (as amended through February 24, 2005 (70 FR 9138));

(3) Appendix VIII--Hazardous Constituents (as amended through December 17, 2010 (75 FR 78918)); and

(4) Appendix IX--Wastes Excluded Under §260.20 and §260.22 (as amended through July 14, 2006 (71 FR 40254)).

Adopted December 10, 2014

Effective January 8, 2015

§335.30. Appendix I.

The following appendix will be used for the purposes of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General).

Figure: 30 TAC §335.30

Table 1

Types of Containers

- DM = Metal drums, barrels, kegs
- DW = Wooden drums, barrels, kegs
- DF = Fiberboard or plastic drums, barrels, kegs
- TP = Tanks portable
- TT = Cargo tanks (tank trucks)
- TC = Tank cars
- DT = Dump truck
- CY = Cylinders
- CM = Metal boxes, cartons, cases (including roll-offs)
- CW = Wooden boxes, cartons, cases
- CF = Fiber or plastic boxes, cartons, cases
- BA = Burlap, cloth, paper or plastic bag

Adopted October 23, 1996

Effective November 20, 1996

§335.31. Incorporation of References.

When used in 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 and adopted in the CFR through September 8, 2005 (70 FR 53420).

Adopted October 7, 2009

Effective October 29, 2009

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

Persons who generate, process, store or recycle hazardous secondary materials must comply with the requirements of 40 Code of Federal Regulations §260.34 (Standards and criteria for non-waste determinations) as adopted and amended through January 13, 2015 (80 FR 1694).

Adopted May 25, 2016

Effective June 16, 2016