

**SUBCHAPTER H: STANDARDS FOR THE MANAGEMENT OF
SPECIFIC WASTES AND SPECIFIC TYPES OF FACILITIES
DIVISION 1: RECYCLABLE MATERIALS USED IN
A MANNER CONSTITUTING DISPOSAL
§§335.211 - 335.214
Effective January 8, 2015**

§335.211. Applicability.

(a) The regulations of this section and §§335.212 - 335.214 of this title (relating to Standards Applicable to Generators and Transporters of Materials Used in a Manner that Constitutes Disposal; Standards Applicable to Storers of Materials That Are To Be Used In a Manner that Constitutes Disposal Who Are Not the Ultimate Users; and Standards Applicable to Users of Materials That Are Used in a Manner that Constitutes Disposal) apply to recyclable materials that are applied to or placed on the land:

(1) without mixing with any other substance(s);

(2) after mixing or combination with any other substance(s). These materials will be referred to throughout this subpart as materials used in a manner that constitutes disposal.

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the product so as to become inseparable by physical means and if such products meet the applicable treatment standards in 40 Code of Federal Regulations (CFR), Part 268, Subpart D (or applicable prohibition levels in 40 CFR §268.32 or Resource Conservation Recovery Act, §3004(d), where no treatment standards have been established) for each recyclable material (i.e., hazardous waste) that they contain, and the recycler complies with 40 CFR §268.7(b)(6). Commercial fertilizers that are produced for the general public's use that contain recyclable materials also are not presently subject to regulation provided they meet these same treatment standards or prohibition levels for each recyclable material that they contain. However, zinc-containing fertilizers using hazardous waste K061 that are produced for the general public's use are not presently subject to regulation.

(c) Anti-skid/deicing uses of slags, which are generated from high temperature metals recovery (HTMR) processing of hazardous waste K061, K062, and F006, in a manner constituting disposal are not covered by the exemption in subsection (b) of this section and remain subject to regulation.

§335.212. Standards Applicable to Generators and Transporters of Materials Used in a Manner That Constitutes Disposal.

Generators and transporters of materials that are used in a manner that constitutes disposal are subject to the applicable requirements of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

Effective May 28, 1986

§335.213. Standards Applicable to Storers of Materials That Are To Be Used in a Manner That Constitutes Disposal Who Are Not the Ultimate Users.

Owners or operators of facilities that store recyclable materials that are to be used in a manner that constitutes disposal, but who are not the ultimate users of the materials, are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedure); Chapter 50 of this title (relating to Action on Applications and Other Authorizations); Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 305 of this title (relating to Consolidated Permits), and the notification requirement under §335.6 of this title (relating to Notification Requirements).

Adopted January 30, 2013

Effective February 21, 2013

§335.214. Standards Applicable to Users of Materials That Are Used in a Manner That Constitutes Disposal.

(a) Owners or operators of facilities that use recyclable materials in a manner that constitutes disposal are regulated under all applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General), Subchapter B of this chapter (relating to Hazardous Waste Management-General Provisions), Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), Subchapter O of this chapter (relating to Land Disposal Restrictions), Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution); Chapter 50 of this title (relating to Actions 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); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); Chapter 305 of this title (relating to Consolidated Permits), and the notification requirement under §335.6 of this title (relating to Notification Requirements). These requirements do not apply to products which contain these recyclable materials under the provisions of §335.211(b) of this title (relating to Applicability).

(b) The use of waste or used oil or other material, which is contaminated with dioxin or any other hazardous waste (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

Adopted September 4, 1998

Effective October 19, 1998

**DIVISION 2: HAZARDOUS WASTE BURNED FOR ENERGY
RECOVERY**

**§§335.221 - 335.225
Effective February 21, 2013**

§335.221. Applicability and Standards.

(a) The following regulations contained in 40 Code of Federal Regulations (CFR) Part 266 (including all appendices to Part 266) are adopted by reference, as amended and adopted in the CFR through April 8, 2008 (73 FR 18970), except as noted in this section:

(1) §266.100--Applicability (as amended through July 14, 2006 (71 FR 40254)), except §266.100(c); and reference to "the applicable requirements of subparts A through H, BB, and CC of parts 264 and 265 of this chapter" is changed to "the applicable requirements of §§335.111 of this title (relating to Purpose, Scope, and Applicability), 335.112(a)(1) - (7), (20), and (21) of this title (relating to Standards), 335.151 of this title (relating to Purpose, Scope, and Applicability), and 335.152(a)(1) - (6), (18), and (19) of this title (relating to Standards)";

(2) §266.102(a)--Permit Standards for Burners - Applicability, excepting those portions of §266.102(a) containing references to §§264.56(d), 264.71 - 264.72, 264.75 - 264.77, 264.90, 264.101, and 264.142(a)(2);

(3) §266.102(b)--Permit Standards for Burners - Hazardous Waste Analysis;

(4) §266.102(c)--Permit Standards for Burners - Emission Standards;

(5) §266.102(d)--Permit Standards for Burners - Permits;

(6) §266.102(e)--Permit Standards for Burners - Operating Requirements (as amended through July 14, 2006 (71 FR 40254));

(7) §266.103 (a)(1) - (3)--Interim Status Standards for Burners - Purpose, Scope, and Applicability--General; Exemptions; and Prohibition on Burning Dioxin-Listed Wastes, respectively, except §266.103(a)(1)(iii) and §266.103(a)(2);

(8) §266.103(a)(4)--Interim Status Standards for Burners--Purpose, Scope, and Applicability--Applicability of Part 265 Standards (as amended through July 14, 2006 (71 FR 40254)), excepting those portions of §266.103(a)(4) containing references to §§265.56(d), 265.71 - 265.72, 265.75 - 265.77, 265.142(a)(2); facilities

qualifying for a corporate guarantee for liability are subject to §265.147(g)(2) and §264.151(h)(2), as amended;

(9) §266.103(a)(5) - (6)--Interim Status Standards for Burners - Purpose, Scope, and Applicability: Special Requirements for Furnaces; and Restrictions on Burning Hazardous Waste That Is Not a Fuel;

(10) §266.103(b)--Interim Status Standards for Burners - Certification of Precompliance (as amended through (July 14, 2006 (71 FR 40254)), except §266.103(b)(1) and (6);

(11) §266.103(c)--Interim Status Standards for Burners - Certification of Compliance (as amended through (July 14, 2006 (71 FR 40254)), except §266.103(c)(3)(i);

(12) §266.103(f)--Interim Status Standards for Burners - Start-Up and Shut-Down;

(13) §266.103(g)(1) - (2)--Interim Status Standards for Burners - Automatic Waste Feed Cutoff (as amended through (July 14, 2006 (71 FR 40254)));

(14) §266.103(h) - (l)--Interim Status Standards for Burners: Fugitive Emissions; Changes; Monitoring and Inspections; Recordkeeping; and Closure, respectively, as amended through April 4, 2006 (71 FR 16862);

(15) §266.104--Standards to Control Organic Emissions, except §266.104(h);

(16) §266.105--Standards to Control Particulate Matter, except §266.105(d);

(17) §266.106--Standards to Control Metals Emissions (as amended through (July 14, 2006 (71 FR 40254)), except §266.106(i);

(18) §266.107--Standards to Control Hydrogen Chloride (HCl) and Chlorine Gas (Cl₂) Emissions, except §266.107(h);

(19) §266.108--Small Quantity On-Site Burner Exemption, except §266.108(d), and except that hazardous wastes subject to §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) may not be burned in an off-site device under the exemption provided by §266.108;

(20) §266.109--Low-Risk Waste Exemption (as amended through (July 14, 2006 (71 FR 40254)));

(21) §266.110--Waiver of DRE Trial Burn for Boilers;

(22) §266.111--Standards for Direct Transfer; and

(23) §266.112--Regulation of Residues.

(b) The following hazardous wastes and facilities are not regulated under this division:

(1) used oil burned for energy recovery that is also a hazardous waste solely because it exhibits a characteristic of hazardous waste identified in 40 CFR Part 261, Subpart C, from use versus mixing. Such used oil is subject to regulation by the United States Environmental Protection Agency (EPA) under 40 CFR Part 279 and Chapter 324 of this title (relating to Used Oil Standards). This exception does not apply if the used oil has been made hazardous by mixing with characteristic or listed hazardous waste other than by a conditionally exempt small quantity generator or household generator;

(2) hazardous wastes that are exempt from regulation under the provisions of 40 CFR §261.4, and §335.24(c)(3) - (4) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and hazardous wastes that are subject to the special requirements for conditionally exempt small quantity generators under the provisions of §335.78 of this title;

(3) gas recovered from hazardous or solid waste landfills when such gas is burned for energy recovery; and

(4) coke ovens, if the only hazardous waste burned is EPA Hazardous Waste No. K087, decanter tank tar sludge from coking operations.

Adopted October 7, 2009

Effective October 29, 2009

§335.222. Management Prior to Burning.

(a) Generators. Generators of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

(b) Transporters. Transporters of hazardous waste that is burned in a boiler or industrial furnace are subject to the requirements of Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste).

(c) Storage and processing facilities. The provisions listed under paragraph (1) of this subsection apply to storage or processing by burners and by intermediaries such as processors, blenders, and distributors between the generator and the burner.

(1) Owners and operators of facilities that store or process hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of the following, except as provided by paragraph (2) of this subsection:

(A) Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General);

(B) Subchapter B of this chapter (relating to Hazardous Waste Management General Provisions);

(C) Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), except §335.112(a)(12) - (19) of this title (relating to Standards);

(D) Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), except §335.152(11) - (16) of this title (relating to Standards);

(E) Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating under a Standard Permit); and

(F) Chapter 305 of this title (relating to Consolidated Permits).

(2) Owners and operators of facilities that burn, in an on-site boiler or industrial furnace exempt from regulations under the small quantity burner provisions of 40 Code of Federal Regulations §266.108, only hazardous waste that they generate are exempt from regulation under the provisions listed above in paragraph (1) of this subsection applicable to storage units for those units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage or processing of hazardous waste by such owners and operators prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (1) of this subsection.

§335.223. Additional Permit Standards for Burners.

(a) In addition to the permit standards for burners under §335.221(a)(2)-(6) of this title (relating to Applicability and Standards), owners and operators of boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), as follows:

(1) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(2) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(3) §335.153 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(4) §335.154 of this title (relating to Reporting Requirements for Owners and Operators);

(5) §335.155 of this title (relating to Additional Reports);

(6) §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response);

(7) §335.167 of this title (relating to Corrective Action for Solid Waste Management Units);

(8) §335.178 of this title (relating to Cost Estimate for Closure).

(b) For the purposes of permit enforcement, compliance with the operating requirements specified in the permit, pursuant to 40 Code of Federal Regulations (CFR) §266.102, §335.221 (a)(1)-(6) of this title (relating to Applicability and Standards), and subsections (a)-(1)-(8) of this section, will be regarded as compliance with 40 CFR §§266.104 - 266.107. However, evidence that compliance with those permit conditions is insufficient to ensure compliance with the requirements of 40 CFR §§266.104 - 266.107 may be "good cause" for justifying suspension or revocation of a permit under §305.66 of this title (relating to Permit Denial, Suspension, and Revocation) or may be "good cause" for amendment of the permit under §305.62(d)(2) of this title (relating to Amendment).

Effective July 29, 1992

§335.224. Additional Interim Status Standards for Burners.

In addition to the interim status standards for burners under §335.221(a)(7) - (14) of this title (relating to Applicability and Standards), owners and operators of "existing" boilers and industrial furnaces that burn hazardous waste are subject to the following provisions, including the applicable provisions of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General) and Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), as follows:

(1) If a boiler or industrial furnace is located at a facility that already has a permit or interim status, then the owner or operator must comply with the applicable rules and regulations dealing with permit amendments or modifications under Chapter 305 of this title (relating to Consolidated Permits) and 40 Code of Federal Regulations (CFR) §270.42, or revisions of applications for hazardous waste permits and changes during interim status under Chapter 305 of this title and 40 CFR §270.72.

(2) The requirements of this section and §335.221(a)(7) - (14) of this title do not apply to hazardous wastes and facilities exempt under §335.221(b) of this title or exempt under 40 CFR §266.108, as adopted under §335.221(a)(19) of this title.

(3) Owners and operators of existing boilers and industrial furnaces that burn hazardous waste are subject to the following provisions:

(A) §335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(B) §335.15 of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(C) §335.113 of this title (relating to Reporting of Emergency Situations by Emergency Coordinator);

(D) §335.115 of this title (relating to Additional Reports);

(E) §335.127 of this title (relating to Cost Estimate for Closure);

(4) The owner or operator must provide complete and accurate information specified in 40 CFR §266.103(b)(2) to the executive director on or before August 21, 1992, and must establish limits for the operating parameters specified in 40 CFR §266.103(b)(3). Such information is termed a "certification of precompliance" and constitutes a certification that the owner or operator has determined that, when the facility is operated within the limits specified in 40 CFR §266.103(b)(3), the owner or operator believes that, using best engineering judgment, emissions of particulate matter, metals, HCl and Cl₂ are not likely to exceed the limits provided under 40 CFR §§266.105, 266.106, and 266.107. The facility may burn hazardous waste only under the operating conditions that the owner or operator establishes under 40 CFR §266.103(b)(3) until the owner or operator submits a revised certification of precompliance under 40 CFR §266.103(b)(8) or a certification of compliance under 40 CFR §266.103(c), or until a permit is issued.

(5) On or before August 21, 1992, the owner or operator must submit a notice for publication in a newspaper regularly published, and generally circulated within the county and area wherein the facility is located and send a copy of the notice of those persons and entities listed under §39.413 of this title (relating to Mailed Notice). The owner and operator must provide to the executive director, with the certification of precompliance, evidence of submittal of the notice for publication. The public notice requirements of this subsection do not apply to recertifications under 40 CFR §266.103(b)(8). The notice shall be entitled "Notice of Certification of Precompliance with Hazardous Waste Burning Requirements of 40 Code of Federal Regulations §266.103(b) and 30 TAC §335.224(4) and (5)." An owner or operator who satisfied the public notice requirements under 40 CFR §266.103(b)(6) will be considered compliant with this paragraph provided that the owner or operator submits evidence of such public notice on or before 30 days after the effective date of this paragraph. The notice shall include:

(A) name and address of the owner and operator of the facility as well as the location of the device burning hazardous waste;

(B) date that the certification of precompliance was submitted to the executive director;

(C) brief description of the regulatory process required to comply with the interim status requirements of this section, §335.221(a)(7) - (14) of this title, and 40 CFR §266.103, including required emissions testing to demonstrate conformance with emissions standards for organic compounds, particulate matter, metals, and HCl and Cl₂;

(D) types and quantities of hazardous waste burned including, but not limited to, source(s), whether solids or liquids, as well as an appropriate description(s) of the waste(s);

(E) type of device(s) in which the hazardous waste is burned including a physical description and maximum production rate of each device;

(F) types and quantities per year of other fuels and industrial furnace feedstocks fed to each unit;

(G) brief description of the basis for this certification of precompliance as specified in 40 CFR §266.103(b)(2);

(H) locations where the record for the facility can be viewed and copied by interested parties. These records and locations shall at a minimum include:

(i) The administrative record kept by the local Texas Natural Resource Conservation Commission regional office; and

(ii) The Boiler and Industrial Furnace (BIF) correspondence file kept at the facility site where the device is located. The correspondence file must include all correspondence between the facility and the Regional Director of the United States Environmental Protection Agency (EPA), state and local regulatory officials, including copies of all certifications and notifications, such as the precompliance certification, precompliance public notice, notice of compliance testing, compliance test report, compliance certification, time extension requests and approvals or denials, enforcement notifications of violations, and copies of EPA and state site visit reports submitted to the owner or operator.

(I) notification of the establishment by the facility owner or operator of a facility mailing list whereby interested parties shall notify the facility owner or operator that they wish to be placed on the mailing list to receive future information and notices about this facility; and

(J) location (mailing address) of the local Texas Commission on Environmental Quality (TCEQ) regional office, where further information can be obtained on TCEQ regulation of hazardous waste burning.

(6) On or before August 21, 1992, the owner or operator shall conduct emissions testing to document compliance with the emissions standards of 40 CFR §§266.103(a)(5)(i)(D), 266.104(b) - (e), and 266.105 - 266.107, under the procedures prescribed by this paragraph and paragraphs (7) and (8) of this section and 40 CFR §266.103(c), except under extensions of time provided by 40 CFR §266.103(c)(7). Based

on the compliance test, the owner or operator shall submit to the executive director a complete and accurate "certification of compliance," in accordance with 40 CFR §266.103(c)(4), with those emission standards establishing limits on the operating parameters specified in 40 CFR §266.103(c)(1). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the certification of compliance or require additional information to be submitted within specified time frames.

(7) Compliance testing must be conducted under conditions for which the owner or operator has submitted a certification of precompliance under 40 CFR §266.103(b) and paragraphs (4) - (5) of this section, and under conditions established in the notification of compliance testing required by 40 CFR §266.103(c)(2). The owner and operator may seek approval on a case-by-case basis to use compliance test data from one unit in lieu of testing a similar on-site unit. To support the request, the owner or operator must provide a comparison of the hazardous waste burned and other feedstreams, and the design, operation, and maintenance of both the tested unit and the similar unit. The director shall provide a written approval to use compliance test data in lieu of testing a similar unit if he finds that the hazardous wastes, the devices, and the operating conditions are sufficiently similar, and the data from the other compliance test is adequate to meet the requirements of §266.103(c).

(8) If the owner or operator chooses to submit a revised certification of compliance (recertification of compliance) under 40 CFR §266.103(c)(8), or if the owner or operator is required to submit a recertification of compliance under paragraphs (9) or (11) of this section, then the owner or operator shall submit the recertification of compliance to the executive director under the procedures in 40 CFR §266.103(c)(8)(i) - (iv). In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(9) The owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR §266.103(c), within 150 days of rejection by the executive director under this paragraph and paragraphs (6) and (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames. Except for the activities necessary for the owner or operator to conduct the compliance testing in accordance with 40 CFR §266.103(c)(8)(i) - (iv), and except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon rejection by the executive director and until a subsequent recertification of compliance is approved under paragraph (8) of this section, the owner or operator shall not burn hazardous waste in the unit for which a certification of compliance or recertification of compliance was rejected.

(10) Except for a rejection by the executive director of a recertification of compliance which was voluntarily submitted by the owner or operator pursuant to paragraph (8) of this section, upon receipt of the third rejection by the executive director of a certification of compliance and/or recertification of compliance for the burning of hazardous waste in a boiler or industrial furnace, the owner or operator shall stop burning hazardous waste in the unit for which the certification and/or recertification were rejected, begin closure activities under 40 CFR §266.103(l), and shall not resume the burning of hazardous waste except under an operating permit issued under Chapter 305 of this title (relating to Consolidated Permits);

(11) Notwithstanding any requirement for a recertification under paragraph (9) of this section, the owner or operator must conduct compliance testing and submit to the executive director a recertification of compliance under the provisions of paragraph (8) of this section and 40 CFR §266.103(c) within five years from submitting the previous certification or recertification (excluding recertification(s) submitted under paragraph (9) of this section). If the owner or operator seeks to recertify compliance under new operating conditions, then the owner or operator must comply with the requirements of paragraph (8) of this section. In accordance with paragraphs (12) and (13) of this section, the executive director may reject the recertification of compliance or require additional information to be submitted within specified time frames.

(12) The executive director may reject certifications or recertifications of compliance based on the failure of the owner or operator to meet the substantive requirements under 40 CFR §266.103 or this section, including, but not limited to, the following:

(A) incorrect or inappropriate calculations or other mathematical techniques which lead to significant effects on operating condition limitations;

(B) incorrect or inappropriate sampling, physical measurements, or analysis techniques which lead to significant effects on operating condition limitations;

(C) equipment failure or malfunction during the compliance test which leads to inadequate results or incorrect results which significantly affects the limits on operating conditions;

(D) inappropriate feed rates of waste, raw production materials, and/or fuels which leads to significant effects on operating condition limitations;

(E) failure to operate the compliance test under steady-state conditions; or

(F) other significant deficiencies which, in the opinion of the executive director will lead to endangerment to public health and welfare or insufficient protection of public property or the environment.

(13) The owner or operator may appeal to the commission any rejection of a certification or recertification by the executive director. Owners and operators who appeal to the commission any rejection of a certification or recertification by the executive director may continue operations under the rejected certification or recertification until the rejection is upheld by the commission.

(14) If the owner or operator does not comply with the interim status compliance schedule provided by paragraphs (4) - (6), (9), or (11) of this section, hazardous waste burning must terminate on the date of the deadline, closure activities must begin under 40 CFR §266.103(l), and hazardous waste burning may not resume except under an operating permit issued under Chapter 305 of this title. For purposes of compliance with the closure provisions of paragraph (4) of this subsection and 40 CFR §265.112(d)(2) and §265.113 (as adopted in §335.112(a)(6) of this title (relating to Standards)) the boiler or industrial furnace has received "the known final volume of hazardous waste" on the date that the deadline is missed.

(15) During the compliance test required by paragraph (7) of this section and 40 CFR §266.103(c)(3), and upon certification of compliance under 40 CFR §266.103(c), a boiler or industrial furnace must be operated with a functioning system that automatically cuts off the hazardous waste feed when the applicable operating conditions specified in 40 CFR §266.103(c)(1)(i) and (v) - (xiii) deviate from those established in the certification of compliance, and the boiler or industrial furnace must be operated in accordance with 40 CFR §266.103(g)(1) - (2).

Adopted October 7, 2009

Effective October 29, 2009

§335.225. Additional Standards for Direct Transfer.

(a) The requirements of this section and 40 Code of Federal Regulations (CFR) §266.111, adopted by reference at §335.221(a)(22) of this title (relating to Applicability and Standards), apply to owners and operators of boilers and industrial furnaces subject to 40 CFR §266.102 or §266.103, if hazardous waste is directly transferred from a transport vehicle to a boiler or industrial furnace without the use of a storage unit.

(b) The direct transfer of hazardous waste to a boiler or industrial furnace shall be conducted so that it does not adversely affect the capability of the boiler or industrial furnace to meet required standards.

Adopted October 24, 2001

Effective November 15, 2001

**DIVISION 3: RECYCLABLE MATERIALS UTILIZED
FOR PRECIOUS METAL RECOVERY**

§335.241

Effective November 15, 2001

§335.241. Applicability and Requirements.

(a) The regulations of this section apply to recyclable materials that are reclaimed to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

(b) Persons who generate, transport, or store recyclable materials that are regulated under this section are subject to the following requirements:

(1) §335.4 of this title (relating to General Prohibitions);

(2) §335.6 of this title (relating to Notification Requirements);

(3) §§335.9 - 335.12 of this title (relating to Shipping and Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Municipal Hazardous Waste or Class 1 Industrial Solid Waste; Shipping Requirements for Transporters of Municipal Hazardous Waste or Class 1 Industrial Solid Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), for generators, transporters, or persons who store, as applicable; and

(4) For precious metals exported to or imported from designated OECD member countries for recovery, 40 Code of Federal Regulations (CFR) Part 262, Subpart H and §265.12(a). For precious metals exported to or imported from non-OECD countries for recovery, §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments).

(c) Persons who store recyclable materials that are regulated under this section shall keep the following records to document that they are not accumulating these materials speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) records showing the volume of these materials stored at the beginning of the calendar year;

(2) the amount of these materials generated or received during the calendar year; and

(3) the amount of materials remaining at the end of the calendar year.

(d) Recyclable materials that are regulated under this section that are accumulated speculatively, as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), are subject to all applicable provisions of this chapter (excluding this subchapter), 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); Chapter 50 of this title (relating to Actions 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); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and Chapter 305 of this title (relating to Consolidated Permits).

Adopted October 24, 2001

Effective November 15, 2001

DIVISION 4: SPENT LEAD-ACID BATTERIES BEING RECLAIMED

§335.251

February 21, 2013

§335.251. Applicability and Requirements.

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

(b) Owners or operators of facilities that store spent lead-acid batteries before reclaiming them (other than spent batteries that are to be regenerated) are subject to the following requirements:

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

Shipping Requirements Applicable to Owners or Operators of Treatment, Storage, or Disposal Facilities) and 40 CFR §265.13; and

(2) all applicable provisions in Chapter 1 of this title; Chapter 3 of this title; Chapter 10 of this title; Chapter 20 of this title; Chapter 37 of this title; Chapter 39 of this title; Chapter 40 of this title; Chapter 50 of this title; Chapter 55 of this title; Chapter 70 of this title; Chapter 80 of this title; Chapter 86 of this title; and Chapter 305 of this title.

(c) In addition to the regulations in this section, persons who transport spent batteries in the United States to export them for reclamation in a foreign country or who export spent batteries for reclamation in a foreign country are subject to the requirements of §335.13 and §335.76(h) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; and Additional Requirements Applicable to International Shipments, respectively).

Adopted January 30, 2013

Effective February 21, 2013

DIVISION 5: UNIVERSAL WASTE RULE
§335.261, §335.262
Effective January 8, 2015

§335.261. Universal Waste Rule.

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

(b) 40 CFR Part 273, except 40 CFR §273.1, is adopted subject to the following changes.

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

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

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

(4) The term "universal waste" is changed to "universal waste as defined under §335.261(b)(16)(F) of this title (relating to Universal Waste Rule)."

(5) The term "this part" is changed to "Chapter 335, Subchapter H, Division 5 of this title (relating to Universal Waste Rule)."

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

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

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

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

(10) In 40 CFR §273.3(b)(3), the reference to "part 261 of this chapter" is changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(11) In 40 CFR §273.3(d)(1)(i) and (ii), references to "40 CFR §261.2" are changed to "§335.1 of this title (relating to Definitions)."

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

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

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

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

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

(A) Destination facility--A facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in

40 CFR §273.13(a) and (c) and 40 CFR §273.33(a) and (c), as adopted by reference in this section. A facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.

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

(C) Large quantity handler of universal waste--A universal waste handler (as defined in this section) who accumulates at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively. This designation as a large quantity handler of universal waste is retained through the end of the calendar year in which 5,000 kilograms or more total universal waste is accumulated.

(D) Small quantity handler of universal waste--A universal waste handler (as defined in this section) who does not accumulate at any time 5,000 kilograms or more total of universal waste (as defined in this section), calculated collectively.

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

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

- (i) batteries, as described in 40 CFR §273.2;
- (ii) pesticides, as described in 40 CFR §273.3;
- (iii) mercury-containing equipment, including thermostats, as described in 40 CFR §273.4;
- (iv) paint and paint-related waste, as described in §335.262(b) of this title (relating to Standards for Management of Paint and Paint-Related Waste); and
- (v) lamps, as described in 40 CFR §273.5.

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

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

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

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

(21) In 40 CFR §273.13(d)(1), the phrase "adequate to prevent breakage" is changed to "adequate to prevent breakage, except as specified in §335.261(e) of this title (relating to Universal Waste Rule)."

(22) In 40 CFR §273.17(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

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

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

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

(26) 40 CFR §273.31(b) is changed to read as follows: "Prohibited from diluting or treating universal waste, except when responding to releases as provided in 40 CFR §273.37; managing specific wastes as provided in 40 CFR §273.33; or crushing lamps under the control conditions of §335.261(e) of this title (relating to Universal Waste Rule)."

(27) In 40 CFR §273.33(a)(3)(i), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

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

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

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

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

(32) In 40 CFR §273.37(b), the reference to "40 CFR parts 260 through 272" and the reference to "40 CFR part 262" are changed to "Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)."

(33) In 40 CFR §273.40(a), the reference to "40 CFR §§262.53, 262.56(a)(1) through (4), (6), and (b) and 262.57" is changed to "§335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) and §335.76 of this title (relating to Additional Requirements Applicable to International Shipments)."

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

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

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

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

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

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

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

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

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

(c) Any person seeking to add a hazardous waste or a category of hazardous waste to the universal waste rule may file a petition for rulemaking under this section, §20.15 of this title, and 40 CFR Part 273, Subpart G as adopted by reference in this section.

(1) To be successful, the petitioner must demonstrate to the satisfaction of the commission that regulation under the universal waste rule: is appropriate for the waste or category of waste; will improve management practices for the waste or category of waste; and will improve implementation of the hazardous waste program. The petition must include the information required by §20.15 of this title. The petition should also address as many of the factors listed in 40 CFR §273.81 as are appropriate for the waste or category of waste addressed in the petition.

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

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

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

(e) Crushing lamps is permissible only in a crushing system for which the following control conditions are met:

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

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

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

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

Adopted December 10, 2014

Effective January 8, 2015

§335.262. Standards for Management of Paint and Paint-Related Waste

(a) This section establishes requirements for managing paint and paint-related waste as described in subsection (b) of this section, and provides an alternative set of management standards in lieu of regulation under other portions of this chapter not otherwise referenced under this section.

(b) Paint and paint-related waste is used or unused paint and paint-related material which is "hazardous waste" as defined under §335.1 of this title (relating to Definitions), as determined under §335.504 of this title (relating to Hazardous Waste Determination), and which is any mixture of pigment and a suitable liquid which forms a closely adherent coating when spread on a surface or any material which results from painting activities.

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

(1) Those requirements which apply to universal wastes in general and the definitions under the following regulations, as adopted by reference under §335.261 of this title (relating to Universal Waste Rule): Title 40 Code of Federal Regulations (CFR) §§273.5, 273.6, 273.10 - 273.12, 273.15 - 273.20, 273.30 - 273.32, 273.35 - 273.40, 273.50 - 273.56, 273.60 - 273.62, and 273.70;

(2) In addition to the requirements referenced under paragraph (1) of this subsection, small quantity handlers and large quantity handlers of universal waste must manage paint and paint-related waste in accordance with §335.4 of this title (relating to General Prohibitions). The paint and paint-related waste must be contained in one or more of the following:

(A) a container that remains closed, except when necessary to add or remove waste;

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

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

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

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

(F) a container, multiple container package unit, tank, transport vehicle or vessel that is labeled or marked clearly with the words "Universal Waste - Paint and Paint-Related Wastes;" and

(3) For paint and paint-related waste that is ignitable, reactive, or incompatible waste, the applicable requirements under 40 CFR §§265.17, 265.176, and 265.177.

(d) Hazardous waste determinations under subsection (b) of this section shall be documented at the time of the determination and maintained for at least three years.

Adopted October 24, 2001

Effective November 15, 2001

DIVISION 6: MILITARY MUNITIONS
§335.271, §335.272
April 12, 2001

§335.271. Purpose, Scope, and Applicability.

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

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

Adopted March 21, 2001

Effective April 12, 2001

§335.272. Standards.

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

(b) Reference to:

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

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

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

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

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

(6) 40 CFR §262.10(i) is changed to §335.61(h) of this title (relating to Standards Applicable to Generators of Hazardous Waste);

(7) 40 CFR §263.10(e) is changed to §335.91(f) of this title (relating to Standards Applicable to Transporters of Hazardous Waste);

(8) 40 CFR §§264.1(g)(8), 265.1(c)(11), and 270.1(c)(3) are changed to §335.41(d)(2) of this title (relating to Hazardous Waste Management General Provisions);

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

(10) Resource Conservation and Recovery Act (RCRA) §1004(27) is changed to Texas Health and Safety Code (THSC), §361.003(34) (related to the definition of Solid Waste);

(11) RCRA §3004(u) is changed to Texas Water Code (TWC), §7.031(a) and (b) (relating to Corrective Action Relating to Hazardous Waste);

(12) RCRA §3008(h) is changed to TWC, §7.031(c) - (e) (relating to Corrective Action Relating to Hazardous Waste);

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

Adopted March 21, 2001

Effective April 12, 2001