

**SUBCHAPTER J: HAZARDOUS WASTE GENERATION, FACILITY AND
DISPOSAL FEE SYSTEM**
§§335.321 - 335.332
Effective July 19, 2002

§335.321. Purpose.

(a) It is the purpose of this subchapter to establish an industrial solid waste and hazardous waste fee program. Under this program the following fees are imposed:

- (1) an annual fee on each generator of Class 1 industrial solid waste or hazardous waste;
- (2) an annual fee on each facility which either holds a Class 1 industrial solid waste or hazardous waste permit or operates Class 1 industrial solid waste or hazardous waste management units subject to permit authorization;
- (3) a fee on the operator of a commercial solid waste disposal facility for Class 1 industrial waste which is disposed on site by the facility;
- (4) a fee on the operator of a hazardous waste storage, processing, or disposal facility for hazardous waste which is managed on site by the facility; and
- (5) a fee on each application for a permit for an industrial solid waste or hazardous waste facility assessed under §305.53 of this title (relating to Application Fees).

(b) Hazardous and solid waste fees fund.

(1) The hazardous and solid waste fees fund shall be used for the purpose of regulation of industrial solid waste and hazardous waste, including payment to other state agencies for services provided under contract relating to enforcement of the Texas Health and Safety Code, Chapter 361.

(2) The fund shall consist of:

(A) generation fees assessed under §335.323 of this title (relating to Generation Fee Assessment);

(B) facility fees assessed under §335.324 of this title (relating to Facility Fee Assessment);

(C) hazardous waste management fees and Class 1 industrial waste disposal fees assessed and apportioned under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment);

(D) application fees assessed under §305.53 of this title; and

(E) interest penalties for late payment of industrial solid waste and hazardous waste fees imposed by §335.331 of this title (relating to Failure to Make Payment or Report).

(c) Hazardous and solid waste remediation fee fund.

(1) The hazardous and solid waste remediation fee fund shall be used for the purpose of the following:

(A) necessary and appropriate removal and remedial action at sites at which solid waste or hazardous substances have been disposed if funds from a liable party, independent third party, or the federal government are not sufficient for the removal or remedial action;

(B) necessary and appropriate maintenance of removal and remedial actions for the expected life of those actions if funds from a liable party have been collected and deposited in the fund for that purpose or if funds from a liable party, independent third party, or the federal government are not sufficient for the maintenance;

(C) expenses related to complying with the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 United States Code §§9601 et seq.) as amended, the federal Superfund Amendments and Reauthorization Act of 1986 (10 United States Code §§2701 et seq.), and the Texas Health and Safety Code, Chapter 361, Subchapters F and I;

(D) expenses concerning the regulation and management of household hazardous substances and the prevention of pollution of the water resources of the state from the uncontrolled release of hazardous substances; and

(E) expenses concerning the cleanup or removal of a spill, release, or potential threat of release of a hazardous substance where immediate action is appropriate to protect human health and the environment.

(2) The fund shall consist of:

(A) hazardous waste management fees and Class 1 industrial waste disposal fees assessed and apportioned under §335.325 of this title;

(B) interest and penalties imposed under §335.331 of this title (relating to Failure to Make Payment or Report);

(C) money paid by a person liable for facility cleanup and maintenance under provisions of the Texas Health and Safety Code, §361.197;

(D) interest received from the investment of the fund in accounts under the charge of the treasurer; and

(E) monies collected on behalf of the commission or transferred from other agencies under any applicable provisions of the Texas Health and Safety Code, including §361.138 concerning fees on lead-acid batteries, or grants from any person made for the purpose of remediation of facilities under the Texas Health and Safety Code, Chapter 361.

(d) Waste management fees collected under §335.325 of this title shall be credited to the funds of the state as follows.

(1) One quarter, or 25%, of the waste management fee collected from a commercial waste storage, processing, or disposal facility shall be credited to the hazardous and solid waste fees fund to be distributed to the county in which the facility paying the fee is located. Funds due the affected county shall be paid by the commission within 60 days of the receipt and verification of payments from a commercial hazardous waste facility in the county.

(2) The remaining amount of commercial waste management fees and the total amount of noncommercial waste fees shall be deposited as follows.

(A) One half, or 50%, of each amount shall be credited to the hazardous and solid waste remediation fee fund.

(B) One half, or 50%, of each amount shall be credited to the hazardous and solid waste fees fund.

Adopted October 24, 2001

Effective November 15, 2001

§335.322. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Affidavit of exclusion** - A sworn statement by a permit applicant in support of an exclusion or exemption from permitting pursuant to §335.2(c) of this title (relating to Permit Required) or §335.43(b) of this title (relating to Permit Required).

(2) **Authorized hazardous waste management unit** - A unit at a hazardous waste management facility which is authorized by permit or which is identified in an application submitted pursuant to and in accordance with §335.2(c) of this title or §335.43(b) of this title.

(3) **Captured facility** - A manufacturing or production facility which generates an industrial solid waste or hazardous waste which is routinely stored, processed, or disposed, on a shared

basis, in an integrated waste management unit owned and operated by and located within a contiguous manufacturing facility.

(4) **Class 1 waste** - Any industrial solid waste or mixture of industrial solid wastes meeting the definition of Class 1 waste under §335.1 of this title (relating to Definitions).

(5) **Class 1 nonhazardous waste** - Any Class 1 waste which is not a hazardous waste as defined in this section.

(6) **Commercial hazardous waste storage, processing, and disposal facility** - Any facility which accepts a hazardous waste for storage, processing (including incineration), or disposal from an off-site generator for a charge.

(7) **Commercial waste storage, processing, and disposal facility** - Any facility which accepts an industrial solid waste or a hazardous waste for storage, processing (including incineration), or disposal for a charge.

(8) **Dry weight** - The weight of all constituents other than water.

(9) **Generator** - Any person whose act or process produces industrial solid waste or hazardous waste or whose act first causes an industrial solid waste or a hazardous waste to become subject to regulation by the commission.

(10) **Generator of hazardous waste or generator** - Any person whose act or process produces hazardous waste or whose act first causes a hazardous waste to become subject to regulation by the commission.

(11) **Hazardous waste** - Those solid wastes not otherwise exempted which have been identified or listed as hazardous wastes by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, 42 United States Code §§6901 et seq., as amended.

(12) **Hazardous waste fuel** - A hazardous waste or blend of hazardous wastes to be burned for energy recovery which, for the purposes of assessment of fees under this section, is not subject to regulation under 40 Code of Federal Regulations (CFR) Part 264 (or Part 265) Subpart O, relating to incinerators.

(13) **Industrial solid waste** - A solid waste meeting the definition of industrial solid waste under §335.1 of this title.

(14) **Injection well** - As provided in the Texas Water Code (TWC), §27.002(11).

(15) **Interim status** - The status of any person who owns or operates a facility required to have a permit under this chapter, and who is required to submit an application for a permit pursuant to §335.2(c) of this title or §335.43(b) of this title.

(16) **Land disposal facility** - Any landfill, surface impoundment (excluding an impoundment treating, processing, or storing waste that is disposed pursuant to TWC, Chapter 26 or Chapter 27), waste pile, facility at which land farming, land treatment, or a land application process is used, or an injection well. Land disposal does not include the normal application of agricultural chemicals or fertilizers.

(17) **Noncommercial waste storage, processing, or disposal facility** - Any facility that accepts an industrial solid waste or a hazardous waste for storage, processing, (including incineration), or disposal for no charge or that stores, processes, or disposes of wastes generated on-site by the facility.

(18) **On-site land disposal facility** - A hazardous waste unit which meets the definition of land disposal facility of this section and on-site disposal as defined in §335.1 of this title.

(19) **Processing** - For the purposes of this subchapter, the term "processing" has the same meaning as defined in §335.1 of this title.

(20) **Recycled** - For the purposes of this subchapter, a waste is recycled if it is used, reused, or reclaimed in a manner consistent with the definition of a recyclable material or nonhazardous recyclable material under §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials).

(21) **Terminal operations** - Nonmanufacturing facilities that provide storage and transfer services for commercial chemical products or chemical intermediates listed in 40 CFR §261.33.

Adopted June 26, 2002

Effective July 19, 2002

§335.323. Generation Fee Assessment.

(a) An annual generation fee is hereby assessed each industrial or hazardous solid waste generator that is required to notify under §335.6 of this title (relating to Notification Requirements) and which generates Class 1 industrial solid waste or hazardous waste or whose act first causes such waste to become subject to regulation under Subchapter B of this chapter (relating to Hazardous Waste Management--General Provisions) on or after September 1, 1985. These fees shall be deposited in the hazardous and solid waste fee fund. The amount of a generation fee is determined by the total amount of Class 1 nonhazardous waste or hazardous waste generated during the previous calendar year. The annual generation fee may not be less than \$50. The annual generation fee for hazardous waste shall not be more than \$50,000 and for nonhazardous waste not more than \$10,000.

(b) Wastewaters are exempt from assessment under the following conditions.

(1) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 Code of Federal Regulations (CFR) Part 261, Subpart C, concerning characteristics of hazardous waste, and are rendered non-hazardous by neutralization or other treatment on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) are exempt from the assessment of hazardous waste generation fees.

(2) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title (relating to Class 1 Waste Determination) and are treated on-site in totally enclosed treatment facilities or wastewater treatment units for which no permit is required under §335.2 of this title or §335.41 of this title and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(3) Wastewaters containing hazardous wastes which are designated as hazardous solely because they exhibit a hazardous characteristic as defined in 40 CFR Part 261, Subpart C, concerning characteristics of hazardous waste, and are transported via direct hard pipe connection to a publicly-owned treatment works (POTW) and rendered nonhazardous by neutralization or other treatment are exempt from the assessment of hazardous waste generation fees.

(4) Wastewaters classified as Class 1 industrial solid wastes because they meet the criteria for a Class 1 waste under the provisions of §335.505 of this title and are transported via direct hard pipe connection to a POTW for treatment and no longer meet the criteria for a Class 1 waste are exempt from the assessment of waste generation fees.

(5) Wastewaters which are designated as hazardous waste solely under 40 CFR §261.3(a)(2)(iv) that are generated at terminal operations due to de minimis losses of commercial chemical products and chemical intermediates listed in 40 CFR §261.33 and are treated on-site or off-site at a POTW are exempt from the assessment of hazardous waste generation fees, provided that any discharge to a POTW is via a direct hardpipe connection. For the purposes of this section, de minimis losses shall have the meaning described in 40 CFR §261.3(a)(2)(iv)(D).

(6) These exemptions or adjustments in fee assessment in no way limit a generator's obligation to report such waste generation or waste management activity under any applicable provision of this chapter.

(7) A wastewater stream treated to meet a different waste classification is subject to only one assessment under this section.

(c) Wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from any generation fee assessed under this section.

(d) Wastes which are recycled shall be exempt from any generation fee assessed under this section.

(e) Generation fees are to be assessed according to the following schedule:

(1) hazardous waste:

<u>Waste Reported (Tons)</u>	<u>Annual Fee</u>
Less than 1 ton	No charge
From 1 - 50 tons	\$100
Greater than 50 tons	\$2 per ton

(2) nonhazardous waste:

<u>Waste Reported (Tons)</u>	<u>Annual Fee</u>
Less than 1 ton	No charge
From 1 - 100 tons	\$50
Greater than 100 tons	\$.50 per ton

(f) Any claim of exemption from or adjustment to the assessment of a generation fee under this section must be made in writing to the executive director prior to the due date of the assessment.

Adopted June 26, 2002

Effective July 19, 2002

§335.324. Facility Fee Assessment.

(a) An annual facility fee is hereby assessed on each permittee who holds one or more Class 1 industrial solid waste or hazardous waste permits and each facility operating a Class 1 industrial solid waste or hazardous waste management unit subject to permit authorization. These fees shall be deposited in the hazardous and solid waste fees fund. The fee for each year is assessed on each facility for which a permit or the requirement to comply with permit authorization is in effect during any part of the fiscal year. For wholly unbuilt permitted facilities, the annual fee shall be assessed according to subsection (d) of this section. A wholly unbuilt facility means a permitted Class 1 industrial solid waste or hazardous waste facility that has not initiated any physical construction and does not mean unbuilt storage, processing or disposal units within an existing facility. Physical construction means excavation, movement of earth, erection of forms or structures, or similar activity to prepare a facility to accept industrial solid waste or hazardous waste.

(b) An applicant who has, prior to September 1, submitted an affidavit of exclusion from permit requirements, shall not be subject to the annual facility fee, pending a decision by the commission on the affidavit of exclusion. If the commission determines that the facility is subject to the permit requirement, the applicant shall pay the fee within 30 days or is subject to the penalties for late payment established under §335.331 of this title (relating to Failure to Make Payment or Report).

(c) An applicant who files an affidavit after September 1 shall be subject to the annual facility fee for the billing year in which the affidavit is filed. The applicant shall not be subject to the annual facility fee for the following year, pending a decision by the commission on the affidavit of exclusion. If the commission determines that the facility is subject to the permit requirement, the applicant shall pay the fee within 30 days or is subject to the penalties for late payment established herein.

(d) The annual facility fee assessed is the cumulative total of fees for all Class 1 industrial solid waste or hazardous waste management units at the facility which are authorized by permit or subject to authorization on September 1, 1991, and September 1 of each year thereafter. The minimum fee for each hazardous waste facility shall be \$2,500. The maximum fee for each hazardous waste facility shall be \$25,000. The minimum fee for each facility authorized to manage only nonhazardous waste shall be \$500 and the maximum fee \$5,000. The annual fee for wholly unbuilt Class 1 industrial solid waste facilities shall be \$500 and the annual fee for wholly unbuilt hazardous waste facilities shall be \$2,500. A permittee shall be responsible for facility fees as required by subsection (i) of this section when any physical construction is initiated. This rule shall apply retroactively to all facility fees for wholly unbuilt Class 1 industrial solid waste facilities or wholly unbuilt hazardous waste facilities due during the four years preceding the effective date of this rule.

(e) A fee under this section for storage or processing in tanks or containers will not be assessed against the owner or operator of an elementary neutralization unit or wastewater treatment unit exempt from the requirement of a permit under §335.41(d) of this title (relating to Purpose, Scope, and Applicability).

(f) An "other unit," for the purposes of subsection (i) of this section, is an incinerator, thermal processing unit, or other processing unit, not otherwise listed in subsection (i) of this section, used for waste reduction, recycling, or hazard reduction and subject to compliance with permit requirements.

(g) For facilities which require post-closure care permits, the fee for a closed unit shall apply. A fee is assessed for each unit which received waste after January 26, 1983, and which has been closed pursuant to an approved closure plan and which is subject to the post-closure care permit requirements. Disposal units which are closed in a manner such that all hazardous wastes and hazardous constituents are removed pursuant to an approved closure plan are not subject to the fee.

(h) The facility fee assessment in subsection (i)(2)-(5) of this section shall be based on the surface area of the waste management unit in which the storage, treatment or disposal of waste has been authorized.

- (i) Facility fees shall be assessed according to the following schedule.

	Type of Waste Management Unit	Fee rate	
		Nonhazardous Waste	Hazardous Waste
(1)	Storage/Processing (Tanks or Containers)	\$250	\$.02/gallon
(2)	Land Treatment	\$400/surface acre	\$4,000/surface acre
(3)	Waste Pile	\$400/surface acre	\$4,000/surface acre
(4)	Surface Impoundment	\$500/surface acre	\$5,000/surface acre
(5)	Landfill	\$500/surface acre	\$5,000/surface acre
(6)	Injection Well	\$1,000/well	\$10,000 well
(7)	Closed Disposal Unit	\$250/unit	\$2,500/unit
(8)	Other Unit	\$250/unit	\$2,500/unit

Adopted December 1, 1999

Effective December 22, 1999

§335.325. Industrial Solid Waste and Hazardous Waste Management Fee Assessment.

(a) A fee is hereby assessed on each owner or operator of a waste storage, processing, or disposal facility, except as provided in subsections (b) - (e) of this section. A fee is assessed for hazardous wastes which are stored, processed, disposed, or otherwise managed and for Class 1 industrial wastes which are disposed at a commercial facility. For the purpose of this section, the storage, processing, or disposal of hazardous waste for which no permit is required under §335.2 of this title (relating to Permit Required) or §335.41 of this title (relating to Purpose, Scope, and Applicability) is not subject to a hazardous waste management fee.

(b) A fee imposed on the owner or operator of a commercial hazardous waste storage, processing, or disposal facility for hazardous wastes which are generated in this state and received from an affiliate or wholly owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this section, an affiliate of a commercial hazardous waste facility must have a controlling interest in common with that facility.

(c) The storage, processing, or disposal of industrial solid waste or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of public funds from the hazardous and solid waste remediation fee fund shall be exempt from the assessment of a waste management fee under this section.

(d) A fee shall not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes if such wastes are stored within the time periods allowed by and in accordance with the provisions of §335.69 of this title (relating to Accumulation Time).

(e) A fee may not be imposed under this section on the operation of a facility permitted under the Water Code, Chapter 26, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface waters of the state. For the purpose of this section, the management of a hazardous waste in a surface impoundment which is not exempt from assessment under this subsection will be assessed the fee for processing under subsection (j) of this section.

(f) The waste management fee authorized under this section shall be based on the total weight or volume of a waste except for wastes which are disposed of in an underground injection well, in which case the fee shall be based on the dry weight of the waste, measured in dry weight tons (dwt), as defined in §335.322 of this title (relating to Definitions) and §335.326 of this title (relating to Dry Weight Determination).

(g) The hazardous waste management fee for wastes generated in this state shall not exceed \$40 per ton for wastes which are landfilled.

(h) The operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed the fee amount required on wastes generated in state plus an additional increment to be established by rule, except as provided in subsection (k) of this section.

(i) For the purposes of subsection (j) of this section, energy recovery means the burning or incineration of a hazardous waste fuel and fuel processing means the handling of a waste fuel, including storage and blending, prior to its disposal by burning.

(j) Except as provided in subsections (k) - (q) of this section, waste management fees shall be assessed according to the following schedule.

- (1) Hazardous waste.

<u>Disposition</u>	<u>Noncommercial</u>		<u>Commercial</u>	
	<u>In State</u>	<u>Imported</u>	<u>In State</u>	<u>Imported</u>
Landfill	\$15/ton	\$19/ton	\$30/ton	\$37.50/ton
Land Treatment	\$12/ton	\$15/ton	\$24/ton	\$30/ton
Underground Injection	\$9/dwt	\$11/dwt	\$18/dwt	\$22.50/dwt
Incineration	\$8/ton	\$10/ton	\$16/ton	\$20/ton
Processing	\$4/ton	\$5/ton	\$8/ton	\$10/ton
Storage	\$1/ton	\$1/ton	\$2/ton	\$2/ton
Energy Recovery	\$4/ton	\$4/ton	\$8/ton	\$8/ton
Fuel Processing	\$3/ton	\$3/ton	\$6/ton	\$6/ton

(2) Class 1 non-hazardous waste.

Disposition	Noncommercial		Commercial	
	In State	Imported	In State	Imported
Landfill	N/A	N/A	\$6/ton	\$7.50/ton
Land Treatment	N/A	N/A	\$4.80/ton	\$6/ton
Underground Injection	N/A	N/A	\$3.60/dwt	\$4.50/dwt
Incineration	N/A	N/A	\$3.20/ton	\$4/ton

(k) For wastes which are generated out-of-state, the fee will be that specified in subsection (j) of this section, except that the fee for the storage, processing, incineration, and disposal of hazardous waste fuels shall be the same for wastes generated out-of-state and in-state.

(l) Except as provided in subsection (m) of this section, only one waste management fee shall be paid for a waste managed at a facility. In any instance where more than one fee could be applied under this section to a specific volume of waste, the higher of the applicable fees will be assessed.

(m) A fee for storage of hazardous waste shall be assessed in addition to any fee for other waste management methods at a facility. No fee shall be assessed under this section for the storage of a hazardous waste for a period of less than 90 days as determined from the date of receipt or generation of the waste (or the effective date of this section). The fee rate specified in the schedule under subsection (j) of this section shall apply to the quantity of waste in any month which has been in storage for more than 90 days or the number for which an extension has been granted under §335.69 of this title.

(n) A facility which receives waste transferred from another facility shall pay any waste management fee applicable under this section and shall not receive credit for any fee applied to the management of the waste at the facility of origin.

(o) The fee rate for incineration of aqueous wastes containing 5.0% or less of total organic carbon will be 10% of the fee for incineration under the schedule in subsection (j) of this section.

(p) A commercial waste disposal facility receiving solid waste not subject to assessment under this section shall pay any assessment due under Chapter 330, Subchapter P of this title (relating to Fees and Reports). No fee for disposal of a solid waste under Chapter 330, Subchapter P of this title, shall be assessed in addition to a fee for disposal under this section.

(q) An operator of a hazardous waste injection well electing to separately measure inorganic salts in the determination of dry weight under the provisions of §335.326(c) of this title shall pay a fee equivalent to 20% of the fee for underground injection assessed in subsection (j) of this section for the components of the waste stream determined to be inorganic salts.

Adopted October 24, 2001

Effective November 15, 2001

§335.326. Dry Weight Determination.

(a) The method of calculating the dry weight of each waste stream subject to assessment under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) shall be determined initially and at any time the waste stream undergoes a significant change in water content using the appropriate method(s) as specified in this section. Determinations shall be made from a representative sample collected by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.

(1) Wastes which contain suspended solids greater than or equal to 15% of the sample on a weight basis shall have the dry weight determination calculated using the method specified in Appendix I in §335.332 of this title (relating to Appendices I and II).

(2) Aqueous based wastes which contain suspended solids less than 15% of the sample by weight basis and which contain a single liquid phase shall have the dry weight determination calculated using Standard Methods for the Examination of Water and Wastewater, 15th Edition, Method 209A, pages 92-93, or equivalent method in later editions.

(3) Organic-based wastes which contain suspended solids less than 15% of the sample by weight and which contain a single liquid phase shall have the dry weight determination calculated using:

(A) 1981 Annual Book of ASTM Standards, Part 30, Method E203, pages 803 - 812, or equivalent method in later editions; or

(B) the method specified in Appendix II in §335.332 of this title.

(4) Wastes which do not meet any of the criteria specified in paragraphs (1) - (3) of this subsection shall have the dry weight determination calculated using:

(A) The 1981 Annual Book of ASTM Standards, Part 23, Method D96, pages 64 - 81, or equivalent method in later editions; or

(B) the method specified in Appendix II in §335.332 of this title; or

(C) The 1981 Annual Book of ASTM Standards, Part 23, Method D95, pages 59 - 63 or equivalent method in later editions. Method D96 determines the water and sediment content of the sample. The calculations shall be modified to determine only the water content.

(5) The method for calculating the dry weight shall be that method specified in Appendix I in §335.332 of this title or an alternate method selected by the generator pursuant to §335.327 of this title (relating to Alternate Methods of Dry Weight Determination), if the waste cannot be analyzed by one of the other required methods of this section due to interfering constituents. Documentation identifying the method of analysis and describing the interference shall be maintained by the generator.

(b) Wastes containing free liquids which are designated for disposal in a landfill and must be solidified prior to disposal shall have the dry weight determination made on the waste, prior to the addition of the solidification agent.

(c) If the dry weight ratio of a hazardous waste as measured under this section exceeds 10%, an operator of a hazardous waste injection well may elect to determine the composition of the waste stream that is inorganic salts or brines and separately record the weight of such inorganic salts for the purpose of assessment of the fee under §335.325(q) of this title. The methods used to determine the weight of inorganic salts in a hazardous waste stream are subject to review and approval by the executive director. This subsection does not apply to:

(1) any component of a waste stream that is a hazardous constituent or is a constituent for which the waste is designated as hazardous; or

(2) any waste stream received by a commercial facility for a charge.

(d) For purposes of a fee assessed under §335.325 of this title, the dry weight of a waste disposed in an underground injection well, to which brine, inorganic salts, or other authorized agents are added to maintain density control to assure compliance with no-migration requirements of 40 Code of Federal Regulations 148 Subpart C, shall be determined prior to the addition of the agent. No solid

waste, as defined by the Texas Health and Safety Code, §361.003(37), may be excluded from the determination of dry weight under this subsection.

Adopted October 24, 2001

Effective November 15, 2001

§335.327. Alternate Methods of Dry Weight Determination.

(a) Generators may select other test methods for the purpose of calculating the dry weight of their waste where one of the methods provided in §335.326 of this title (relating to Dry Weight Determination) is not applicable. Technical justification must be sent to the executive director, demonstrating that the proposed method will produce an accurate determination of the dry weight ratio of the waste unless the executive director has provided written approval for use of the alternate method. Use of an evaporation temperature above 75 degrees Celsius will be allowed only on demonstration that the waste stream contains appreciable volatile compounds that exhibit higher evaporation temperatures. Where practicable, results from the proposed test methods and the required method should be compared. Applicability of this item to such dry weight determinations is subject to review by the executive director.

(b) Generators may elect to declare the total wet weight of the waste as the dry weight.

Effective February 16, 1994

§335.328. Fees Payment.

(a) Generation and facility fees are payable each year for all Class 1 industrial solid waste and hazardous waste generators, permittees, and facilities. Fees must be paid by check, certified check, or money order payable to Texas Natural Resource Conservation Commission. Annual facility fees are payable by permittees, owners, or operators regardless of whether the facility is in actual operation. All annual generation and facility fees shall be due by a date to be established by the Texas Natural Resource Conservation Commission at the time payment is requested.

(b) Except as provided in subsection (c) of this section, waste management fees are to be paid monthly by each operator of a waste storage, processing, or disposal facility for wastes managed subject to the provisions of §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment) in that month. Fees must be paid by check, certified check, or money order to Texas Natural Resource Conservation Commission and shall be due by the 25th day following the end of the month for which payment is due.

(c) An owner or operator required to pay a waste management fee who owes less than \$500 for a calendar month or less than \$1,500 for a calendar quarter is not required to file a monthly report under §335.329 of this title (relating to Records and Reports) but should file a quarterly report with and pay a quarterly fee to the commission.

Adopted October 24, 2001

Effective November 15, 2001

§335.329. Records and Reports.

(a) Generators are required to:

(1) keep records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed on-site or shipped off-site for storage, processing or disposal in accordance with the requirements of §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators);

(2) keep records of the dry weight amount of each waste designated for disposal in an underground injection well and records of the amounts of any solidification agents, brine, or other authorized material added to a waste stream which may be excluded from the determination of dry weight under §361.326 of this title (relating to Dry Weight Determination);

(3) provide each operator of an underground injection well a certificate of computation of the dry weight of a waste to be disposed. For each off-site shipment, the dry weight amount of each hazardous waste to be disposed in an underground injection well is to be recorded in Item J of the Uniform Hazardous Waste Manifest as required under §335.30 of this title (relating to Appendix I); and

(4) submit the appropriate reports required under §335.13(b) 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) on forms furnished or approved by the executive director.

(b) Owners or operators of waste storage, processing, or disposal facilities are required to:

(1) for on-site facilities, keep records of all hazardous waste and industrial solid waste activities regarding the quantities stored, processed, and disposed on site or shipped off site for storage, processing, or disposal in accordance with the requirements of §335.9 of this title;

(2) for off-site facilities, submit the appropriate reports required under §335.15(2) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(3) record the dry-weight amount of each waste disposed in an underground injection well at the facility;

(4) document the basis for the assessment of any applicable fee as determined under §335.325 of this title (relating to Industrial Solid Waste and Hazardous Waste Management Fee Assessment), including any adjustment to or exemption from assessment; and

(5) except as provided in §335.328 of this title (relating to Fees Payment), submit a monthly summary of on-site waste management activities subject to the assessment of fees under §335.325 of this title on forms furnished or approved by the executive director. This summary report shall be due by the 25th day following the end of the month (or quarter) for which a report is made. An owner

or operator required to comply with this subsection shall continue to prepare and submit monthly (or quarterly) summaries, regardless of whether any storage, processing, or disposal was made during a particular month (or quarter), by preparing and submitting a summary indicating that no waste was managed during that month (or quarter).

(c) Records or reports required to be kept under this section shall be retained for a minimum of three years after the date the record or report is made.

(d) 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

§335.330. Cancellation, Revocation, and Transfer.

(a) Cancellation or revocation of a permit, or termination of interim status, whether by voluntary action on the part of the applicant or permittee or as a result of involuntary proceedings initiated by the commission, will not constitute grounds for refund, in whole or in part, of any fee paid by the permittee or applicant.

(b) Transfer of facility ownership will not entitle the transferring permittee, applicant, or generator to a refund, in whole or in part of any fee already paid by the permittee, applicant, or generator. The transferring permittee, applicant, or generator remains liable for any unpaid portion of fee assessed which accrued during his ownership. Any permittee, applicant, or generator to whom facility ownership or a permit is transferred shall be liable for any of the fees assessed after date of transfer. Payment by either the transferring permittee, applicant, or generator, or by the permittee, applicant, or generator to whom the ownership was transferred shall constitute full payment for any fees assessed.

(c) A generator who ceases generation of industrial solid waste or hazardous waste due to a change of process or closing of operations shall not be eligible for a refund, in whole or in part, of any fee paid.

Effective March 19, 1992

§335.331. Failure to Make Payment or Report.

(a) Failure to make payment in accordance with this subchapter constitutes a violation subject to enforcement pursuant to the Health and Safety Code, §361.137 and §361.252.

(b) The executive director shall impose interest and penalties on owners who fail to make payment of the annual facility fees imposed under this subchapter when due in accordance with Chapter 12 of this title (relating to Payment of Fees).

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

(d) Any interest or penalties collected by the commission shall be deposited in the appropriate fund.

Adopted January 22, 1997

Effective February 14, 1997

§335.332. Appendices I and II.

The following appendices will be used for the purposes of this subchapter. (Appendix I - Dry Weight Determination for Solids Based Industrial Solid Waste and Hazardous Waste; Appendix II - Dry Weight Determination for Oil and Organic Based Industrial Solid Waste and Hazardous Waste).

APPENDIX I
DRY WEIGHT DETERMINATION FOR SOLIDS BASED
INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE

The dry weight determination provisions of §335.326 of this title (relating to Dry Weight Determination) specify that the generator must determine the dry weight of each waste stream. This appendix outlines the method to be used by the generator.

1. Collect a representative sample by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.
2. An aliquot of about 100 grams or more shall be weighed in a tared evaporating dish, casserole or similar container. Record tare weight as "A" and container plus sample as "B".
3. This sample shall be evaporated at 73N to 75NC for two hours. Cool and weigh the sample plus container and record weight as "C".
4. Evaporate sample again in a drying oven at 103N to 105NC per "Standard Methods", 15th Edition, Method 209A. Cool and weigh sample plus container and record weight as "D".

All work should be done with all laboratory precautions necessary, including use of fume hoods and absence of ignition sources as appropriate.

$$\begin{aligned} \text{Weight of water} &= C - D \\ \text{Weight of Water-free Waste} &= (B-A) - (C-D) \\ &= \text{Weight of original sample} \\ &\quad \text{minus weight of water} \\ \text{Dry Weight Ratio} &= \frac{(B-A) - (C-D)}{(B-A)} \\ &= \text{Weight of water-free waste divided} \\ &\quad \text{by weight of original sample} \end{aligned}$$

APPENDIX II DRY WEIGHT DETERMINATION FOR OIL AND ORGANIC BASED INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE

The dry weight determination provisions of §335.326 of this title (relating to Dry Weight Determination) specify that the generator must determine the dry weight of each hazardous waste stream. This appendix outlines the method to be used by the generator.

1. Collect a representative sample by grab or composite. Collection methods and sample preservation shall be by methods to minimize volatilization.
2. An aliquot of about 25 grams or more shall be weighed to the nearest 0.1 mg in a tared evaporating dish or beaker. Record tare weight as "A" and container plus sample as "B".
3. Dilute sample with 100 ml of hexane. Filter sample through a crucible with a glass fiber filter (Whatman grade 934AH and 984H; Gelman Type A/E; millipore type AP40; or equivalent. Available in diameters of 2.2 cm to 4.7 cm.). Rinse evaporating dish or beaker with two 20 ml portions of hexane and filter through the crucible. Discard the solids and filter and save the filtrate.
4. Weigh approximately 25 grams of predried, anhydrous magnesium sulfate (MgSO_4) in a 400 ml beaker to the nearest 0.1 mg. Record the weight of the beaker and MgSO_4 as "C". Add the filtrate from Step 3 and stir for a few minutes with a glass rod. (Caution: Heat may be generated upon addition of filtrate.) Carefully decant the liquid portion in the beaker.
5. Dry the beaker at 73N - 75NC for one hour. Cool and weigh the beaker and record the weight as "D". All work shall be done with all laboratory precautions necessary, including use of fume hoods and absence of ignition sources as appropriate.

$$\begin{aligned} \text{Weight of water} &= D - C \\ \text{Weight of Water-free Waste} &= (B-A) - (D-C) \\ &= \text{Weight of original sample minus} \\ &\quad \text{weight of water} \\ \text{Dry Weight Ratio} &= \frac{(B-A) - (D-C)}{(B-A)} \\ &= \frac{\text{Weight of water-free waste}}{\text{Weight of original sample}} \end{aligned}$$

Effective February 16, 1994