The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §§335.1, 335.206, 335.325, and 335.329.

Amended §§335.1, 335.206, 335.325, and 335.329 are adopted *without changes* to the proposed text as published in the May 24, 2024, issue of the *Texas Register* (49 TexReg 3770) and therefore will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

Promulgation of House Bill 3060

The commission adopts this rulemaking to implement House Bill (HB) 3060, 88th Texas Legislature, 2023. HB 3060 amended Texas Health and Safety Code (THSC), §361.003 (Definitions), §361.041 (Treatment of Post-Use Polymers and Recoverable Feedstocks as Solid Waste), and §361.119 (Regulation of Certain Facilities as Solid Waste Facilities). These statutory enactments expanded the existing conditional exclusion from the definition of solid waste and regulations applicable to owners and operators of facilities that convert plastics and certain other nonhazardous recyclable material through pyrolysis and gasification to include the processes of depolymerization and solvolysis. The conditional exclusion is dependent upon two conditions being satisfied: (1) an advanced recycling facility owner or operator must demonstrate that the primary function of the facility is to convert materials into products for subsequent beneficial use; and (2) that all solid waste generated from converting the materials is disposed of at a solid waste management facility authorized by the commission. The commission's adopted implementation of HB 3060 in Chapter 335 is only applicable to material that will be classified as nonhazardous industrial solid waste if discarded. Implementation of provisions enacted by HB 3060 applicable to material that will be classified as municipal solid waste if discarded is proposed in Chapter 330 (Municipal Solid Waste).

Rule Citation Corrections

In addition to HB 3060 implementation, this rulemaking makes minor and non-substantive updates to incorrect rule citations or references.

As part of this rulemaking, the commission is also adopting revisions to 30 Texas Administrative Code (TAC) Chapter 281 (Applications Processing); Chapter 328 (Waste Minimization and Recycling); and Chapter 330 (Municipal Solid Waste), concurrently in this issue of the Texas Register.

Section by Section Discussion

§335.1, Definitions

The commission amends §335.1 to add three new definitions as paragraphs in alphabetical order, remove two definition paragraphs, and renumber the subsequent definition paragraphs accordingly to account for these amendments.

The commission adopts §335.1(8) to add the definition of "Advanced recycling facility." This amendment implements HB 3060 by adding the definition of "Advanced recycling facility" to implement the new definition of "Advanced recycling facility" in THSC, §361.003.

The commission adopts §335.1(50) to add the definition of "Depolymerization." This amendment implements HB 3060 by adding the definition of "Depolymerization" to implement the new definition of "Depolymerization" in THSC, §361.003.

The commission amends renumbered §335.1(76) to revise the definition of "Gasification" to

implement the amended definition of "Gasification" in THSC, §361.003, as amended by HB 3060. The definition of "Gasification" in §361.003 was amended to remove crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or other fuels from the list of valuable raw materials, valuable intermediate products, and valuable final products that the process of gasification may convert recoverable feedstocks into.

The commission deletes existing §335.1(75) to remove the definition of "Gasification facility." This amendment implements HB 3060 which removed the definition of "Gasification facility" from THSC, §361.003.

The commission amends renumbered §335.1(89)(B), the definition of "Incinerator," by removing "Gasification facility" and "Pyrolysis facility" and establishing that incinerators are not an "Advanced recycling facility" managing "Recoverable feedstock." These amendments also implement the new definition of "Advanced recycling facility" and the removal of the definitions of "Gasification facility" and "Pyrolysis facility" from THSC, §361.003 as enacted by HB 3060.

The commission amends renumbered §335.1(137) to revise the definition of "Post-use polymers" to implement the definition of "Post-use polymers" in THSC, §361.003, as amended by HB 3060, and clarify that post-use polymers will be classified as nonhazardous waste if discarded. HB 3060 amended the definition of "Post-use polymers" in §361.003 by: replacing the term plastic polymers with the term plastics; adding agricultural, preconsumer recovered materials and postconsumer materials to the sources of plastics that post-use polymers may be derived from; removing a list of wastes, medical waste, electronic waste, tires, and construction or demolition debris, that when mixed with used polymers will not meet the definition of post-

use polymers; identifying that post-use polymers are sorted from solid waste and other regulated waste and may contain residual amounts of organic material; specifying that plastics mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility do not meet the definition of post-use polymers; identifying that post-use polymers are used or intended for use as a feedstock or for the production of feedstocks, raw materials, intermediate products or final products using advanced recycling; and adding that post-use polymers are processed or held prior to processing at an advanced recycling facility.

The commission amends renumbered §335.1(143) to revise the definition of "Pyrolysis" to implement the definition of "Pyrolysis" in THSC, §361.003, as amended by HB 3060. The definition of "Pyrolysis" in §361.003 was amended to clarify which materials are included and excluded from the list of valuable raw materials, valuable intermediate products, and valuable final products that the process of pyrolysis converts post-use polymers into. The amended definition clarified this list by adding the term "polymers," and by removing a comma between the terms "plastic" and "monomer" which omitted "plastic" from the list; and by removing "crude oil, diesel, gasoline, diesel and gasoline blendstock, home heating oil, ethanol, or another fuel" from the list.

The commission deletes existing §335.1(143) to remove the definition of "Pyrolysis facility." This amendment implements HB 3060 which removed the definition of "Pyrolysis facility" from THSC, §361.003.

The commission amends §335.1(146) to revise the definition of "Recoverable feedstock" to implement the definition of "Recoverable feedstock" in THSC, §361.003, as amended by HB 3060. The definition of "Recoverable feedstock" in §361.003 was amended to clarify that

recoverable feedstock may be processed to be used as feedstock in an advanced recycling facility or through gasification by removing the term gasification facility, excluding materials and post-industrial wastes containing post-use polymers that have been processed into a fuel, and including post-industrial waste that the commission or EPA has determined are feedstocks and not solid waste.

The commission amends §335.1(160)(A)(v) to revise the definition of "Solid waste" to implement revisions to the definition of "Solid waste" in THSC, §361.003, as amended by HB 3060. HB 3060 expanded the existing conditional exclusions from the definition of "Solid waste" applicable to post-use polymers and recovered feedstocks processed through pyrolysis and gasification that are not classified as hazardous waste to also include post-use polymers and recovered feedstocks processed through solvolysis or depolymerization that are not classified as hazardous waste. The conditional exclusion requires that the facility operator keep records on-site demonstrating that post-use polymers and recovered feedstocks are converted into products for subsequent beneficial reuse and that solid waste generated from converting the materials is disposed of at a solid waste management facility authorized by the commission under THSC, Chapter 361.

The commission adopts §335.1(162) to add the definition of "Solvolysis." This amendment will implement HB 3060 by adding a new definition of "Solvolysis" to implement the new definition of "Solvolysis" in THSC, §361.003. The adopted definition implements HB 3060 by clarifying that the conditional exclusions from classification and regulation as solid waste applicable to plastics recycling are not applicable to a solvolysis manufacturing process that produces fuel products.

§335.206, Petitions for Rulemaking

The commission amends §335.206 by removing an extra comma and replacing the reference to 30 TAC §275.78 with the correct citation, 30 TAC §20.15. The rules regarding rule petitions were previously moved from §275.78 to §20.15 without substantive revisions in accordance with a procedural rule reorganization project (21 TexReg 4719).

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

The commission amends §335.325(d) and (m) by replacing the reference to 30 TAC §335.69 with the correct citation, 30 TAC §335.53. The conditional exemptions from permitting requirements for hazardous waste generators were repealed from 30 TAC §335.69 and adopted in 30 TAC §335.53 as part of the commission's adoption of the federal Hazardous Waste Generator Improvements Rule (47 TexReg 318). The Generator Improvements Rule (81 FR 85732) reorganized 40 Code of Federal Regulations Part 262 and defined "condition for exemption" as requirements that must be met in order to obtain an exemption from any applicable requirement.

§335.329, Records and Reports

The commission amends §335.329(a)(2) by replacing the reference to 30 TAC §361.326 with the correct citation, 30 TAC §335.326. The reference to §361.326 is a typographical error.

Final Regulatory Impact Determination

The commission reviewed the rulemaking adoption in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rulemaking is not subject to Texas Government Code, §2001.0225. Texas Government Code, §2001.0225

applies to a "Major environmental rule" which is defined in Texas Government Code, §2001.0225(g)(3) as a rule with a specific intent "to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state."

First, the rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because its specific intent is not to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the rulemaking adoption is to add, remove, and revise definitions in Chapter 335 so that they are consistent with the definitions in THSC Chapter 361 and to make minor and non-substantive updates to incorrect rule citations or references in Chapter 335.

Second, the rulemaking adoption does not meet the statutory definition of a "Major environmental rule" because the adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. It is not anticipated that the cost of complying with the adopted rules will be significant with respect to the economy as a whole or with respect to a sector of the economy; therefore, the rulemaking adoption will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Finally, the rulemaking adoption does not meet any of the four applicability requirements for a "Major environmental rule" listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1)

exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking adoption does not meet any of the four preceding applicability requirements.

This rulemaking adoption does not meet the statutory definition of a "Major environmental rule," nor does it meet any of the four applicability requirements for a "Major environmental rule." Therefore, this rulemaking is not subject to Texas Government Code, §2001.0225.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No public comments were received regarding the regulatory impact analysis determination.

Takings Impact Assessment

The commission has prepared a takings impact assessment for these adopted rules in accordance with Texas Government Code, §2007.043. The commission's preliminary assessment is that implementation of these adopted rules will not constitute a taking of real property. The commission adopts this rulemaking for the purpose of adding, removing, and revising definitions in Chapter 335 so that they are consistent with the definitions in THSC Chapter 361 and to make minor and non-substantive updates to incorrect rule citations or references in Chapter 335.

The commission's analysis indicates that Texas Government Code, Chapter 2007, does not apply to these adopted rules based upon an exception to applicability in TGC, §2007.003(b)(5). The adopted rules will add, remove, and revise definitions in Chapter 335 so that they are consistent with the definitions in THSC Chapter 361 and make minor and non-substantive updates to incorrect rule citations or references in Chapter 335, which provides a unilateral expectation that does not rise to the level of a recognized interest in private real property. Therefore, Texas Government Code, Chapter 2007 does not apply to these adopted rule changes because the rulemaking adoption falls within the exception under Texas Government Code, §2007.003(b)(5).

Further, the commission determined that promulgation of these adopted rules will be neither a statutory nor a constitutional taking of private real property. Specifically, there are no burdens imposed on private real property under the rulemaking because the adopted rules neither relate to, nor have any impact on, the use or enjoyment of private real property, and there will be no reduction in property value as a result of these rules. Therefore, the adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in

accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the amendments are consistent with CMP goals and policies because the rulemaking will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies. No public comments were received regarding the CMP.

Public Comment

The commission offered a public hearing on June 20, 2024. The comment period closed on June 25, 2024. No public comments were received.

SUBCHAPTER A: INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

§335.1

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC, Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities.

The adopted amendment implements House Bill 3060, 88th Texas Legislature, 2023.

§335.1. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A) - (C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency in accordance with the Federal Solid Waste Disposal Act, as amended (42 United States Code, §§6901 et seq.).

(6) Acute hazardous waste--Hazardous wastes that meet the listing criteria in 40 Code of Federal Regulations (CFR) §261.11(a)(2) and therefore are either listed in 40 CFR §261.31 with the assigned hazard code of (H) or are listed in 40 CFR §261.33(e).

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

(8) Advanced recycling facility--A manufacturing facility that receives, stores, and converts post-use polymers and recoverable feedstocks into valuable raw materials, valuable intermediate products, or valuable final products using advanced recycling technologies and processes including pyrolysis, gasification, solvolysis, and depolymerization. An advanced

recycling facility is not a solid waste facility, final disposal facility, waste-to-energy facility, or incinerator.

(9) Aerosol can--A non-refillable receptacle containing a gas compressed, liquefied, or dissolved under pressure, the sole purpose of which is to expel a liquid, paste, or powder and fitted with a self-closing release device allowing the contents to be ejected by the gas.

(10) AES filing compliance date--The date that the United States Environmental Protection Agency (EPA) announces in the *Federal Register,* on or after which exporters of hazardous waste and exporters of cathode ray tubes for recycling are required to file EPA information in the Automated Export System or its successor system, under the International Trade Data System platform.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) fluidized bed combustion units;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) receiving broken or intact CRTs;

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

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

(30) Central accumulation area--Any on-site hazardous waste accumulation area with hazardous waste accumulating in units subject to either 40 Code of Federal Regulations (CFR) §262.16 or §262.17, as these sections are adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste). In accordance with 40 CFR Part 262, Subpart K, as adopted by reference under §335.59 of this title (relating to Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material for Laboratories Owned by Eligible Academic Entities), a central accumulation area at an eligible academic entity that chooses to operate under 40 CFR Part 262, Subpart K, is also subject to 40 CFR §262.211 as adopted by reference under §335.59 of this title when accumulating unwanted material and/or hazardous waste.

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

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

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

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

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

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

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

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

(39) Conditionally exempt small quantity generator--A conditionally exempt small quantity generator (CESQG) is a very small quantity generator as defined in this section

that meets the independent requirements and the conditions for exemption for a very small quantity generator under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste). A reference to a conditionally exempt small quantity generator, "CESQG", or a person who generates no more than 100 kilograms of hazardous waste in a calendar month is a reference to a very small quantity generator.

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

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

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

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

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

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

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

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

(44) Contaminant--Includes, but is not limited to, "Solid waste," "Hazardous waste," and "Hazardous waste constituent" as defined in this section;" "Pollutant" as defined in Texas Water Code (TWC), §26.001, and Texas Health and Safety Code (THSC),"§361.401; "Hazardous substance" as defined in THSC, §361.003; and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, TWC, §§26.261 - 26.267.

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

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

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

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

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

(50) Depolymerization--A manufacturing process through which post-use polymers are broken down into:

(A) smaller molecules, including monomers and oligomers; or

(B) raw materials, intermediate products, or final products, including plastic feedstocks, chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, or coatings; and

(C) does not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel.

(51) Designated facility--A hazardous waste treatment, storage, or disposal facility which: has received a permit (or interim status) in accordance with the requirements of 40 Code of Federal Regulations (CFR) Parts 124 and 270; has received a permit (or interim status) from a state authorized in accordance with 40 CFR Part 271; or is regulated under 40 CFR §261.6(c)(2) or 40 CFR Part 266, Subpart F and has been designated on the manifest by the generator pursuant to 40 CFR §262.20. For hazardous wastes, if a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste. For Class 1 wastes, a designated facility is any treatment, storage, or disposal facility authorized to receive the Class 1 waste that has been designated on the manifest by the generator. Designated facility also means a generator site designated on the manifest to receive its waste as a return shipment from a facility that has rejected the waste in accordance with 40 CFR §264.72(f) as adopted under §335.152 of this title (relating to Standards) or 40 CFR §265.72(f) as adopted under §335.112 of this title (relating to Standards).

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

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

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

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

(56) Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

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

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

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

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

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

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

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations (CFR)

§261.22, or are listed in 40 CFR Part 261, Subpart D, only for this reason; or is used for neutralizing the pH of nonhazardous industrial solid waste; and

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

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

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

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

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

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

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

(67) Explosives or munitions emergency--A situation involving the suspected or detected presence of unexploded ordnance, damaged or deteriorated explosives or munitions, an improvised explosive device, other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. These situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

(68) Explosives or munitions emergency response--All immediate response activities by an explosives and munitions emergency response specialist to control, mitigate, or eliminate the actual or potential threat encountered during an explosives or munitions emergency, subject to the following:

(A) an explosives or munitions emergency response includes in-place render-safe procedures, treatment or destruction of the explosives or munitions and/or transporting those items to another location to be rendered safe, treated, or destroyed;

(B) any reasonable delay in the completion of an explosives or munitions emergency response caused by a necessary, unforeseen, or uncontrollable circumstance will not terminate the explosives or munitions emergency; and

(C) explosives and munitions emergency responses can occur on either public or private lands and are not limited to responses at hazardous waste facilities.

(69) Explosives or munitions emergency response specialist--An individual trained in chemical or conventional munitions or explosives handling, transportation, render-safe procedures, or destruction techniques, including United States Department of Defense (DOD) emergency explosive ordnance disposal, technical escort unit, and DOD-certified civilian or contractor personnel; and, other federal, state, or local government, or civilian personnel similarly trained in explosives or munitions emergency responses.

(70) Extrusion--A process using pressure to force ground poultry carcasses through a decreasing-diameter barrel or nozzle, causing the generation of heat sufficient to kill pathogens, and resulting in an extruded product acceptable as a feed ingredient.

(71) Facility--Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste, or for the management of hazardous secondary materials prior

to reclamation. A facility may consist of several treatment, storage, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them);

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) or §335.602(a)(5) of this title (relating to Standards), all contiguous property under the control of the owner or operator seeking a permit for the treatment, storage, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste);

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

(72) Final closure--The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste).

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

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

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

(76) Gasification--A process through which recoverable feedstocks are heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw materials, valuable intermediate products, or valuable final products, which include plastic monomers, chemicals, waxes, lubricants, or chemical feedstocks; and do not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel.

(77) Generator--Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class 3 wastes only shall not be considered a generator.

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

(79) Hazardous industrial waste--Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the Resource Conservation and Recovery Act of 1976, §3001 (42 United States Code, §6921). The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

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

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

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

(83) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*

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

(85) Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly- or privately-owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

(86) Hazardous waste management unit--A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

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

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

(89) Incinerator--

(A) Any enclosed device that:

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

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

(B) Does not include an "Advanced recycling facility" managing "Recoverable feedstock" as defined in this section.

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

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

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

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

(92) Industrial furnace--Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

(A) cement kilns;

(B) lime kilns;

(C) aggregate kilns;

(D) phosphate kilns;

(E) coke ovens;

(F) blast furnaces;

(G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

(H) titanium dioxide chloride process oxidation reactors;

(I) methane reforming furnaces;

(J) pulping liquor recovery furnaces;

(K) combustion devices used in the recovery of sulfur values from spent sulfuric acid;

(L) halogen acid furnaces for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3.0%, the acid product is used in a manufacturing process, and, except for "Hazardous waste" burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

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

(94) Infrared incinerator--Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

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

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

(97) Inner liner--A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

(98) Installation inspector--A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

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

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

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

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

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

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

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

(106) Large quantity generator--A generator who generates any of the following amounts in a calendar month:

(A) greater than or equal to 1,000 kilograms (2,200 pounds) of non-acute hazardous waste; or

(B) greater than 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 Code of Federal Regulations (CFR) §261.31 or §261.33(e); or

(C) greater than 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

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

(108) Leak-detection system--A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of solid waste or hazardous waste into the secondary containment structure.

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

(110) Liner--A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of solid waste or hazardous waste, hazardous waste constituents, or leachate.

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

(112) Manifest--The waste shipping document, United States Environmental Protection Agency (EPA) Form 8700-22 (including, if necessary, EPA Form 8700-22A), or the electronic manifest, originated and signed by the generator or offeror in accordance with the applicable requirements of this chapter and 40 Code of Federal Regulations Parts 262 - 265.

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

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

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

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

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

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

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

(117) Municipal hazardous waste--A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(118) Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

(119) New tank system or new tank component--A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations (CFR) §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 CFR §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986. *(See* also "Existing tank system.")

(120) No free liquids--As used in 40 Code of Federal Regulations §261.4(a)(26) and (b)(18), means that solvent-contaminated wipes may not contain free liquids as determined by Method 9095B (Paint Filter Liquids Test), included in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (EPA Publication SW-846), which is incorporated by reference at §335.31 of this title (relating to Incorporation of References), and that there is no free liquid in the container holding the wipes.

(121) Non-acute hazardous waste--All hazardous wastes that are not acute hazardous waste, as defined in this section.

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

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

(124) On-Site--The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

(125) Open burning--The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. *(See* also "Incinerator" and "Thermal processing.")

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

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

(128) Partial closure--The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

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

(130) Permit--A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify, or operate a specified municipal hazardous waste or industrial solid waste treatment, storage, or disposal facility in accordance with specified limitations.

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

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

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

(A) Except as provided in subparagraph (C) of this paragraph for the purposes of this chapter, a "Petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code (USC), §§6921, *et seq.))* and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances--i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels--a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes, but is not limited to, stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines--i.e., Grade 80, Grade 100, and Grade 100-LL;

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

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

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

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

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

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

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

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

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

(B) For the purposes of this chapter, a "Petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 USC, §§6921, *et seq.))* and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials--i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

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

(135) Plasma arc incinerator--Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

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

(137) Post-use polymers--Plastics:

(A) derived from any industrial, commercial, agricultural, or domestic activity, including preconsumer recovered materials and postconsumer materials;

(B) that would be classified as nonhazardous solid waste if discarded;

(C) that have been sorted from solid waste and other regulated waste and may contain residual amounts of organic material and incidental contaminants or impurities such as paper labels or metal rings;

(D) not mixed with solid waste or hazardous waste on-site or while being processed at an advanced recycling facility;

(E) used or intended for use as a feedstock or for the production of feedstocks, raw materials, intermediate products, or final products using advanced recycling; and

(F) processed or held prior to being processed at an advanced recycling facility.

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

(139) Poultry carcass--The carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(140) Poultry facility--A facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(141) Processing--The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of solid waste or hazardous waste, designed to change the physical, chemical, or biological character or composition of any solid waste or hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of "Processing" does not include activities relating to those materials exempted by the administrator of the United States Environmental Protection Agency in accordance with the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.,* as amended.

(142) Publicly-owned treatment works (POTW)--Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the federal Clean Water Act, §502(4)). The definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

(143) Pyrolysis--A manufacturing process through which post-use polymers are heated in an oxygen-deficient atmosphere and the pyrolysis product is converted into valuable raw materials, valuable intermediate products, or valuable final products, which include plastic

monomers, chemicals, naphtha, waxes, polymers, plastic feedstocks, or chemical feedstocks; and do not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel.

(144) Qualified groundwater scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

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

(146) Recoverable feedstock--One or more of the following materials, derived from recoverable nonhazardous waste, other than coal refuse, that has been processed so that it may be used as feedstock in an "Advanced recycling facility" or through "Gasification" as these terms are defined in this section:

(A) post-use polymers;

(B) material, including municipal solid waste and other post-industrial waste:

(i) for which the commission or the United States Environmental Protection Agency has made a non-waste determination under 40 Code of Federal Regulations §241.3(c); or

(ii) that the commission or the United States Environmental Protection Agency has otherwise determined are feedstocks and not solid waste; and

(C) excluding fuels.

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

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

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

(150) Remediation waste--All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and Texas Water Code, §7.031 (Corrective Action Relating to Hazardous Waste). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under §335.166(5) of this title (relating to Corrective Action Program) or §335.167(c) of this title.

(151) Remove--To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility, or area to another location for treatment, storage, or disposal.

(152) Replacement unit--A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste. "Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or United States Environmental Protection Agency or state approved corrective action.

(153) Representative sample--A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

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

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

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

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

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

(159) Small quantity generator--A generator who generates the following amounts in a calendar month:

(A) greater than 100 kilograms (220 pounds) but less than 1,000 kilograms (2,200 pounds) of non-acute hazardous waste;

(B) less than or equal to 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 Code of Federal Regulations (CFR) §261.31 or §261.33(e); and

(C) less than or equal to 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

(160) Solid waste--

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued in accordance with Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored, or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation of Waste Disposal), prior to sale or other conveyance of the property;

(iii) waste materials which result from "Activities associated with the exploration, development, or production of oil or gas or geothermal resources," as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas in accordance with the Texas Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas, or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) in accordance with the federal Solid Waste Disposal Act, 42 United States Code, §§6901 *et seq.,* as amended;

(iv) a material excluded by 40 Code of Federal Regulations (CFR) §§261.4(a), 261.39, or 261.40, as adopted under §335.504 of this title (relating to Hazardous Waste Determination), subject to the changes in this clause, by variance, or by non-waste determination granted under §335.18 of this title (relating to Non-Waste Determinations and Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or To Be Classified as a Boiler or for Non-Waste Determinations), and §335.32 of this title (relating to Standards and Criteria for Non-Waste Determinations). For the purposes of the exclusions under 40 CFR §261.39 and §261.40, 40 CFR §261.41 is adopted by reference under §335.504 of this title; or

(v) recoverable feedstocks including post-use polymers that are processed through pyrolysis, gasification, solvolysis, or depolymerization at an advanced recycling facility where the owner or operator keeps records on-site in accordance with subparagraph (I) of this paragraph demonstrating: that the primary function of the facility is to convert recoverable feedstocks into valuable raw materials, valuable intermediate products, or valuable final products for subsequent beneficial use; and that solid waste generated from converting materials has been disposed of at an authorized solid waste management facility.

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

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

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

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

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

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

(i) disposed of;

(ii) burned or incinerated;

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

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

(D) Except for materials described in subparagraph (H) of this paragraph, materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of "Solid waste" provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) are solid wastes when they are:

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

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

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) are solid wastes when they are:

(I) burned to recover energy; or

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

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed (unless they meet the requirements of 40 CFR §261.4(a)(17), (23), (24), or (27)). Materials without an asterisk in Column 3 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) are not solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 in Figure: 30 TAC §335.1(160)(D)(iv) are solid wastes when accumulated speculatively.

Figure: 30 TAC §335.1(160)(D)(iv)

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i)	**Energy Recovery/Fuel S.W. Def. (D)(ii)**	**Reclamation S.W. Def. (D)(iii)[2]**	**Speculative Accumulation S.W. Def. (D)(iv)**
Spent materials (listed hazardous and not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous)[1]	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous)[1]	*	*		*

By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous)[1]	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal that is not excluded under subparagraph (A) of this paragraph (hazardous)	*	*	*	*
Scrap metal other than excluded scrap metal (see §335.17(a)(9) of this title) (nonhazardous)[1]	*	*	*	*

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

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

[2] Reclamation (40 CFR §261.2(c)(3)), except as provided in §261.4(a)(17) for mineral processing secondary materials or as provided in 40 CFR §261.4(a)(23), (24), or (27) for hazardous secondary materials.

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) materials accumulated speculatively; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(L) Other portions of this chapter that relate to solid wastes that are recycled include §335.6 of this title (relating to Notification Requirements), §§335.17 - 335.19 of this title, §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

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

(N) Foundry sand from the iron and steel casting industry may not be considered as solid waste if the sand is an intended output or result of the use of an iron or steel casting process to make cast iron and steel products, introduced into the stream of commerce, and managed as an item of commercial value, including through a controlled use in a manner constituting disposal, and not as discarded material.

(161) Solvent-contaminated wipe--A wipe that, after use or after cleaning up a spill, either:

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

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

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

(162) Solvolysis--A manufacturing process that includes hydrolysis, aminolysis, ammonolysis, methanolysis, and/or glycolysis through which post-use polymers are purified with the aid of solvents while heated at low temperatures, pressurized, or both heated at low temperatures and pressurized, to remove additives and contaminants and make useful products, which include monomers, intermediates, valuable chemicals, plastic feedstocks, chemical feedstocks, and raw materials; and do not include crude oil, diesel, gasoline, diesel blend stock, gasoline blend stock, home heating oil, ethanol, or another fuel.

(163) Sorbent--A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.

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

(165) Staging pile--An accumulation of solid, non-flowing "Remediation waste," as defined in this section, that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the executive director according to the requirements of 40 Code of Federal Regulations §264.554, as adopted by reference under §335.152(a) of this title (relating to Standards).

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

(167) Storage--The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled, or stored elsewhere.

(168) Sump--Any pit or reservoir that meets the definition of "Tank" in this section and those troughs/trenches connected to it that serve to collect solid waste or hazardous waste for transport to solid waste or hazardous waste treatment, storage, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile

rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

(169) Surface impoundment or impoundment--A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

(170) Tank--A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

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

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

(173) Thermal processing--The processing of solid waste or hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the solid waste or hazardous waste.

Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge.*(See* also "Incinerator" and "Open burning.")

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

(175) Totally enclosed treatment facility--A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

(176) Transfer facility--Any transportation-related facility including loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous or industrial solid waste or hazardous secondary materials are held during the normal course of transportation.

(177) Transport vehicle--A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

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

(179) Treatability study--A study in which a hazardous or industrial solid waste is subjected to a treatment process to determine:

(A) whether the waste is amenable to the treatment process;

(B) what pretreatment (if any) is required;

(C) the optimal process conditions needed to achieve the desired treatment;

(D) the efficiency of a treatment process for a specific waste or wastes; or

(E) the characteristics and volumes of residuals from a particular treatment process. Also included in this definition for the purpose of the exemptions under 40 Code of Federal Regulations §261.4(e) and (f) and §335.2 of this title (relating to Permit Required) are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous or industrial solid waste.

(180) Treatment--To apply a physical, biological, or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

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

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

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

(184) Unfit-for-use tank system--A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing solid waste or hazardous waste without posing a threat of release of solid waste or hazardous waste to the environment.

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

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

(187) Universal waste--Any of the hazardous wastes defined as universal waste under §335.261(b)(19)(F) of this title (relating to Universal Waste Rule) that are managed under the universal waste requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

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

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

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

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

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

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

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

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

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

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

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

(C) elects to use the paper manifest form and submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with 40 Code of Federal Regulations (CFR) §264.71(a)(2)(v) as adopted under

§335.152 of this title (relating to Standards) or 40 CFR §265.71(a)(2)(v) as adopted under §335.112 of this title (relating to Standards). These paper copies are submitted for data exchange purposes only and are not the official copies of record for legal purposes.

(194) Very small quantity generator--A generator who generates less than or equal to the following amounts in a calendar month:

(A) 100 kilograms (220 pounds) of non-acute hazardous waste; and

(B) 1 kilogram (2.2 pounds) of acute hazardous waste listed in 40 Code of Federal Regulations (CFR) §261.31 or §261.33(e); and

(C) 100 kilograms (220 pounds) of any residue or contaminated soil, water, or other debris resulting from the cleanup of a spill, into or on any land or water, of any acute hazardous waste listed in 40 CFR §261.31 or §261.33(e).

(195) Wastewater treatment unit--A device which:

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

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

sludge which is a hazardous or industrial solid waste, or processes or stores a wastewater treatment sludge which is a hazardous or industrial solid waste; and

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

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

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

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

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

SUBCHAPTER G: LOCATION STANDARDS FOR HAZARDOUS WASTE STORAGE, PROCESSING, OR DISPOSAL

§335.206

Statutory Authority

The amendment is adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC, Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities; and Texas Government Code, §2001.021, which requires the commission by rule to prescribe the form and procedure for the submission, consideration, and disposition of a request made by an interested person to the commission to adopt a rule.

The adopted amendment implements House Bill 3060, 88th Texas Legislature, 2023, and Texas Government Code, §2001.021.

§335.206. Petitions for Rulemaking.

Local governments may petition the commission for a rule which restricts or prohibits the siting of a new hazardous waste management facility in areas including, but not limited to, those meeting one or more of the characteristics delineated in Texas Health and Safety Code, §361.022, and §335.204 of this title (relating to Unsuitable Site Characteristics). Such petitions shall be submitted in writing and shall comply with the requirements of §20.15 of this title (relating to Petition for Adoption of Rules). No rule adopted by the commission under this section shall affect the siting of a new hazardous waste management facility if an application or a notice of intent to file an application with respect to such facility has been filed with the commission prior to the filing of a petition under this section.

SUBCHAPTER J: HAZARDOUS WASTE GENERATION, FACILITY AND DISPOSAL FEE SYSTEM

§335.325, §335.329

Statutory Authority

The amendments are adopted under the authority of Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC; TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under TWC and other laws of the state; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; Texas Health and Safety Code (THSC), §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that THSC Chapter 361 Subchapter B does not abridge, modify or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC Chapter 361 to ensure that solid waste processing facilities are regulated as solid waste facilities and not allowed to operate unregulated as recycling facilities.

The adopted amendments implement House Bill 3060, 88th Texas Legislature, 2023. The provisions regarding the conditional exemption from permitting requirements for hazardous waste generators were readopted in 30 Texas Administrative Code §335.53 in accordance with a

state rule reorganization project (47 TexReg 318) necessitated by the federal reorganization of 40 Code of Federal Regulations Part 262 associated with the federal Hazardous Waste Generator Improvements Rule (81 FR 85732).

§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 in compliance with the conditions for exemption for a small quantity generator in 40 Code of Federal Regulations (CFR) §262.16 or the conditions for exemption for a large quantity generator in 40 CFR §262.17 as adopted in §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(e) A fee may not be imposed under this section on the operation of a facility permitted under the Texas 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 up to the maximum fee according to the schedules in the tables in Figure: 30 TAC §335.325(j)(1) and (2) in this subsection.

(1) Table 1: Hazardous Waste Schedule.

Figure: 30 TAC §335.325(j)(1)

Table 1
Hazardous Waste Schedule

	Maximum Fee Noncommercial		**Maximum Fee Commercial**	
Disposition	**In State**	**Imported**	**In State**	**Imported**
Landfill	$21.75/ton	$27.55/ton	$40/ton	$50/ton
Land Treatment	$17.40/ton	$21.75/ton	$34.80/ton	$43.50/ton

Underground Injection	$13.05/dwt	$15.95/dwt	$26.10/dwt	$32.63/dwt
Incineration	$11.60/ton	$14.50/ton	$23.20/ton	$29/ton
Processing	$5.80/ton	$7.25/ton	$11.60/ton	$14.50/ton
Storage	$1.45/ton	$1.45/ton	$2.90/ton	$2.90/ton
Energy Recovery	$5.80/ton	$5.80/ton	$11.60/ton	$11.60/ton
Fuel Processing	$4.35/ton	$4.35/ton	$8.70/ton	$8.70/ton

(2) Table 2: Nonhazardous Waste Schedule.

Figure: 30 TAC §335.325(j)(2)

Table 2

Class 1 Nonhazardous Waste Schedule

	Maximum Fee Noncommercial		**Maximum Fee Commercial**	
Disposition	**In State**	**Imported**	**In State**	**Imported**
Landfill	N/A	N/A	$8.00/ton	$10/ton
Land Treatment	N/A	N/A	$6.96/ton	$8.70/ton
Underground Injection	N/A	N/A	$5.22/dwt	$6.53/dwt
Incineration	N/A	N/A	$4.64/ton	$5.80/ton

(3) The executive director may adjust fees at or below the fee specified in the fee schedule, on an annual basis, and will notify fee payers of the upcoming fee rate before the rates go into effect.

(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 40 CFR §262.17(b) as adopted in §335.53(f) 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 Reporting). 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.

§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 §335.326 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.

(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.